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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SUSANNE AMBLER and RICHARD AMBLER,

Plaintiffs,

v.

DAIICHI, SANKYO, INC., et al.,

Defendants.

Case No. 14cv1475-WQH (BLM)

**CASE MANAGEMENT CONFERENCE
ORDER REGULATING DISCOVERY
AND OTHER PRETRIAL
PROCEEDINGS**

(Fed. R. Civ. P. 16)
(Local Rule 16.1)
(Fed. R. Civ. P. 26)

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a telephonic Case Management Conference was held on September 8, 2014. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

IT IS HEREBY ORDERED:

1. The parties shall file a joint motion for a protective order, which includes the terms of their agreement for handling confidential documents and information, on or before **September 26, 2014.**

2. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **November 7, 2014.**

3. Each party shall serve on all opposing parties a list of experts whom that party

1 expects to call at trial, on or before **January 23, 2015**. Each party may supplement its
2 designation in response to the other party's designation no later than **February 20, 2015**.
3 Expert designations shall include the name, address, and telephone number of each expert and
4 a reasonable summary of the testimony the expert is expected to provide. The list shall also
5 include the normal rates the expert charges for deposition and trial testimony.

6 The parties must identify any person who may be used at trial to present evidence
7 pursuant to Rules 702, 703 or 705 of the Federal Rules of Evidence. This requirement is not
8 limited to retained experts.

9 **Please be advised that failure to comply with this section or any other discovery**
10 **order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,**
11 **including a prohibition on the introduction of experts or other designated matters in**
12 **evidence.**

13 4. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served on all
14 parties on or before **March 27, 2015**. Any contradictory or rebuttal information shall be
15 disclosed on or before **May 1, 2015**. In addition, Fed. R. Civ. P. 26(e)(2) imposes a duty on the
16 parties to supplement the expert disclosures made pursuant to Fed. R. Civ. P. 26(a)(2)(B) by the
17 time that pretrial disclosures are due under Fed. R. Civ. P. 26(a)(3) (discussed below).

18 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2) regarding expert
19 disclosures. Such disclosures shall include an expert report, all supporting materials, a complete
20 statement of all opinions to be expressed and the basis and reasons therefor, the data or other
21 information considered by the expert in forming the opinions, any exhibits to be used as a
22 summary of or as support for the opinions, the qualifications of the witness including a list of all
23 publications authored by the witness within the preceding ten years, the compensation to be paid
24 for the study and testimony, and a list of other cases in which the witness has testified as an
25 expert at trial or by deposition within the preceding four years.

26 This disclosure requirement applies to all persons retained or specially employed to provide
27 expert testimony, or whose duties as an employee of the party regularly involve the giving of
28 expert testimony.

1 **Please be advised that failure to comply with this section or any other discovery**
2 **order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,**
3 **including a prohibition on the introduction of experts or other designated matters in**
4 **evidence.**

5 5. All fact discovery must be completed by all parties on or before **February 27,**
6 **2015.** All expert discovery must be completed by all parties on or before **June 26, 2015.**
7 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure,
8 and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance
9 of the cut-off date, so that it may be completed by the cut-off date, taking into account the times
10 for service, notice, and response as set forth in the Federal Rules of Civil Procedure.

11 Counsel shall promptly and in good faith meet and confer with regard to all discovery
12 disputes in compliance with Federal Rule of Civil Procedure and Civil Local Rule 26.1(a). **All**
13 **discovery motions shall be filed within thirty (30) days after counsel have met and**
14 **conferred and reached an impasse with regard to any particular discovery issue, but**
15 **in no event shall discovery motions be filed more than sixty (60) days after the date**
16 **upon which the event giving rise to the discovery dispute occurred.** For oral discovery,
17 the event giving rise to the discovery dispute is the completion of the transcript of the affected
18 portion of the deposition. For written discovery, the event giving rise to the discovery dispute is
19 either the service of the response, or, if no response was served, the initial date the response was
20 due. **In addition, all discovery motions must be filed within thirty (30) days after the**
21 **close of discovery.** The Court's procedures for resolving discovery disputes are set forth in
22 Magistrate Judge **Barbara L. Major's** Civil Chambers Rules, which are posted on the Court's
23 website.

24 6. All other pretrial motions must be filed on or before **August 21, 2015.** **Motions**
25 **will not be heard or calendared unless counsel for the moving party has obtained a motion**
26 **hearing date from the law clerk of the judge who will hear the motion.** Failure to timely request
27 a motion date may result in the motion not being heard.

28 Questions regarding this case should be directed to the judge's law clerk. The Court draws

1 the parties' attention to Local Rule 7.1(e)(4) which requires that the parties allot additional time
2 for service of motion papers by mail. Papers not complying with this rule shall not be accepted
3 for filing.

4 Briefs or memoranda in support of or in opposition to any pending motion shall not exceed
5 twenty-five (25) pages in length without leave of the judge who will hear the motion. No reply
6 memorandum shall exceed ten (10) pages without leave of the judge who will hear the motion.

7 7. A Mandatory Settlement Conference shall be conducted on **January 21, 2015** at
8 **9:30 a.m.** in the chambers of Magistrate Judge Barbara L. Major located at **333 West**
9 **Broadway, Suite 1110, San Diego, CA 92101**. All discussions at the Mandatory Settlement
10 Conference will be informal, off the record, privileged, and confidential. Counsel for any non-
11 English speaking party is responsible for arranging for the appearance of an interpreter at the
12 conference.

13 a. **Personal Appearance of Parties Required**: All parties, adjusters for
14 insured defendants, and other representatives of a party having full and complete authority to
15 enter into a binding settlement, as well as the principal attorneys responsible for the litigation,
16 must be present **in person** and legally and factually prepared to discuss settlement of the case.
17 Counsel appearing without their clients (whether or not counsel has been given settlement
18 authority) will be cause for immediate imposition of sanctions and may also result in the
19 immediate termination of the conference.

20 Unless there is good cause, persons required to attend the conference pursuant to this
21 Order shall not be excused from personal attendance. **Requests for excuse from attendance**
22 **for good cause shall be made in writing at least three (3) court days prior to the**
23 **conference.** Failure to appear **in person** at the Mandatory Settlement Conference will be
24 grounds for sanctions.

25 b. **Full Settlement Authority Required**: In addition to counsel who will try
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1 the case, a party or party representative with full settlement authority¹ must be present for the
2 conference. In the case of a corporate entity, an authorized representative of the corporation
3 who is not retained outside counsel must be present and must have discretionary authority to
4 commit the company to pay an amount up to the amount of Plaintiff's prayer (excluding punitive
5 damages prayers). The purpose of this requirement is to have representatives present who can
6 settle the case during the course of the conference without consulting a superior. Counsel for a
7 government entity may be excused from this requirement so long as the government attorney
8 who attends the Mandatory Settlement Conference (1) has primary responsibility for handling the
9 case, and (2) may negotiate settlement offers which the attorney is willing to recommend to the
10 government official having ultimate settlement authority.

11 c. **Confidential Settlement Statements Required:** No later than
12 **January 14, 2015**, the parties shall submit directly to Magistrate Judge Major's chambers (via
13 hand delivery or email address efile_major@casd.uscourts.gov) confidential settlement statements
14 no more than five (5) pages in length. **These confidential statements shall not be filed or**
15 **served on opposing counsel.** Each party's confidential statement must set forth the party's
16 statement of the case, identify controlling legal issues, concisely set out issues of liability and
17 damages, and shall set forth the party's settlement position, including any previous settlement
18 negotiations, mediation sessions, or mediation efforts, the last offer or demand made by that
19 party, and a separate statement of the offer or demand the party is prepared to make at the
20 settlement conference. If a specific demand or offer for settlement cannot be made at the time
21 the brief is submitted, then the reasons therefore must be stated along with a statement as to
22 when the party will be in a position to state a demand or make an offer.

23 General statements that a party will "negotiate in good faith" is not a specific demand or
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25 ¹ "Full settlement authority" means that the individuals at the settlement conference must be authorized to
26 explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties. Heileman
27 Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion
28 and authority" to change the settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D.
Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference
contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A
limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th
Cir. 2001).

1 offer contemplated by this Order. It is assumed that all parties will negotiate in good faith.

2 d. **Requests to Continue a Mandatory Settlement Conference:** Any
3 request to continue the Mandatory Settlement Conference or request for relief from any of the
4 provisions or requirements of this Order must be sought by a **written ex parte application.**
5 The application must (1) be supported by a declaration of counsel setting forth the reasons and
6 justifications for the relief requested, (2) confirm compliance with Civil Local Rule 83.3(h), and
7 (3) report the position of opposing counsel or any unrepresented parties subject to the Order.
8 **Absent good cause, requests for continuances will not be considered unless submitted**
9 **in writing no fewer than seven (7) days prior to the scheduled conference.**

10 **If the case is settled in its entirety before the scheduled date of the conference,**
11 **counsel and any unrepresented parties must still appear in person, unless a written**
12 **joint notice confirming the complete settlement of the case is filed no fewer than**
13 **twenty-four (24) hours before the scheduled conference.**

14 7. The parties must comply with the pretrial disclosure requirements of Fed. R. Civ. P.
15 26(a)(3) no later than **November 20, 2015.** The parties should consult Fed. R. Civ. P. 26(a)(3)
16 for the substance of the required disclosures.

17 **Please be advised that failure to comply with this section or any other discovery**
18 **order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,**
19 **including a prohibition on the introduction of designated matters in evidence.**

20 8. No Memoranda of Contentions of Fact and Law are to be filed unless so ordered by
21 the Court.

22 9. Counsel shall confer and take the action required by Local Rule 16.1(f)(4) on or
23 before **November 24, 2015.** At this meeting, counsel shall discuss and attempt to enter into
24 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
25 exchange copies and/or display all exhibits other than those to be used for impeachment, lists of
26 witnesses and their addresses including experts who will be called to testify, and written
27 contentions of applicable facts and law. The exhibits shall be prepared in accordance with Local
28 Rule 16.1(f)(2)(c). Counsel shall cooperate in the preparation of the proposed final pretrial

1 conference order.

2 10. The proposed final pretrial conference order, including written objections, if any, to
3 any party's Fed. R. Civ. P. 26(a)(3) pretrial disclosures, shall be served on opposing counsel and
4 lodged directly with Judge Hayes' chambers on or before **December 11, 2015** and shall be in
5 the form prescribed in and in compliance with Local Rule 16.1(f)(6). Any objections shall comply
6 with the requirements of Fed. R. Civ. P. 26(a)(3). **Please be advised that the failure to file**
7 **written objections to a party's pretrial disclosures may result in the waiver of such**
8 **objections, with the exception of those made pursuant to Rules 402 (relevance) and**
9 **403 (prejudice, confusion or waste of time) of the Federal Rules of Evidence.**

10 11. The final pretrial conference is scheduled on the calendar of the Honorable William
11 Q. Hayes on **December 18, 2015** at **11:00 a.m.** The trial date will be assigned by Judge Hayes
12 at the pretrial conference.

13 12. The dates and times set forth herein will not be modified except for good cause
14 shown.

15 13. Plaintiff's(s') counsel shall serve a copy of this order on all parties that enter this
16 case hereafter.

17 **IT IS SO ORDERED.**

18
19 DATED: September 10, 2014

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21 BARBARA L. MAJOR
22 United States Magistrate Judge