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STIPULATED CASE MANAGEMENT ORDER

FOR

COMMERCIAL / BUSINESS CASES

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**CASE MANAGEMENT ORDER
FOR COMMERCIAL / BUSINESS CASES**

1. INTRODUCTION

The parties hereby stipulate and agree to this Case Management Order (“CMO”) for the purpose of managing this commercial/business litigation in a more efficient and cost-effective manner. This CMO is entered into by the parties on a fully voluntary basis. The Court shall not compel any of the parties to enter into this CMO without their express consent. This CMO is entered pursuant to the Court’s power to conduct proceedings pursuant to Code of Civil Procedure sections 128 and 177. Failure to comply with its provisions may result in the imposition of sanctions under applicable statutes, rules of court, and case law.

2. INSTRUCTIONS

The parties are to select all options within this CMO that best suit the needs of the parties and their specific case. Only those options marked with a check shall be deemed part of this CMO.

This CMO is designed to apply to a broad range of commercial and business cases, which may vary from case to case. Not all options or categories of options are suitable for all cases. The listing of options below does not mean that any particular option or category of option is appropriate for a given case. Counsel are urged to evaluate their cases and select those options that are suitable to the needs of their case. Counsel are cautioned that some California Rules of Court may not be waived; see, e.g., California Rule of Court 243.1 and 243.2. Counsel may choose to bring to the Court’s attention provisions of this CMO that have been modified.

3. MEDIATION / SETTLEMENT

3A The parties have met and conferred and believe that mediation is appropriate for this case. The parties acknowledge that their communications concerning mediation, as well as those made during the course of any mediation proceeding, are confidential under applicable law, including but not limited to California Code of Civil Procedure sections 1119 and 1152.

1 In connection with their agreement to mediate this dispute, the parties agree to complete
2 their mediation by _____ [DATE], understand that all parties, their counsel
3 of record, and all individuals whose presence is necessary to effect a settlement of the case
4 (including any insurance company representatives with settlement authority) need to be present at
5 the mediation, and further stipulate to the following [SELECT ONLY THOSE THAT APPLY]:

6 3B _____ [INSERT NAME] shall act as the mediator in
7 this case.

8 3C The mediator's fees shall be divided among the parties as follows:
9 _____.

10 3D In order to facilitate the mediation, the parties agree to exchange the
11 following documents at least thirty (30) days in advance of the mediation [LIST DOCUMENT
12 TYPES], such as insurance policies, drafts of any contracts at issue, records of all treating
13 physicians. [OTHER EXAMPLES], etc.):

14 _____
15 _____

16 3E In order to facilitate the mediation, the parties agree that the following
17 depositions should be completed at least fifteen (15) days in advance of the mediation:

18 _____
19 _____

20 3E In order to facilitate the mediation, the parties agree to an exchange of
21 expert information, at least fifteen (15) days in advance of the mediation, as follows: [DESCRIBE
22 TYPE OF EXCHANGE, SUCH AS EXPERT REPORTS OR A MEETING AMONG THE
23 EXPERTS]

24 _____
25 _____

26 3F [IF ANY PREMEDIATION DISCOVERY IS SELECTED IN 3D
27 THROUGH 3E:] All premediation discovery identified above will be completed by
28 _____ [DATE].

1 **4. LIAISON COUNSEL / COMMITTEE**

2 *[THE PROVISIONS IN THIS SECTION GENERALLY ARE INTENDED FOR USE IN*
3 *CASES WITH MULTIPLE PARTIES:]*

4 4A Committee Selection. In cases with multiple parties or related cases in
5 which there are several counsel, the parties shall meet and confer about forming a Liaison
6 Committee. If they are unable to agree, they shall schedule a hearing to ask the Court to appoint
7 appropriate representatives among counsel to serve as the Liaison Committee. Counsel who wish
8 to be appointed to the Liaison Committee shall submit firm and individual resumés and up to a
9 three-page declaration setting forth the reasons the Court should appoint them.

10 4B Conduct at Hearings. The parties shall agree upon one spokesperson per
11 side (i.e., for parties similarly aligned) to argue motions and generally to address the Court at each
12 hearing. This responsibility may be rotated among counsel as they desire. At the start of each
13 hearing, the spokesperson shall identify himself or herself to the Court, and state his or her area(s)
14 of responsibility for the hearing.

15 4C Coordination. The Liaison Committee shall coordinate administrative,
16 discovery, and pretrial matters, including but not limited to:

- 17 a. Coordination of discovery and motion practice to avoid duplication of effort or
18 undue burden on adverse parties;
19 b. Coordination of briefing and argument of motions;
20 c. Acting as spokespersons at status conferences; and
21 d. Convening meetings of counsel with adverse parties.

22 The members of the Liaison Committee (“Liaison Counsel”) shall have the administrative duties
23 specified in this and subsequent Court orders, but shall not otherwise act on behalf of parties other
24 than their clients. The actions of Liaison Counsel shall not constitute representation of parties for
25 whom Liaison Counsel has not appeared as counsel of record.

26 4D Agreements Among Parties. Liaison Counsel shall have the right to enter
27 into agreements with adverse parties concerning the procedural conduct of this litigation on
28 behalf of and as representatives of all parties similarly aligned in this action. A party may rely

1 upon all agreements made with Liaison Counsel for adverse parties, and such agreements shall be
2 binding on all adverse parties as if made directly with counsel for those parties.

3 4E Communications Among Parties. A party seeking to communicate with
4 adverse parties concerning procedural matters within the purview of the Liaison Committee is
5 only required to communicate with Liaison Counsel for such parties, and such Liaison Counsel
6 shall be responsible for transmitting such communications promptly to all similarly aligned
7 parties.

8 4F Court Communications. To the extent not communicated directly, the
9 Liaison Committee shall be responsible for promptly notifying counsel for all parties of all
10 communications with the Court.

11 4G Master Service List. The Liaison Committee shall maintain a Master
12 Service List of all counsel of record in the matter. It shall be the responsibility of each party to
13 notify the Liaison Committee of any changes necessary to maintain an up-to-date Master Service
14 List. The Master Service List shall be updated by the Liaison Committee from time to time as
15 necessary, and a copy of the current Master Service List shall be filed with the Court and served
16 on all parties.

17 **5. ELECTRONIC SERVICE**

18 5A Electronic Service Vendor. The parties shall select a vendor capable of
19 providing electronic service, consistent with the requirements of the California Code of Civil
20 Procedure, and shall submit to the Court a proposed order implementing the use of such service.

21 5B E-Mail Service. *[FOR USE ONLY IN CASES IN WHICH AN*
22 *ELECTRONIC SERVICE VENDOR IS NOT USED:]* From the date this CMO is entered, all
23 parties shall, in place of or in addition to other forms of service, serve by electronic mail all
24 pleadings, motions, and other documents requiring service. Every document served electronically
25 shall bear a facsimile or typographical signature of: (i) at least one of the attorneys of record for
26 the party or parties on whose behalf the document is served, together with the name, address,
27 telephone number, and State Bar of California number (or *pro hac vice* status) of such counsel; or
28 (ii) in the case of documents served by Liaison Counsel, at least one of the Liaison Counsel,

1 together with the name, address, telephone number, and State Bar of California number (or *pro*
2 *hac vice* status) of such counsel. Electronic service shall be complete at the time of transmission.
3 Electronic service of any notice given pursuant to this section (which is not accompanied by
4 overnight or hand delivery of the notice) shall increase the requisite period of notice, and the time
5 in which a party must respond to such notice, by two court days beyond the period prescribed for
6 hand-served notice. If electronic service is accompanied by hand or overnight delivery, the notice
7 period applicable to such hand or overnight delivery shall apply. Notwithstanding the foregoing,
8 electronic service shall in no event extend the time for filing notice of intention to move for a new
9 trial, notice of intention to move to vacate judgment pursuant to Code of Civil Procedure section
10 663a, or notice of appeal.

11 Pending further orders concerning electronic filing, this section shall apply only to
12 electronic service by the parties. Parties filing documents with the Court shall do so in
13 accordance with the filing procedures prescribed by statute or Rule of Court.

14 5C Master E-Mail Distribution List. _____ [NAME OF PARTY,
15 OR THE LIAISON COMMITTEE] shall maintain a Master E-Mail Distribution List of all counsel
16 of record in the matter. It shall be the responsibility of each party to notify _____
17 [SAME AS ABOVE] of any changes necessary to maintain a current Master E-Mail Distribution
18 List.

19 **6. INITIAL DISCLOSURES**

20 To the extent the parties elect any of the provisions in this Section 6, the Initial
21 Disclosures set forth below (whether Specified or General) shall be in writing, signed by counsel
22 of record, and verified pursuant to Code of Civil Procedure section 2031.250. The signature of
23 counsel constitutes a certification that the best of the signer's knowledge, information, and belief,
24 formed after reasonable inquiry, the disclosure is complete and correct as of the time it is made.

25 6A Specified Initial Disclosures. To expedite resolution of this action, without
26 waiting for discovery requests, each party shall, within the later of _____ days after its own
27 general appearance in the action or _____ days after any other party's general appearance in the
28 action, serve written Initial Disclosures on such other party as prescribed below. The parties

1 agree to exchange the following categories of documents, except to the extent they are privileged
2 or otherwise protected from disclosure:

3 _____
4 _____
5 _____
6 _____
7 _____

8 *[CHOOSE ONE OF THE FOLLOWING:]*

9 *[OPTION 1:]* The parties agree to produce these documents no later than

10 _____.

11 *[OPTION 2:]* The parties agree to produce these documents on a rolling basis as

12 follows: _____.

13 6B General Initial Disclosures. *[THIS SECTION MAY BE USED IN*

14 *ADDITION OR AS AN ALTERNATIVE TO SECTION 6A:]* To expedite resolution of this action,
15 without waiting for discovery requests, each party shall, within the later of _____ days after its
16 own general appearance in the action or _____ days after any other party's general appearance in
17 the action, and subject to any applicable objections to discovery based on privilege, provide to
18 other parties:

19 a. The name and, if known, the address and telephone number of each individual
20 likely to have discoverable information that the disclosing party may use to
21 support its claims or defenses, unless solely for impeachment, identifying the
22 subjects of the information;

23 b. A copy of, or a description by category and location of, all documents, data
24 compilations, and tangible things that are in the possession, custody, or control of
25 the party and that the disclosing party may use to support its claims or defenses,
26 unless solely for impeachment;

27 c. A computation of any damages claimed by the disclosing party, making available
28 for inspection and copying as under Code of Civil Procedure sections 2031, et

1 seq., the documents or other evidentiary material, not privileged or protected from
2 disclosure, on which such computation is based, including materials bearing on the
3 nature and extent of injuries suffered; and

- 4 d. For inspection and copying as under Code of Civil Procedure sections 2031, et
5 seq., any insurance agreement under which any person carrying on an insurance
6 business may be liable to satisfy part or all of a judgment which may be entered in
7 the action or to indemnify or reimburse for payments made to satisfy the judgment.

8 Each party must make its Initial Disclosures under this Section 6B based on the
9 information then reasonably available to it. No party is excused from making its disclosures
10 because it has not fully completed its investigation of the case, or because it challenges the
11 sufficiency of another party's disclosures, or because another party has not timely made its
12 disclosures.

13 6C Duty to Supplement. A party that has made Initial Disclosures is under a
14 duty to supplement them seasonably if the party learns that in some material respect the
15 information disclosed is incomplete or incorrect and if the additional or corrective information
16 has not otherwise been made known to the other parties during discovery or in writing.

17 6D Enforcement. A party's failure to comply with the disclosure requirements
18 of Section 6 will subject to sanctions in accordance with applicable law. If without substantial
19 justification a certification is made in violation of this Section 6, the Court, upon motion or upon
20 its own initiative, shall impose appropriate sanctions upon either or both the certifying party and
21 counsel, which may include an order to pay reasonable attorney's fees and expenses incurred by
22 adverse parties because of the violation.

23 In determining a party's compliance with Sections 6B and 6C above, insofar as
24 practicable, the Court shall follow the decisions of federal courts sitting in California (i.e., the
25 Ninth Circuit Court of Appeals, together with the United States District Courts for the Eastern,
26 Northern, Central and Southern Districts of California), and may consider the decisions of other
27 federal courts, which interpret and apply the disclosure requirements imposed by Rule 26 of the
28 Federal Rules of Civil Procedure.

1 **7. INITIAL DISCLOSURE WAITING PERIOD**

2 *[TO BE USED ONLY IF INITIAL DISCLOSURES ARE SELECTED IN SECTION 6A OR*
3 *6B:]*

4 7A In order to enable the parties to focus their efforts on making the Initial
5 Disclosures required by this CMO, and to enforce compliance with the Initial Disclosure
6 requirements, no formal discovery may be propounded by any party for a period of ___ days after
7 the date of this CMO (the “Initial Discovery Period”). Further, no party may initiate formal
8 discovery of any kind unless and until that party has made the Initial Disclosures required by this
9 CMO.

10 7B To the extent any party has propounded formal discovery to any other party
11 prior to the date this CMO is entered, those discovery requests are deemed withdrawn, without
12 prejudice to the propounding party’s right to propound the same or similar discovery requests
13 later in accordance with this CMO.

14 **8. MEET-AND-CONFER OBLIGATIONS IN DISCOVERY DISPUTES AND**
15 **MOTION PRACTICE**

16 8A Within ___ days after being served with interrogatories, document
17 production requests, or requests for admission, a party shall serve its objections to them. Within
18 ___ days after being served with a deposition notice that calls for production of documents or
19 designates areas of examination pursuant to Code of Civil Procedure section 2025.230, a party
20 shall serve its objections to the notice. Within ___ days after service of objections, the affected
21 parties shall meet and confer in person or by telephone to attempt to resolve them. If they are
22 unable to resolve the objections within ___ days after service of them, they shall immediately
23 request a discovery conference with the Court. At least _____ court days in advance of the
24 discovery conference, the parties shall file:

25 *[OPTION 1:]* a [___-page] letter or pleading that identifies the discovery requests
26 in dispute, without argument, and attaches copies of only those discovery requests
27 and responses in dispute.
28

1 [OPTION 2:] a joint statement [not to exceed ___ pages] which identifies the
2 discovery requests in dispute, describes the nature of the dispute(s), and contains a
3 succinct statement of the parties' respective positions and the means they propose
4 to resolve the dispute(s).

5 At the discovery conference, the Court may sustain or overrule objections in whole or in
6 part, and make such other orders, including without limitation protective orders, as the Court
7 deems appropriate. The responding party(ies) shall thereafter serve responses to requests within
8 the time(s) specified by the Court in accordance with the Court's rulings on objections.

9 It is the goal of this CMO to facilitate the resolution of discovery disputes without
10 extensive and costly briefing and delay whenever feasible. Accordingly, no discovery motions
11 may be filed or will be considered by the Court unless the moving party has complied with its
12 meet-and-confer procedure set forth in this section.

13 8B Except as otherwise provided in Section 8A above (with respect to
14 discovery disputes), and except with respect to applications for temporary restraining orders or
15 preliminary injunctions, before filing any motion counsel shall first meet and confer with
16 opposing counsel in person or by telephone to discuss thoroughly the substance of the motion and
17 any potential resolution. If the proposed motion is one which under the Code of Civil Procedure
18 must be filed within a specified period (e.g., a demurrer, motion to strike, or a motion to quash
19 service of process), then the conference shall take place at least ___ days before the last day to
20 file the motion; otherwise, the conference shall take place at least ____ days before the motion is
21 filed. If the parties are unable to reach a resolution which eliminates the necessity for a hearing,
22 counsel for the moving party shall include in the notice of motion a certification to the following
23 effect: "This motion is made following the conference between counsel pursuant to CMO
24 Section 8B which took place on [date]."

25 8C [TO BE SELECTED ONLY AT THE OPTION OF THE COURT:] No *ex*
26 *parte* applications shall be filed without first contacting the Court and obtaining leave of Court or
27 other instructions. Similarly, no motions shall be filed without first obtaining leave of Court.
28

1 **9. LIMITATIONS ON WRITTEN DISCOVERY**

2 9A The parties shall make a good-faith effort to coordinate discovery in order
3 to avoid duplication of interrogatories, document requests, and requests for admissions.

4 9B *[FOR CASES GENERALLY:]* Each party shall be limited to:

5 a. _____ [25] interrogatories to each opposing party;

6 b. _____ [40] document requests to each opposing party; and

7 c. _____ [25] requests for admission to each opposing party.

8 9C *[FOR CASES WITH MULTIPLE PARTIES WHOSE INTERESTS ARE*
9 *SUBSTANTIALLY ALIGNED:]* Plaintiffs whose interests are substantially aligned (in most cases,
10 parties plaintiff and parties defendant) shall be limited to the following written discovery:

11 a. _____ [25] joint interrogatories (i.e., the same interrogatories served jointly by all
12 aligned parties on all opposing parties), and _____ [5] individual interrogatories
13 to each opposing party;

14 b. _____ [40] joint document requests and _____ [15] individual requests to each
15 opposing party; and

16 c. _____ [25] joint requests for admission and _____ [5] individual requests to
17 each opposing party.

18 9D Limits on requests for admission shall not apply to requests for admission
19 concerning the genuineness documents.

20 9E Written responses to interrogatories, document requests, and requests for
21 admissions shall be served _____ [45] days after service of such discovery. Verifications, where
22 required, shall be served with written responses.

23 **10. DOCUMENT IDENTIFICATION PROTOCOL**

24 10A Uniform Protocol. A uniform system of document identification shall be
25 established for all disclosures and document productions. Except for electronic documents
26 disclosed or produced in native format, wherever feasible counsel shall assign unique Bates or
27 production control numbers to each page of each document disclosed or produced during the
28

1 course of this litigation, as well as to all documents withheld from disclosure or production based
2 on privilege or attorney work product.

3 10B Unique Party Prefixes. The parties (or if appointed, Liaison Counsel) shall
4 agree upon a unique prefix to be assigned to each of the parties in this litigation. In accordance
5 with that agreement, each document disclosed or produced in this litigation shall include a prefix
6 consisting of at least three letters (unique to each party) followed by at least seven numbers.

7 10C Nonparty Documents. The parties (or if appointed, Liaison Counsel) shall
8 agree upon a unique prefix to be assigned to each nonparty that produces documents in the course
9 of this litigation. In accordance with that agreement, each document produced by a nonparty in
10 this litigation shall include a prefix consisting of at least three letters (unique to each nonparty)
11 followed by at least seven numbers. Each party at whose instance nonparty documents are first
12 obtained in formal discovery is responsible for making sure they are properly labeled.

13 **11. ELECTRONIC DISCOVERY**

14 11A In addition to those matters about which the parties are to meet and confer
15 in advance of the initial case management conference pursuant to California Rules of Court,
16 rule 212(f), the parties shall discuss, and be prepared to include in those matters to be addressed at
17 the initial case management conference under California Rules of Court, rule 212(e), whether any
18 party will likely be requested to produce information from electronic or computer-based media.

19 11B Duty to Investigate. Before the initial case management conference,
20 counsel for each party shall review the party's information management systems, including
21 without limitation electronic or computer-based systems, in order to understand how information
22 is stored and how it can be retrieved. Counsel shall further familiarize themselves with their
23 client's information files, including currently maintained computer files as well as historical,
24 archival, back-up, and legacy computer files, whether in current or historic media or formats.

25 11C Meet and Confer. Before the initial case management conference, the
26 parties shall confer and attempt to agree on discovery of electronic and computer-based
27 information, including the following:
28

- 1 a. Preservation of Electronic Documents. Counsel shall attempt to agree upon
2 reasonable measures that should have been or will be taken to preserve potentially
3 discoverable data from alteration or destruction in the ordinary course of business
4 or otherwise.
- 5 b. Scope of Electronic Production. Counsel shall attempt to agree upon the scope of
6 obligations to produce electronic and computer-based information. For instance,
7 to the extent electronic documents can searched by “key words” or other subject
8 matter, counsel shall attempt to agree on an appropriate scope for such a search.
9 Similarly, to minimize costs, counsel shall attempt to agree on any other
10 reasonable limits (*e.g.*, time frames, fields, document types).
- 11 c. Electronic Documents Reasonably Available. Counsel shall address whether
12 production should be limited to data reasonably available to the parties in the
13 ordinary course of business and, if not, the anticipated scope, cost and time
14 required for disclosure or production of data beyond what is reasonably available
15 to the parties in the ordinary course of business.
- 16 d. Back-up Data. Counsel shall attempt to agree on whether or not back-up or
17 historic legacy data are within the scope of discovery, the extent to which back-up
18 data are needed, the cost associated with retrieval of such data, and who should
19 bear that cost.
- 20 e. Deleted Information. Counsel shall attempt to agree on whether or not restoration
21 of deleted digital information may be necessary, the extent to which restoration of
22 deleted information is needed, the cost associated with such restoration, and who
23 should bear that cost.
- 24 f. E-mail information. Counsel shall attempt to agree on the scope of e-mail
25 discovery and on an e-mail search protocol.
- 26 g. Format. Counsel shall attempt to agree on format(s) for the production of digital
27 information, including without limitation native formats. If the parties cannot
28 agree on formats, and pending resolution of any related discovery disputes in

1 accordance with this CMO, electronic documents shall be produced to the
2 requesting party as image files (e.g., PDF or TIFF). When the image file is
3 produced, the producing party must preserve the integrity of the electronic
4 document's contents, i.e., the original formatting of the document, its metadata
5 and, where applicable, its revision history. After initial production in image file
6 format is complete, a party must demonstrate particularized need for production of
7 electronic documents in their native format.

8 h. Inadvertent Production. Counsel shall attempt to agree upon a procedure to deal
9 with inadvertent production of privileged information in digital format. To the
10 extent counsel cannot agree, electronic documents that contain privileged
11 information or attorney work product shall be immediately returned if the
12 documents appear on their face to have been inadvertently produced or if there is
13 notice of the inadvertent production of privileged or work product information
14 within a reasonable time.

15 **12. PRIVILEGE LOGS**

16 12A All documents withheld from production by a party on the basis of a claim
17 of privilege shall be identified on a privilege log served not later than _____ [30] days after the
18 documents are produced, except as otherwise agreed by the requesting and producing parties.
19 Except as provided in Section 12B below, privilege logs shall contain the following information
20 for each document withheld from production upon a claim of privilege:

- 21 a. the designated document number, if any;
- 22 b. the author and his or her capacity or position;
- 23 c. all recipients and their capacities or positions (including without limitation named
24 recipients and any person(s) to whom copies were directed or by whom copies
25 were received);
- 26 d. the date(s) of creation of the document;
- 27 e. the type of document;
- 28 f. a general statement of the subject matter; and

1 g. the privilege(s) being asserted.

2 12B Exemptions. To avoid unnecessary expense and delay incident to the
3 preparation of privilege logs, the parties agree the following categories of documents need not be
4 included on privilege logs if created (a) in anticipation of or preparation for this litigation, or
5 (b) if created after the commencement of this litigation:

6 All confidential communications between a party and its outside counsel of record
7 in this action;

8 All confidential communications between a party and any of its inside counsel
9 who were acting in the capacity of attorneys for the party in connection with the
10 communication;

11 All confidential work product created by or at the request of outside counsel for
12 any of the parties in connection with this litigation;

13 All confidential communications between or among any of the parties concerning
14 settlement of this action.

15 Other: _____.

16 **13. DOCUMENT REPOSITORIES**

17 13A All documents produced or obtained in discovery will be stored and
18 available for inspection and reproduction at _____.

19 13B The parties shall utilize a virtual repository maintained by
20 _____.

21 13C The parties shall maintain their own documents at a location to be
22 designated within 75 miles of the courthouse and available for inspection weekdays between
23 9:00 a.m. and 5:00 p.m. on 48-hour notice.

24 **14. DEPOSITIONS**

25 14A The parties shall meet and confer regarding the scheduling of depositions,
26 and shall cooperate in the scheduling of all depositions in this litigation.

27

28

1 14B The parties shall, when and where feasible, share the costs of bringing
2 nonparty witnesses to mutually convenient deposition locales. Such costs shall include a
3 witness's reasonable food, travel, lodging, and incidental expenses.

4 14C *[FOR USE ONLY WHEN A LIAISON COMMITTEE HAS BEEN*
5 *APPOINTED UNDER SECTION 4:]* All requests for depositions shall be submitted to the
6 Liaison Committee. Each request shall set forth the witness or witnesses to be deposed, contact
7 information for each witness and the witness's counsel, to the extent known, and the proposed
8 dates and location of the deposition. Before submitting a deposition request to the Liaison
9 Committee, a party shall use reasonable efforts to notify the witness and the witness's counsel of
10 the proposed dates and location. The Liaison Committee shall periodically prepare, update, and
11 circulate approved deposition schedules ("Deposition Schedules") to all parties. Except by
12 agreement of the Liaison Committee or order of the Court, no deposition may be taken unless it
13 shall first have appeared on a schedule approved and circulated by the Liaison Committee at least
14 _____ [30] days before it begins.

15 14D *[FOR USE ONLY WHEN A LIAISON COMMITTEE HAS BEEN*
16 *APPOINTED UNDER SECTION 4:]* Once a deposition appears on a Deposition Schedule, it
17 may be noticed by any of the parties on the dates and at the places shown on the most current
18 Deposition Schedule at the time the notice is given. Deposition Schedules shall not relieve
19 parties of their obligations to notice depositions in accordance with Code of Civil Procedure
20 sections 2025, et seq. Deposition notices shall be served on the Liaison Committee at least
21 _____ [10] calendar days before each noticed deposition is scheduled to commence,
22 unless the Court orders or the Liaison Committee agrees to a shorter period.

23 14E *[FOR USE ONLY WHEN A LIAISON COMMITTEE HAS BEEN*
24 *APPOINTED UNDER SECTION 4:]* Except in unforeseeable and unavoidable circumstances or
25 as otherwise agreed by all parties (not including nonparty deponents), changes in the schedule of
26 a noticed deposition may be made only with the concurrence of the Liaison Committee or by
27 order of the Court, and must be communicated to all parties and the deponent by telephone,
28

1 facsimile, or email no later than two (2) business days before the date scheduled for the
2 deposition

3 14F Except as otherwise agreed by the parties or ordered by the Court for good
4 cause shown, depositions shall be limited in number and duration as follows:

5 a. Each party or group of aligned parties shall be entitled to depose up to _____
6 opposing party fact witnesses, including without limitation depositions of
7 organizations pursuant to Code of Civil Procedure section 2025.230 (each
8 organization to count as a single deposition), for a total of up to _____
9 [(7.5-HOUR DAYS) (CHESS CLOCK HOURS)];

10 b. Each party or group of aligned parties shall be entitled to depose up to _____
11 nonparty fact witnesses, including without limitation depositions of organizations
12 pursuant to Code of Civil Procedure section 2025.230 (each unaffiliated
13 organization to count as a single witness), for a total of up to _____
14 [(7.5-HOUR DAYS) (CHESS CLOCK HOURS)]; and

15 c. No single deposition shall exceed _____ [(7.5-HOUR DAYS)
16 (CHESS CLOCK HOURS)] in duration.

17 14G If a timely request to produce accompanies the notice of deposition of a
18 party witness sufficiently in advance of the deposition, the deponent shall produce a privilege log
19 at or before the commencement of the deposition covering all documents withheld from
20 production upon a claim of privilege.

21 **15. NUMBERING OF DEPOSITION EXHIBITS**

22 15A Numbering of Exhibits. Documents marked for use at depositions or
23 offered as exhibits filed or lodged with the Court shall be numbered sequentially, provided that
24 the parties may agree to assign blocks of sequential exhibit numbers to each party in order to
25 facilitate orderly and simultaneous discovery, motion, and trial practice. A single unique exhibit
26 number shall be assigned to any given document, without regard to the identity of the party
27 marking the document. To the extent feasible, each exhibit newly marked shall be given the next
28 sequential number available.

1 15B Duplicate Exhibits. Any exhibit that is an exact duplicate of an exhibit
2 previously numbered shall bear the same exhibit number, regardless of which party marks or uses
3 the exhibit. Any version of any exhibit which is not an exact duplicate shall be marked and
4 treated as a different exhibit bearing a different exhibit number.

5 15C Inadvertent Numbering of a Duplicate Exhibit. If through inadvertence the
6 same exhibit has been marked with different exhibit numbers, the parties shall assign the lowest
7 such exhibit number to the exhibit and conform all deposition transcripts and exhibits to reflect
8 the lowest number. The superseded number shall not be reused by the parties.

9 *Example:* If the same exhibit has been marked as 52 in the deposition of A and
10 125 in the depositions of B, C and/or D, the exhibit marked 125 shall be
11 renumbered 52 and the depositions of B, C and D shall be conformed to the
12 renumbered exhibit. Thereafter, number 125 shall not be used.

13 15D Designation of Exhibit Subparts. If it is necessary to identify subparts of a
14 document that has been marked as an exhibit, then such sub-parts shall be designated by the
15 number of the exhibit followed by a number designation.

16 *Example:* If a three-page contract is marked as Exhibit No. 12, the pages of the
17 contract may be marked as Exhibits 12-1, 12-2, 12-3, etc.

18 15E Deposition Exhibits. All deposition transcripts shall include an exhibit
19 index, which shall identify each exhibit both by exhibit number and by Bates or production
20 control number.

21 **16. CERTIFIED REPORTERS / VIDEOGRAPHERS [FOR USE ONLY WHEN A**
22 **LIAISON COMMITTEE HAS BEEN APPOINTED UNDER SECTION 4:]**

23 16A The Liaison Committee shall select a single firm or group of firms for the
24 reporting of all depositions. The certified reporting firm(s) agreed upon shall have the capacity to
25 produce transcripts of all depositions in hard copy and in ASCII-formatted computer diskettes.
26 The appearance fee(s) of the court reporters and the cost of an original and one copy of the
27 transcript shall be borne by the party or parties noticing the deposition.
28

1 16B The Liaison Committee shall select a single videographer or group of
2 videographers to record depositions.

3 16C The Liaison Committee shall select a specific video format to be used
4 consistently wherever feasible throughout all depositions. The format shall include:

5 split screen technology [showing exhibit and witness at same time;
6 showing questioner and witness at same time; or panorama of room with participants].

7 real-time transcript below the witness.

8 **17. DOCUMENTS IDENTIFIED DURING DEPOSITION**

9 17 If, during the course of deposition, a party deponent identifies a document
10 (including but not limited to a prior deposition transcript) that the examining party desires, then
11 the examining party may request a copy of that document on the record at the deposition, and
12 thereafter confirm by letter the request for the document. This letter shall, for all purposes, be
13 treated as a document request pursuant to Code of Civil Procedure sections 2031, et seq., with a
14 written response to the request due fifteen (15) days after the date the letter is received by the
15 attorney for such party deponent. Any numerical limitation on document requests set forth herein
16 shall not apply to requests made in accordance with this Section; provided however, that such
17 requests are not used to circumvent the limits imposed on discovery by this CMO.

18 **18. PRESENT AND FORMER EMPLOYEES**

19 18A On request, a party shall make reasonable efforts to make former
20 employees of the party or its predecessor available for deposition without the need for service of
21 process.

22 18B Upon request, a party shall provide last known contact information for
23 employees of the party or its predecessor.

24 18C When the deposition of a present or former employee of a party or its
25 predecessor is noticed sufficiently in advance of the deposition, the party shall, reasonably in
26 advance of the deposition, provide the other parties (at their expense) with all of the deponent's
27 prior deposition and trial testimony (and related exhibits) given during the deponent's tenure as
28 an employee concerning the same subject matter as this litigation. If any portion(s) of the

1 transcripts of such testimony and associated exhibits are subject to a protective order against
2 disclosure entered by a court of competent jurisdiction, the party shall promptly provide the
3 deposing party with the case name, case number, and court in which the prior deposition or trial
4 testimony was given. After receiving former deposition or trial testimony reasonably in advance
5 of the deposition in this action, deposing party(ies) shall use reasonable efforts to refrain from
6 duplicative questioning that is unnecessary to preserve testimony for trial of this action or to test
7 the credibility of the witness.

8 **19. OUT-OF-STATE DEPOSITIONS**

9 19A Where necessary for taking the deposition of a nonparty deponent beyond
10 the jurisdiction of this Court, parties may apply *ex parte* to the Court for a commission, letters
11 rogatory, or letters of request without the necessity of an appearance before the Court. The
12 application shall include a copy of the proposed commission, letters rogatory, or letters of request.
13 The parties agree the Court may order the issuance of the proposed commission, letters rogatory,
14 or letters of request, unless within ___ court days a party objects, in which event the matter shall
15 proceed by noticed motion or, if the Court permits, set for hearing on the *ex parte* application on
16 shortened time. All commissions, letters rogatory, and letters of request issued, and all orders for
17 the issuance of the same, shall be served on all parties by the party that sought them.

18 **20. EXPERT DESIGNATIONS AND DISCOVERY**

19 20A [FOR USE ONLY IF SECTION 20B IS NOT SELECTED:] Except as
20 otherwise noted in this Section, expert designations shall be served on or before _____
21 in accordance with Code of Civil Procedure sections 2034, et seq. Supplemental designations
22 shall take place on or before _____, and expert discovery/depositions shall be
23 completed by _____. Expert designation and discovery shall be governed by Code
24 of Civil Procedure sections 2034, et seq.

25 If any party intends to offer testimony of a retained expert that differs materially from the
26 expert's deposition testimony or the opinions set forth in the expert's report, the party may not
27 offer such testimony unless the expert provides a written report ("Supplemental Report") to
28 opposing counsel outlining the substance of such new testimony and that expert is made available

1 for further deposition. No expert may offer such testimony at trial unless: (i) his or her
2 Supplemental Report is furnished to opposing counsel on or before _____, and (ii) he or
3 she has been made available for a further deposition not later than _____.

4 20B [ALTERNATIVE TO SECTION 20A, BASED ON RULE 26, FEDERAL
5 RULES OF CIVIL PROCEDURE:]

- 6 a. In addition to the Initial Disclosures, a party shall disclose to other parties the
7 identity of any person who may be used at trial to present evidence under
8 Division 7, Chapter 1, of the California Evidence Code (sections 801, et seq.).
- 9 b. Except as otherwise stipulated or directed by the Court, this disclosure shall, with
10 respect to a witness who is retained or specially employed to provide expert
11 testimony in the case or whose duties as an employee of the party regularly
12 involve giving expert testimony, be accompanied by a written report prepared and
13 signed by the witness. The report shall contain a complete statement of all
14 opinions to be expressed and the basis and reasons therefor; the data or other
15 information considered by the witness in forming the opinions; any exhibits to be
16 used as a summary of or support for the opinions; the qualifications of the witness,
17 including a list of all publications authored by the witness within the preceding ten
18 years; the compensation to be paid for the study and testimony; and a listing of any
19 other cases in which the witness has testified as an expert at trial or by deposition
20 within the preceding four years.
- 21 c. These disclosures shall be made at the times and in the sequence directed by the
22 Court. In the absence of other directions from the Court or stipulation by the
23 parties, the disclosures shall be made at least 90 days before the trial date or the
24 date the case is to be ready for trial or, if the evidence is intended solely to
25 contradict or rebut evidence on the same subject matter identified by another party
26 under Subsection 20B(b) above, within 30 days after the disclosure made by the
27 other party.
- 28

- 1 d. A party is under a duty to supplement at appropriate intervals its disclosures under
2 Subsections 20B(b)-(c) above if the party learns that in some material respect the
3 information disclosed is incomplete or incorrect and if the additional or corrective
4 information has not otherwise been made known to the other parties during the
5 discovery process or in writing. With respect to testimony of an expert from
6 whom a report is required under Subsections 20B(b) above, the duty extends both
7 to information contained in the report and to information provided through a
8 deposition of the expert, and any additions or other changes to this information
9 shall be disclosed by the time the party's disclosures are due at least ___ days
10 before trial.
- 11 e. A party may depose any person who has been identified as an expert whose
12 opinions may be presented at trial. If a report from the expert is required under
13 Subsection 20B(b) above, the deposition shall not be conducted until after the
14 report is provided.
- 15 f. A party may, through interrogatories or by deposition, discover facts known or
16 opinions held by an expert who has been retained or specially employed by
17 another party in anticipation of litigation or preparation for trial and who is not
18 expected to be called as a witness at trial, only as provided in Code of Civil
19 Procedure section 2018.
- 20 g. Unless manifest injustice would result: (i) the Court shall require that the party
21 seeking discovery pay the expert a reasonable fee for time spent in responding to
22 discovery under this Subsection 20B; and (ii) with respect to discovery obtained
23 under Subsection 20B(f) of this CMO, the Court shall require the party seeking to
24 pay discovery to pay the other party a fair portion of the fees and expenses
25 reasonably incurred by the latter party in obtaining facts and opinions from the
26 expert.

27 In determining a party's compliance with Section 20B above, insofar as practicable, the
28 Court shall follow the decisions of federal courts sitting in California (i.e., the Ninth Circuit Court

1 of Appeals, together with the United States District Courts for the Eastern, Northern, Central and
2 Southern Districts of California), and may consider the decisions of other federal courts, which
3 interpret and apply the disclosure requirements imposed by Rule 26 of the Federal Rules of Civil
4 Procedure.

5 **21. CONFIDENTIALITY / PROTECTIVE ORDER**

6 21A Information and documents produced by any party may be designated and
7 treated as confidential in accordance with this CMO (“Confidential Information”). Confidential
8 Information may include information concerning personal, private, medical, or financial matters,
9 or proprietary business information of any party.

10 21B Unless otherwise agreed by the parties, the designation of information as
11 “Confidential” shall be made as follows:

12 a. For documents or things, at the time of the production of the documents or things
13 by marking such documents or things with the following (or its substantial
14 equivalent):

15 **“CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”**

16 b. For declarations, written discovery responses, and pleadings, at earlier of service
17 or filing;

18 c. For testimony, either at the time that such testimony is given by a statement
19 designating the testimony as “Confidential” made on the record, or within ten (10)
20 days from the time of the receipt of the transcript of the testimony.

21 d. In unusual and rare situations, highly confidential information may be marked for
22 **“ATTORNEY’S EYES ONLY.”** This designation is to be used extremely
23 sparingly.

24 e. Because the parties and the Court recognize the potential for abuse for an
25 “Attorney’s Eyes Only” designation, all categories of documents so designated
26 must be accompanied by a declaration by the attorney setting forth the reasons
27 underlying this designation.
28

1 i. Failure to include such a declaration will result in the downgrading of the
2 classification as “Attorney’s Eyes Only” to “Confidential – Subject to
3 Protection Order.”

4 ii. If upon motion, the Court determines that the reasons for the “Attorney’s
5 Eyes Only” designation as set forth in the accompanying attorney
6 declaration are not made in good faith, the Court may sanction the attorney
7 and/or party in the amount at the reasonable fees and costs of bringing the
8 motion and for any other reasonable consequential costs arising from the
9 misdesignation of information as “Attorney’s Eyes Only.”

10 21C If a receiving party, at any time, seeks to challenge a designation of
11 “Confidential” for any particular information produced to it, that party shall first request, in
12 writing, that the designating party change its designation, and the parties shall meet and confer in
13 an attempt to resolve that dispute. In any application or proceeding to challenge a “Confidential”
14 designation, the designating party shall have the burden of proving that the designation is proper.
15 Parties shall treat information as originally designated unless and until the Court otherwise orders.

16 21D No Confidential Information shall be used by the parties for any purpose
17 other than in connection with this litigation. This “litigation” includes, but is not limited to, law
18 and motion practice, trial, mediation, arbitration, appeal, and any other form of alternative dispute
19 resolution arising out of or in reference to this action.

20 21E Confidential Information may be filed with the Court. If any party wishes
21 to file Confidential Information with the Court under seal, it must obtain Court permission to do
22 so. Confidential Information may be filed with the Court under seal only if permitted by order of
23 the Court. Parties wishing to file Confidential Information under seal must comply with
24 California Rules of Court, rules 243.1, et seq.

25 21F This CMO does not limit the right of any party to object to the scope of
26 discovery in this action. Nothing in this Section 21 affects in any way the admissibility of any
27 documents, testimony or other evidence at trial, or any party’s right to object to the admissibility
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1 of any document, or restricts the use of nonconfidential information obtained from sources other
2 than discovery conducted under the terms of this Order.

3 21G No counsel or party will provide any Confidential Information or copies
4 thereof to persons other than:

- 5 a. The Court, persons employed by the Court, and the stenographer transcribing the
6 testimony or argument at a hearing, trial or deposition in this action;
- 7 b. Counsel of record for any party to this action and regular employees of such
8 counsel to the extent necessary to assist counsel in the preparation of this
9 litigation;
- 10 c. Experts consulted by such counsel in connection with this proceeding to the extent
11 necessary to assist counsel in the preparation of this litigation;
- 12 d. Any employee, former employee, agent or independent contractor of any party or
13 its counsel who is requested by counsel to assist in the preparation of this
14 litigation, provided, however, that disclosure of this Confidential Information to
15 said individual is made only to the extent necessary to perform such assistance.

16 21H Any person who makes any disclosure of Confidential Information
17 permitted under this Order to a person listed in Subsections 21G(c)-(d) above shall, prior to such
18 disclosure, advise the recipient of such information of the contents of Section 21 of this CMO and
19 obtain a written undertaking by the recipient to abide by the terms of Section 21.

20 Notwithstanding the foregoing, nothing in this CMO shall preclude a party from
21 disclosing its own Confidential Information. Confidential Information filed under seal in any
22 Court proceeding in this action shall not lose its confidential status through such use.

23 21I The provisions of Section 21 of this CMO shall continue to bind the parties
24 and their counsel after termination of this action. The Court retains jurisdiction over the parties
25 and their counsel for enforcement of the provisions of Section 21 of this CMO following the
26 determination of this action.

27 21J Any party that inadvertently fails to designate or wishes to change the
28 designation of information produced or disclosed in discovery as “Confidential,” must do so by

1 the later of thirty (30) days after production or discovery of the inadvertent failure to designate
2 the Discovery Matter as “Confidential.” If a claim of inadvertent failure to designate is made
3 more than thirty (30) days after production or disclosure, it shall be accompanied by a declaration
4 of counsel which shall state the manner in which the failure to designate was discovered and
5 which shall establish good cause for late or changed designation. Late or changed designations
6 made in compliance with this Section 21J shall be treated by receiving parties in accordance with
7 the late or changed designation unless and until the Court orders otherwise.

8 A party designating or changing the designation of Confidential Information after it was
9 initially produced or disclosed shall, unless the parties otherwise agree, provide replacement
10 copies to the other parties at its expense of such information within ten (10) days. Upon receiving
11 such replacement copies, the receiving parties shall, at the election of the producing party, destroy
12 or return the initially produced Confidential Information. Reasonable costs of such destruction or
13 return shall be borne by the party making or changing the designation.

14 **22. INADVERTENT PRODUCTION OF PRIVILEGED MATERIALS**

15 22 A producing party shall, within thirty (30) days of discovery of the
16 inadvertent production of privileged materials, notify a receiving party that documents or
17 materials that should have been withheld as privileged were inadvertently produced. Within ten
18 (10) days after receiving such notice, the receiving party shall return or certify the destruction of
19 all copies (including summaries) of such documents or materials. The receiving party shall not
20 disclose or use in any manner the information claimed to be privileged. In the event of a
21 challenge to the claim of privilege, the affected parties shall meet and confer and promptly bring
22 the issue to the Court’s attention if they are unable to resolve the it. Reasonable costs for return
23 or destruction of inadvertently produced documents shall be borne by the producing party.

24 **23. COMMON INTEREST DOCTRINE - JOINT PROSECUTION / DEFENSE**

25 23A Cooperative efforts by or among aligned parties from _____
26 [*E.G., THE FILING DATE OF THIS ACTION*] to the final resolution of this action which are
27 specifically related to the prosecution or defense of claims in this action shall not waive the
28 attorney-client privilege, the protection afforded work product, or any other privilege to which a

1 party may otherwise be entitled. If a party aligned with others withdraws from cooperative
2 prosecution or defense efforts with them, prior communications and work product shared among
3 them shall not lose any protection afforded by the attorney-client or other applicable privilege, or
4 the work product doctrine. Communications covered by this provision do not have to be listed on
5 a privilege log.

6 23B All assertions of common-interest doctrine protection shall be made
7 pursuant to California law.

8 **24. DETERMINATION OF THRESHOLD ISSUES**

9 24 The parties believe that there are specific threshold legal or factual issues,
10 the early resolution of which either could be dispositive or could substantially improve the
11 chances of settlement. These issues are: _____
12 _____

13 These issues can best be addressed through the following procedural vehicle:

- 14 Demurrer
- 15 Judgment on the pleadings
- 16 Motion for summary judgment/adjudication
 - 17 With stipulated facts
 - 18 Without stipulated facts
- 19 Mini trial
 - 20 Court trial
 - 21 Jury trial
- 22 Sever the following issue for a limited trial.
- 23 Threshold issue determination_____ (please state)

24 The discovery should be limited to this/these issue(s)
25 _____.

26 Discovery should include
27 _____
28 _____

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Discovery will be phased as follows _____.

Suggested time frame:

25. PERIODIC STATUS CONFERENCES

25A Status conferences shall be held every _____ days. Parties are to cooperate in requesting regular status conferences periodically to be held every _____.

25B *[TO BE USED ONLY IF SECTION 4 IS SELECTED:]* The Liaison Committee will attempt in good faith to submit a brief joint agenda or status report to the Court, not to exceed ten (10) pages, at least three Court days before each status conference. In the event agreement cannot be reached on a joint agenda or status report, each side is entitled to submit a separate agenda or report to the Court, not to exceed five (5) pages, at least three Court days before the status conference.

25C Except as otherwise ordered by the Court, parties need not attend a status conference as long as they agree to be bound by the agreement, decisions, and representations of the Liaison Committee made at the status conference.

26. DEADLINES AND LIMITS ON JOINDER OF PARTIES, AMENDED ON ADDITIONAL PLEADINGS OR CLAIMS

All defendants are to be served by _____.

All cross-defendants are to be served by _____.

All defendants are deemed to have filed and served cross-complaints upon each other for equitable indemnity together with general denials.