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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WARSAW ORTHOPEDIC, INC., et al.,
Plaintiffs,
vs.
NUVASIVE, INC., et al.,
Defendants.

CASE NO. 12cv2738-CAB (MDD)
ORDER: 1) DENYING
PLAINTIFFS' REQUEST FOR
CASE MANAGEMENT
CONFERENCE; 2)
SCHEDULING EARLY
NEUTRAL EVALUATION
CONFERENCE FOR
COMPLIANCE WITH PATENT
L.R. 2.1
[ECF NO. 42]

On November 30, 2012, Plaintiffs filed a request for a case management conference. (ECF No. 42). Defendants filed a response on December 3, 2012. (ECF No. 44). The Court has reviewed the case history and based upon the status of the case, the Court declines to schedule an early case management conference and issues the following order setting an Early Neutral Evaluation Conference:

I. On January 28, 2013, at 9:30 a.m. an Early Neutral Evaluation of your case will be held in the chambers of the Honorable Mitchell D. Dembin, United States Magistrate Judge, 333 West Broadway, Suite 1180, San Diego, California, 92101. **Absent extraordinary circumstances, requests for continuances will not be considered *unless* submitted in *writing* no less than fourteen (14) days prior**

1 to the scheduled conference.

2 Pursuant to Civil Local Rule 16.1.c and Patent Local Rule 2.1.a of the Local
3 Rules of the United States District Court for the Southern District of California, **all**
4 **counsel and each party, in addition to any other person(s) who has full**
5 **authority to explore settlement options and to agree at that time to any**
6 **settlement terms acceptable to the parties must appear in person at the**
7 **conference. Governmental entities may appear through litigation counsel**
8 **only. As to all other parties, appearance by litigation counsel only is not**
9 **acceptable.** The parties must be prepared to present demands and offers of
10 settlement.

11 **II.** Plaintiff's counsel must give notice of the Early Neutral Evaluation
12 conference to all defendants making an appearance after the date of this notice.

13 **All conference discussions will be informal, off the record, privileged**
14 **and confidential.**

15 In preparation for the Early Neutral Evaluation Conference, the parties must each
16 submit a confidential settlement brief to chambers on or before ***January 22, 2013.***

17 The settlement briefs must include must include the following:

- 18 1. For the Plaintiff a brief description of the case and the claims asserted;
19 a specific and current demand for settlement addressing all relief or
20 remedies sought. If a specific demand for settlement cannot be made at
21 the time the brief is submitted, then the reasons therefor must be stated
22 along with a statement as to when the plaintiff(s) will be in a position to
23 state a demand; and a brief description of any previous settlement
24 negotiations, mediation sessions or mediation efforts.
- 25 2. For the Defendant a brief description of the defendant(s) position
26 concerning plaintiff(s) allegations, any defenses and any counter-claims
27 or set-offs asserted;
28 a specific and current response to plaintiff(s) demand and the

1 defendant(s) specific offer of settlement; and a brief description of any
2 previous settlement negotiations, mediation sessions or mediation
3 efforts.

4 General statements that a party will "negotiate in good faith" is not a specific
5 demand or offer contemplated by this Order. It is assumed that all parties will
6 negotiate in good faith.

7 The briefs are limited to ten (10) pages and must not include exhibits,
8 attachments, or incorporate by reference the pleadings on file or other material.

9 **III.** Any request to continue the conference or request for relief from any of
10 the provisions or requirements of this Order must be sought by a written *ex parte*
11 application. The application must be supported by a declaration of counsel setting
12 forth the reasons and justifications for the relief requested; confirm compliance with
13 Civil Local Rule 26.1; and, report the position of opposing counsel or any
14 unrepresented parties subject to the Order.

15 If the case is settled in its entirety before the scheduled date of the conference,
16 counsel and any unrepresented parties must still appear in person, unless a joint
17 motion to vacate a conference date due to the complete settlement of the case is
18 submitted no less than 48 hours before the scheduled conference.

19 **IV.** In the event the case does not settle at the ENE, the parties must be
20 prepared to discuss Rule 26 compliance dates and deadlines and a Claim
21 Construction briefing schedule and hearing date. **Parties shall therefore meet**
22 **and confer pursuant to Fed. R. Civ. P. 26(f) no later than *January 15, 2013*,**
23 and be prepared to discuss the following matters at the conclusion of the ENE
24 conference:

- 25 1. Any anticipated objections under Federal Rule of Civil Procedure
26 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil
27 Procedure 26(a)(1)(A-D) and the date of initial disclosures;
- 28 2. Any proposed modification of the deadlines provided for in the Patent

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Local Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

- 3. Whether the court will hear live testimony at the Claim Construction Hearing;
- 4. The need for and specific limitations on discovery relating to claim construction, including depositions of percipient and expert witnesses;
- 5. The order of presentation at the Claim Construction Hearing; and
- 6. Any proposed modifications to the limitations on discovery imposed under the Federal Rules of Civil Procedure or by local rule.

The Court will issue an order following the ENE addressing these issues and setting dates as appropriate.

Questions regarding this case may be directed to the Judge's chambers at (619) 446-3972.

IT IS SO ORDERED.

DATED: December 6, 2012


Hon. Mitchell D. Dembin
U.S. Magistrate Judge