

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COVANCE LABORATORIES INC.,

Plaintiff,

vs.

CHROMADEX, INC., AND CHROMADEX
ANALYTICS, INC.,

Defendants.

Case No. 1:19-cv-00065-RGA-SRF

~~PROPOSED~~ SCHEDULING ORDER

This 26th day of February, 2019, the Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Federal Rule of Civil Procedure 16(b) and Local Rule 16.1 on February 25, 2019, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard.**

Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) within five (5) days of the date of this Order. If they have not already done so, the parties are to review the Default Standard for Discovery of Electronic Documents, which is posted on Magistrate Judge Fallon's section of the Court's website at <http://www.ded.uscourts.gov> under the "Guidelines" tab, and is incorporated herein by reference, however, the parties are allowed to disclose up to 10 custodians.

2. **Joinder of Other Parties and Amendment of Pleadings.** All motions to join other parties, and to amend or supplement the pleadings shall be filed on or before April 1, 2019.

3. **Discovery.**¹ Unless otherwise ordered by the Court, the limitations on discovery set forth in Local Rule 26.1 shall be strictly observed.

(a) **Depositions.**

(i) **Limitation on Hours for Deposition Discovery.** Each side is limited to a total of 35 hours of taking testimony by deposition upon oral examination.

(ii) **Location of Depositions.** Any party or representative (officer, director, or managing agent) of a party filing a civil action in this district court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made by order of the Court or written agreement of the parties. A defendant who becomes a counterclaimant, cross-claimant, or third-party plaintiff shall be considered as having filed an action in this Court for the purpose of this provision.

(b) **Requests for Admission.** A maximum of 25 requests for admission are permitted for each side.²

¹ Should the parties agree to modify the number of depositions under FED. R. CIV. P. 30, the number of allowed interrogatories under Rule 33 or limit the number of requests for production and/or requests for admission under Rules 34 and 36 respectively, they shall include the appropriate proposed provisions in this Order.

² Requests for admission relating solely to the authentication or admissibility of documents, data, or other evidence, issues that the parties shall attempt to resolve initially through negotiation, shall not count against this limit.

(c) Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before October 1, 2019. The Court encourages the parties to serve and respond to contention interrogatories early in the case.

(d) Disclosure of Expert Testimony.

(i) Expert Reports. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before November 1, 2019. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before December 6, 2019. Reply expert reports from the party with the initial burden of proof are due on or before December 23, 2019. No other expert reports will be permitted without either the consent of all parties or leave of the Court. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition. Expert depositions are to be completed by January 17, 2020.

(ii) Objections to Expert Testimony. To the extent any objection to expert testimony is made pursuant to the principles announced in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), as incorporated in Federal Rule of Evidence 702, it shall be made by motion no later than the deadline for dispositive motions set forth herein, unless otherwise ordered by the Court.

(e) Discovery Matters and Disputes Relating to Protective Orders. Should counsel find they are unable to resolve a discovery matter or a dispute relating to a protective order,³ the parties involved shall contact chambers at (302) 573-4551 to schedule a telephone conference. After the parties have contacted chambers and have scheduled a

³ Counsel are expected to *verbally* discuss the issues/concerns before seeking the Court's intervention.

teleconference, the moving party or parties should file a “[Joint] Motion for Teleconference to Resolve [Protective Order or Discovery] Dispute.” The suggested text for this motion can be found in Magistrate Judge Fallon's section of the Court's website in the “Forms” tab, under the heading “Discovery Matters-Motion to Resolve Discovery Dispute.”

Not less than seventy-two (72) hours prior to the conference, excluding weekends and holidays, the party seeking relief shall file with the Court a letter, not to exceed four (4) pages, in no less than 12-point font, outlining the issues in dispute and its position on those issues. (The Court does not seek extensive argument or authorities at this point; it seeks simply a statement of the issue to be addressed and a summary of the basis for the party’s position on the issue.) Not less than forty-eight (48) hours prior to the conference, excluding weekends and holidays, any party opposing the application for relief may file a letter, not to exceed four (4) pages, in no less than 12-point font, outlining that party’s reason for its opposition. Courtesy copies of the letters are to be hand delivered to the Clerk’s Office within one hour of e-filing.

Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Disputes or issues regarding protective orders, or motions for extension of time for briefing case-dispositive motions which are related to discovery matters are to be addressed in accordance with this Order.

No motions to compel or motions for protective order shall be filed absent approval of the court. Absent express approval of the court following a discovery conference, no motions pursuant to Fed. R. Civ. P. 37 shall be filed.

4. **Application to Court for Protective Order.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, counsel should confer and attempt to reach an agreement

on a proposed form of order and submit it to the Court within ten (10) days from the date of this Order. Should counsel be unable to reach an agreement on a proposed form of protective order, counsel must follow the provisions of Paragraph 3(d) above.

Any proposed protective order should include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this litigation, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated "confidential" [the parties should list any other level of designation, such as "highly confidential," which may be provided for in the protective order] pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

5. **Papers Filed Under Seal.** When filing papers under seal, counsel should deliver to the Clerk an original and one (1) copy of the papers. In accordance with section G of the Administrative Procedures Governing Filing and Service by Electronic Means, a redacted version of any sealed document shall be filed electronically within seven (7) days of the filing of the sealed document.

6. **Courtesy Copies.** The parties shall provide to the Court two (2) courtesy copies of all briefs and one (1) courtesy copy of any other document filed in support of any briefs (i.e., appendices, exhibits, declarations, affidavits, etc.). This provision also applies to papers filed under seal.

7. **ADR Process.** This matter will be discussed during the Rule 16 scheduling conference.

8. **Interim Status Report.** On September 10, 2019, counsel shall submit a joint interim report to the Court on the nature of the matters in issue and the progress of discovery to date.

9. **Status Conference.** On January 6, 2020, the Court will hold a Rule 16(a), (b) and (c) conference by telephone with counsel beginning at 10 a.m. Plaintiff's counsel shall initiate the telephone call. At the time of this conference, counsel shall also be prepared to discuss the progress, if any, of settlement discussions and shall be prepared to discuss the possibility of setting up a settlement conference with the Court, counsel and their clients. If all parties agree that there is nothing to report, nor anything to add to the interim status report or to this order, they shall notify the Court in writing before the conference is scheduled to occur, and the conference will be taken off the Court's calendar. ^(SRF)

10. **Case Dispositive Motions.** All case dispositive motions, an opening brief, and affidavits, if any, in support of the motion shall be served and filed on or before January 31, 2020.⁴ Briefing will be presented pursuant to the Court's Local Rules, except as may be modified during the scheduling conference. If the matter is scheduled for a bench trial, no case dispositive motions shall be filed without prior authorization of the Court. No case dispositive motion under Rule 56 may be filed more than ten (10) days before the above date without leave of the Court.

Any reference to exhibits in the briefs must refer to the specific pages of the exhibit proffered in support of a party's argument. If the exhibit is a deposition, both the page and line numbers must be specified.⁵

11. **Applications by Motion.** Except as otherwise specified herein, any application to the Court shall be by written motion filed with the Clerk. Unless otherwise

⁴ Depending on the nature of the parties' expert disclosures on November 1, 2019, the parties may be able to file dispositive motions before completing expert discovery. The parties expect to meet-and-confer regarding the possibility of advancing the dispositive motion cutoff as discovery progresses.

⁵ For example, a reference to an exhibit that refers to the entire document will not be accepted and is not consistent with this provision.

⁶ The parties have indicated their intent to pursue ADR with a private mediator.

requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

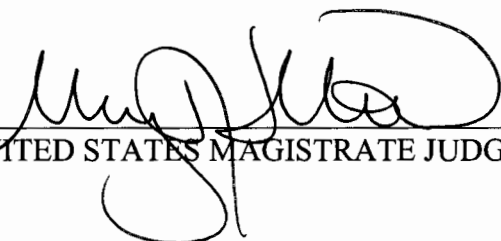
11. **Pretrial Conference.** On April 21, 2020, the Court will hold a Pretrial Conference in Court with counsel beginning at 10:00 a.m. Unless otherwise ordered by the Court, the parties should assume that filing the pretrial order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before April 14, 2020. Unless otherwise ordered by the Court, the parties shall comply with the timeframes set forth in Local Rule 16.3(d)(1)-(3) for the preparation of the joint proposed final pretrial order. The Court will advise the parties at or before the above-scheduled pretrial conference whether an additional pretrial conference will be necessary.

12. **Motions in Limine.** Motions *in limine* shall not be separately filed. All *in limine* requests and responses thereto shall be set forth in the proposed pretrial order. Each party shall be limited to ~~five (5)~~ three (3) *in limine* requests, unless otherwise permitted by the Court. The *in limine* request and any response shall contain the authorities relied upon; each *in limine* request may be supported by a maximum of three (3) pages of argument and may be opposed by a maximum of three (3) pages of argument, and the party making the *in limine* request may add a maximum of one (1) additional page in reply in support of its request. If more than one party is supporting or opposing an *in limine* request, such support or opposition shall be combined in a single three (3) page submission (and, if the moving party, a single one (1) page reply), unless

otherwise ordered by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

13. **Jury Instructions, Voir Dire, and Special Verdict Forms.** Where a case is to be tried to a jury, pursuant to Local Rules 47 and 51 the parties should file **joint** (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms three (3) full business days before the final pretrial conference. This submission shall be accompanied by a computer disk containing each of the foregoing four (4) documents in Microsoft Word format.

14. **Trial.** This matter is scheduled for a 4 day jury trial beginning at 9:30 a.m. on May 11, 2020, ~~2020~~ with the remaining trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

/s/ 
UNITED STATES MAGISTRATE JUDGE

Summary of Case Schedule

Event	Proposed Dates
Complaint Filed	January 10, 2019
Answer Filed	February 6, 2019
Exchange Rule 26 Initial Disclosures	March 4, 2019
Default Standard Paragraph 3 Disclosures by Both Parties	March 27, 2019
Protective Order	March 7, 2019
Amendment of Pleadings	September 20, 2019
Interim Status Report	September 10, 2019
Close of Fact Discovery	October 1, 2019
Opening Expert Reports	November 1, 2020
Rebuttal Expert Reports	December 6, 2019
Reply Expert Reports	December 23, 2019
Status Conference	January 6, 2020
Close of Expert Discovery	January 17, 2020
Case Dispositive Motions	January 31, 2020
Pretrial Conference	April 21, 2020
Jury Trial	May 11, 2020