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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Diane Wickberg,

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CV 10-8177-PCT-JAT

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Plaintiff,

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v.

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ORDER

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Candace D. Owens,; Coconino County,

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Defendants.

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Plaintiff has moved for an ex parte Temporary Restraining Order (“TRO”) or for a Preliminary Injunction. (Doc. 11.) The circumstances in which a court may issue an ex parte order are extremely limited. *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006).

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The stringent restrictions imposed by ... Rule 65 on the availability of ex parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard had been granted to both sides of a dispute. Ex parte temporary restraining orders are no doubt necessary in certain circumstances, but under federal law they should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as necessary to hold a hearing, and no longer.

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Consistent with this overriding concern, courts have recognized very few circumstances justifying the issuance of an ex parte TRO. For example, an ex parte TRO may be appropriate where notice to the adverse party is impossible either because the identity of the adverse party is unknown or because a known party cannot be located in time for the hearing. ...

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In cases where notice could have been given to the adverse party, courts have recognized a very narrow band of cases in which ex parte orders are proper because notice to the defendant would render fruitless the further prosecution of the action. ... In the trademark arena, such cases include situations where an

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1 alleged infringer is likely to dispose of the infringing goods before the hearing.
2 ... To justify an ex parte proceeding on this latter ground, the applicant must
3 do more than assert that the adverse party would dispose of evidence if given
4 notice. ... Plaintiffs must show that defendants would have disregarded a direct
5 court order and disposed of the goods within the time it would take for the
6 hearing...and must support such assertions by showing that the adverse party
7 has a history of disposing of evidence or violating court orders or that persons
8 similar to the adverse party have a history.

9 *Id.* (internal citations and quotations omitted).

10 The Court finds Plaintiff has not met the standard for ex parte relief, and accordingly,
11 the Court will not consider the request on an ex parte basis. The Court will set the following
12 briefing schedule and hearing.

13 **IT IS ORDERED** setting a hearing on Plaintiff's Motion (Doc. 11) on Thursday,
14 October 21, 2010 at 9:00 a.m. This hearing will be held in Courtroom 503, 401 W.
15 Washington Street, Phoenix, Arizona 85003.

16 **IT IS FURTHER ORDERED** that the parties shall **jointly** prepare and file a
17 **joint** pre-hearing statement by Tuesday, October 19, 2010, setting forth the following
18 information:¹

19 **A. COUNSEL FOR THE PARTIES**

20 Include the mailing addresses and office phone and fax numbers.

21 Plaintiff(s):

22 Defendant(s):

23 **B. STATEMENT OF JURISDICTION**

24 Cite the statute(s) that gives this Court jurisdiction.

25 State whether jurisdiction is or is not disputed.

26 (If jurisdiction is disputed, the party contesting jurisdiction shall set forth with
27 specificity the bases for the objection.)

28 **C. LIST OF WITNESSES**

Each party shall **separately** list the names of witnesses, their respective addresses,

¹The Court's copy of every document required by this Order shall be **three-hole punched** on the left side of the document.

1 whether a fact or expert witness, and a brief statement as to the testimony of each witness.
2 The witnesses shall be grouped as follows: (1) witnesses who shall be called at the hearing;
3 (2) witnesses who may be called at the hearing; and (3) witnesses who are unlikely to be
4 called at the hearing.

5 Additionally, the parties shall include the following text in this section of the **joint**
6 pre-hearing statement: “Each party understands that it is responsible for ensuring that the
7 witnesses it wishes to call to testify are subpoenaed. Each party further understands that any
8 witness a party wishes to call shall be listed on that party’s list of witnesses above and that
9 party cannot rely on that witness having been listed or subpoenaed by another party.”

10 **D. LIST OF EXHIBITS** (SEE ATTACHMENT #1 - the parties shall number
11 exhibits as provided in Attachment #1 (“Exhibits - Marking, Listing and Custody”), and such
12 numbers shall correspond to the numbers of exhibits listed in the **joint** pre-hearing
13 statement):

14 **1.** The following exhibits are admissible in evidence and may be marked
15 in evidence by the Clerk:

16 **a.** Plaintiff’s Exhibits:

17 **b.** Defendant’s Exhibits:

18 **2.** As to the following exhibits, the parties have reached the following
19 stipulations:

20 **a.** Plaintiff’s Exhibits:

21 **b.** Defendant’s Exhibits:

22 **3.** As to the following exhibits, the party against whom the exhibit is to be
23 offered objects to the admission of the exhibit and offers the objection stated below:

24 **a.** Plaintiff’s Exhibits:

25 (E.g., City Hospital records of Plaintiff from March 6, 1985 through March 22, 1985.
26 Defendant objects for lack of foundation because . . . (the objection must specify why there
27 is a lack of foundation)).

28 **b.** Defendant’s Exhibits:

1 (E.g., Payroll records of Plaintiff's employer which evidences payment of Plaintiff's
2 salary during hospitalization and recovery. Plaintiff objects on grounds of relevance and
3 materiality because (the objection must specify why the exhibit is not relevant or material)).

4 (If there are more than 20 exhibits, the parties shall submit their exhibit lists in
5 writing, five (5) business days before the hearing on an IBM-PC compatible computer disk
6 in WordPerfect 9.0 format).

7 **4.** The parties shall include the following text in this section of the **joint**
8 pre-hearing statement: "Each party hereby acknowledges by signing this **joint** pre-hearing
9 statement that any objections not specifically raised herein are waived."

10 **E. DEPOSITIONS TO BE OFFERED**

11 The parties shall list the depositions that may be used at the hearing. The portions to
12 be read at the hearing shall be identified by page and line number in the **joint** pre-hearing
13 statement. Additionally, the party offering the deposition shall provide the Court with a copy
14 of the offered deposition testimony. The offering party shall highlight, in color, the portions
15 of the deposition to be offered. If multiple parties are offering the same deposition, only one
16 copy of such deposition shall be provided. Such copy shall contain each parties' highlighting
17 (each party should use a different color).

18 The parties shall include the following text in this section of the **joint** pre-hearing
19 statement: "Each party hereby acknowledges by signing this **joint** pre-hearing statement that
20 any deposition not listed as provided herein will not be allowed, absent good cause."

21 **F. ESTIMATED LENGTH OF HEARING**

22 ___ hours.

23 **G. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

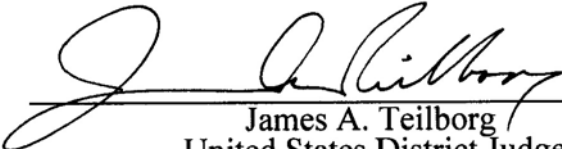
24 Each party shall submit **separate** Proposed Findings of Fact and Conclusions of Law
25 by the same date the **joint** pre-hearing statement is due. The Proposed Findings of Fact and
26 Conclusions of Law shall be submitted by: 1) electronically filing a notice of filing the
27 proposed findings of fact and conclusions of law with the Clerk of the Court; and 2) e-
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1 mailing a WordPerfect® 9.0 compatible copy to the chambers' e-mail address.² Additionally,
2 Plaintiff shall submit a proposed preliminary injunction, including the proposed bond
3 amount.

4 **H. FAILURE TO RESPOND**

5 Defendants shall respond to the motion for TRO or PI by Tuesday, October 19, 2010.
6 Defendants are advised that if they fail to respond within this deadline, the Court will deem
7 their failure to respond to be consent to the motion being granted. *See* Local Rule Civil
8 7.2(i).

9 DATED this 14th day of October, 2010.

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13 James A. Teilborg
14 United States District Judge
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² Teilborg_chambers@azd.uscourts.gov

ATTACHMENT #1

EXHIBITS - MARKING, LISTING AND CUSTODY

for United States District Court Judge
James A. Teilborg (Judge Code 7025)

(revised 11/3/06)

Marking and listing of exhibits is the responsibility of counsel, not the courtroom deputy, and shall be delivered to the courtroom deputy the day of trial or the day before trial (not the final pretrial conference) unless otherwise directed by the deputy clerk.

Counsel are required to use the exhibit cover sheets and/or adhesive labels as described herein. **Counsel shall also prepare the exhibit and witness lists (using the Clerk's Office format) and provide the lists to the courtroom deputy in triplicate (1 original and 2 copies), along with the actual exhibits.**

During trial/hearing, please be prepared to advise the courtroom deputy **in advance** which exhibits will be needed for each witness.

If you need a format in which to prepare the exhibit and witness lists, please refer to the district court's website at www.azd.uscourts.gov and access "Judicial Officer Information."

Counsel are to E-MAIL at least one day prior to trial/hearing a list of medical and technical terms and terms specific to the case to david_german@azd.uscourts.gov (in Word format) or FAX to chambers at 602-322-7569, Attention: David German.

USE OF LABELS/COVER SHEET

1. Exhibit cover sheets and labels are divided by color to indicate whether the exhibit is offered by plaintiff (**YELLOW**) or defendant (**BLUE**).
2. Exhibit cover sheets are provided to counsel by the courtroom deputy for the purpose of numbering and labeling exhibits PRIOR to trial. Cover sheets shall be copied on yellow or blue paper and used in cover sheet fashion to identify standard-size paper exhibits. The cover sheet shall be stapled to the top of the original exhibit, and the exhibit shall be placed in a manilla folder number to correspond with the exhibit number. Prepare extra cover sheets and provide extra manilla folders to use for exhibits marked during trial.
3. If the paper exhibit is too large to staple, use a 2-hole ACCO fastener to fasten the exhibit together at the top of the page, with an exhibit cover sheet attached to the front of the exhibit.
4. If the exhibit is a photograph or item smaller than 8" x 10", STAPLE it to an exhibit cover sheet OR place an exhibit label on the reverse side, lower right-hand corner.
5. Large or bulky items may require the use of tie tags with the exhibit label placed on the tag or may be marked in a logical location on the item or on the plastic bag containing the item.
6. Large charts should be identified in the lower right-hand corner with an exhibit label. If the item is an enlargement of another marked exhibit, it should be numbered as a sub-part of the smaller exhibit.

1 NUMBERING

- 2 1. Blocks of numbers are assigned to each side: plaintiff starts with number 1
3 through the estimated number of exhibits. Defendant is to utilize numbers
4 starting after plaintiff but allowing space for additional exhibits marked during
5 trial. (Example: Plaintiff 1 - 80; Defendant 100-). Exhibit numbers not used will
6 be noted by the clerk on the exhibit list. **Failure to comply with this directive
7 will result in exhibits being remarked by counsel.**
- 8 2. Plaintiff and defendant shall consult with one another prior to marking exhibits to
9 **avoid marking duplicates.** If plaintiff marks a document, the defendant should
10 not mark the same document. The exhibits are considered court exhibits, not
11 plaintiff and defendant. Either side may move the other's exhibits into evidence.
- 12 3. Use NUMBERS ONLY except when identifying sub-parts (e.g. 3a, 3b, 3c). If the
13 sub-parts will be more than a through z for a single exhibit, do not use double
14 letters; instead commence with another number (e.g. 3x, 3y, 3z, 4a, 4b, 4c, etc. or
15 3-1, 3-2, 3-3, etc.). It is very difficult for the court, counsel/parties, clerk and
16 court reporter to ask for or listen to exhibits 1aa - 1eeee. Categorizing exhibits
17 should be kept as simple and clear as possible. For the most part, USE
18 NUMBERS.
- 19 4. Multiple page exhibits should be stapled or ACCO fastened; please do not use
20 paper or binder clips or rubber bands. **If submitted in this fashion, exhibits will
21 be returned to counsel to be re-submitted stapled or with ACCO fasteners.**
22 Regarding bulky documents, BATES stamp numbers may be placed on each page
23 and can be continuously numbered for easy reference.
- 24 5. Blocks of numbers may be used to categorize exhibits (e.g. series 1-99 are bank
25 records; series 100-199 are tax returns; series 200-299 are photographs; etc.)

16 USE OF FOLDERS

- 17 1. Place exhibits loose in folders so that the exhibits may be pulled out of the folder
18 during trial. DO NOT attach the exhibit to the file folder. Label the top of the
19 folder to identify the exhibit. Provide extra folders to the courtroom deputy for
20 exhibits marked during trial.
- 21 2. Place the exhibit folders in a box in numerical order. Mark the outside of the box
22 as to what exhibits are contained therein. Leave room in the box for any extra
23 exhibits that may be submitted during trial.
- 24 3. DO NOT place trial exhibits in binders except when the binder is considered ONE
25 exhibit. Mark the binder with an exhibit label in the lower right-hand corner.
- 26 4. **A courtesy copy of the exhibits should be prepared for the Judge.** Place these
27 exhibits in three-ring binders with numbered tabs to correspond with exhibit
28 numbers. The Judge's copies should NOT have original exhibit covers sheets on
them.

25 EXHIBIT LISTS

- 26 1. Exhibits may be listed on the exhibit list provided or the exhibit worksheet
27 reproduced on a word processor (Word Perfect 9.0 compatible) using the same
28 format. The form is self-explanatory. Be sure and leave enough SPACE to add
additional information, such as sub-parts and additional exhibits.
2. Provide the courtroom deputy clerk with the original and two (2) copies of the

1 exhibit list the morning of trial or as otherwise directed. **Counsel are not to**
2 **provide the courtroom deputy with the Pretrial Order (civil cases) in lieu of**
3 **the exhibit list.**

3 WITNESS LISTS

- 4 1. Witnesses may be listed on the witness list provided or the witness list reproduced
5 on a word processor (Word Perfect 9.0 compatible) using the same format. Names
6 should be at the top of the block and extra spaces provided at the end of the list.
7 This is helpful when names have to be added that are not on the list. **Counsel are**
8 **not to provide the courtroom deputy with the Pretrial Order (civil cases) in**
9 **lieu of the witness list.**
- 10 2. Provide the courtroom deputy with the original and two (2) copies of the witness
11 list the morning of trial or as otherwise directed.

9 SENSITIVE EXHIBITS

- 10 1. The courtroom deputy clerk will NOT take custody of any sensitive exhibits.
11 During lengthy breaks and at close of the day, these exhibits are returned to the
12 government (usually the agent) until court resumes. Pursuant to General Order
13 160 dated July 30, 1987,

14 “the arresting or investigative agency or designated
15 representative shall retain custody of sensitive exhibits prior to,
16 throughout, and after the trial. Sensitive exhibits shall include
17 drugs and drug paraphernalia, guns and other weapons, money
18 and any other exhibits designated as sensitive by the court.”

15 IMPEACHMENT EXHIBITS

- 16 1. Impeachment exhibits are given to the courtroom deputy **the first day of trial,**
17 (unless other arrangements are made) in a SEALED envelope. The envelope
18 should be marked with the caption of the case, case number and shall identify
19 the party presenting the exhibit. If there is more than one exhibit in the
20 envelope, mark each one with a SEPARATE NUMBER so you (and the clerk)
21 will be able to identify it. Identify these exhibits with a numbering system of
22 your own for easy retrieval. Prepare an impeachment exhibit list for the
23 courtroom deputy (on the accepted format) and a courtesy copy for the Court.
24 The courtroom deputy will assign the next available number when the exhibit is
25 used during trial.
- 26 2. Provide an extra copy of impeachment exhibits in a sealed envelope as a
27 courtesy copy for the Court with accompanying exhibit list.

22 STIPULATED EXHIBITS

- 23 1. In civil trials, parties may agree on most of the exhibits prior to trial and as
24 listed in the Pretrial Order. Counsel may give the courtroom deputy clerk a list
25 of the stipulated exhibits to be marked in evidence before moving for their
26 admission on the record. For example, stipulated exhibits 1-28, 31, 45-50, etc.
27 The clerk will then mark those exhibits and the exhibit list as ‘admitted into
28 evidence.’”

In criminal trials, stipulated exhibits usually come in one at a time during the
course of trial.

28 DEPOSITIONS

1. Depositions ARE NOT to be marked as exhibits. Identify them by party (so

1 they can be returned to the correct party after trial), place them in alphabetical
2 order and give them to the courtroom deputy the morning of trial.

3 MEDICAL OR TECHNICAL TERMS

4 1. Provide a list of medical or technical terms (in alphabetical order) for the court
5 reporter prior to trial commencing (please refer to page 1, paragraph 4).

6 RETURN OF EXHIBITS

7 1. Pursuant to Local Rule Civil 79.1(a), all exhibits are returned to respective
8 parties for them to keep custody pending all appeals. If the exhibits are not
9 picked up within thirty (30) days of the Notice of Return of Exhibits, Local Rule
10 Civil 79.1(c), the clerk may destroy or otherwise dispose of those exhibits.

11 2. Usually trial exhibits are handed immediately back to the respective counsel by
12 the courtroom deputy at the conclusion of trial. When the case is taken under
13 advisement and a verdict or court ruling issues at a later date, a separate order
14 will follow directing counsel to retrieve the exhibits from the courtroom deputy.

15 If you have any questions, or need additional exhibit labels, please do not hesitate to
16 call or e-mail me.

17 Teddy Bengtson
18 Courtroom Deputy Clerk for U.S. District Judge James A. Teilborg
19 602-322-7231
20 teddy_bengtson@azd.uscourts.gov

21 Sample exhibit and witness lists and exhibit tags are attached. On the exhibit
22 worksheet and witness lists modify forms to reflect the correct title (criminal or civil)
23 and the case number (CR or CV).
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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF ARIZONA

3 CRIMINAL/CIVIL EXHIBIT LIST

4 Preliminary Injunction TRO Non-Jury Trial Jury
Trial

5 Case Number CR (CV) - - - -JAT Judge Code 7025

6 Date _____

7 _____ vs. _____

8 Plaintiff/Petitioner Defendant/Respondent

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10 EXHIBIT NUMBER	MARKED FOR IDENTIFICATION	ADMITTED IN EVIDENCE	DESCRIPTION
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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF ARIZONA
3 CRIMINAL/CIVIL WITNESS LIST

4 ___ Preliminary Injunction ___ TRO ___ Non-Jury Trial ___ Jury
Trial

5 Case Number CR (CV) - - -JAT Judge Code 7025

6 Date _____

7 _____ vs. _____

8 ___ Plaintiff/Petitioner ___ Defendant/Respondent

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CASE NO. _____

VS. _____
PLAINTIFF'S EXHIBIT _____
DATE: _____
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DATE: _____
EVID.
BY: _____
Deputy Clerk

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CASE NO. _____

VS. _____

DEFENDANT'S EXHIBIT _____

DATE: _____

IDEN.

DATE: _____

EVID.

BY: _____

Deputy Clerk