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

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Dennis Montoya,

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No. CV-13-8068-PCT-SMM

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Plaintiff,

)

**ORDER SETTING RULE 16  
PRELIMINARY PRETRIAL  
CONFERENCE**

11

vs.

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12

3PD Incorporated, et al,

)

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Defendants.

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This matter now being ready for a pretrial conference,

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**IT IS HEREBY ORDERED** that pursuant to Rule 16 of the Federal Rules of Civil

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Procedure a Preliminary Pretrial Conference is set for **September 4, 2013 at 3:30 p.m.**

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before the Honorable Stephen M. McNamee in Courtroom #605, sixth floor, Sandra Day

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O'Connor U.S. Courthouse, 401 W. Washington Street, Phoenix, Arizona.

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**\*\*\* NOTICE \*\*\***

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**IT IS FURTHER ORDERED:**

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**1. COUNSEL WHO WILL BE RESPONSIBLE FOR TRIAL OF THE  
LAWSUIT FOR EACH PARTY SHALL PERSONALLY APPEAR  
AND PARTICIPATE IN THE PRELIMINARY PRETRIAL**

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**CONFERENCE.** Counsel for all parties are directed to Rule 16 of the

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Federal Rules of Civil Procedure for the objectives of the conference. At

1 least one of the attorneys for each party attending the conference shall have  
2 authority to enter into stipulations and make admissions regarding all  
3 matters which may be discussed.

4 2. **IN ADDITION TO COUNSEL OF RECORD, EACH PARTY, OR A**  
5 **REPRESENTATIVE OF EACH PARTY (WHO IS NOT COUNSEL**  
6 **OF RECORD) WITH BINDING SETTLEMENT AUTHORITY IF**  
7 **THE PARTY IS AN ENTITY, SHALL BE PRESENT AT THE**  
8 **PRELIMINARY PRETRIAL CONFERENCE. NO PARTY OR**  
9 **COUNSEL SHALL BE EXCUSED FROM PERSONALLY**  
10 **APPEARING AT THE CONFERENCE WITHOUT PRIOR**  
11 **PERMISSION OF THE COURT. See Fed. R. Civ. P. 16(f).**

12 3. Counsel must be prepared to discuss what the parties must prove in order to  
13 prevail on their respective claims or defenses at the time of the Preliminary  
14 Pretrial Conference.

15 4. Counsel should be prepared to discuss logistical matters.

16 **IT IS FURTHER ORDERED** that all parties are directed to meet at least twenty-  
17 one (21) days before the Preliminary Pretrial Conference, in accordance with Rule 26(f)  
18 of the Federal Rules of Civil Procedure, to discuss the following matters:

19 1. The possibility of consent to trial before a United States Magistrate Judge  
20 pursuant to 28 U.S.C. § 636(c), the suitability for referral of this matter to this  
21 District's court-annexed voluntary arbitration program or any other alternative  
22 dispute resolution mechanism, or the reference of this matter to a special master;

23 2. Any matters relating to jurisdiction or venue or the joinder of additional  
24 parties;

25 3. The nature and bases of their claims and defenses and the possibilities for a  
26 prompt settlement or resolution of the case;

27 4. A schedule of all pre-trial proceedings;

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1           5.       Modification of pre-trial procedures due to the simplicity or complexity of  
2       the case;

3           6.       Arrangements for Initial Disclosures in compliance with Rule 26(a)(1) of  
4       the Federal Rules of Civil Procedure. Unless otherwise stipulated in writing by the  
5       parties or otherwise directed by a written Order of this Court, Initial Disclosures  
6       shall be made at the initial Rule 26(f) case management meeting or within fourteen  
7       (14) days after the meeting; and

8           7.       Any other matters which counsel may feel will help dispose of the matter in  
9       an efficient manner.

10           **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of  
11 Civil Procedure 26(a) the parties shall file with the Clerk of the Court a Notice of Initial  
12 Disclosure; copies of the actual disclosures shall therefore not be filed.

13           **IT IS FURTHER ORDERED** that at the Rule 26(f) case management meeting,  
14 the parties shall develop a **Proposed Case Management Plan** which shall include brief  
15 statements or proposals concerning:

16           1.       The nature of the case, setting forth in brief statements the factual and legal  
17       basis of plaintiff's claims and defendant's defenses;

18           2.       A list of the elements of proof necessary for each count of the complaint  
19       and each affirmative defense. Where the burden of proof shifts, each party shall  
20       list the elements of the claim or defense that the party must prove in order to  
21       prevail. The list of the elements of proof must contain citations to relevant legal  
22       authority (i.e., United States statutory and/or administrative law, U.S. Supreme  
23       Court case law, Ninth Circuit Court of Appeals case law, Arizona state case and  
24       statutory law, or other authority as dictated by conflicts of law rules);

25           3.       The factual and legal issues genuinely in dispute, and whether they can be  
26       narrowed by stipulation or motion;

27           4.       The jurisdictional basis of the case, citing specific statutes;

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1 5. Parties, if any, which have not been served, as well as parties which have  
2 not filed an answer or other appearance. Unless counsel can otherwise show  
3 cause, a proposed form of order shall accompany the joint Case Management Plan  
4 which dismisses any party which has not been served, or seeks default judgment  
5 on any non-appearing party;

6 6. The names of parties not subject to the Court's jurisdiction;

7 7. Whether there are further dispositive or partially dispositive issues to be  
8 decided by pretrial motions, and the legal issues about which any pretrial motions  
9 are contemplated;

10 8. Whether the case is suitable for reference to arbitration, to a special master,  
11 or to a United States Magistrate Judge for trial;

12 9. The status of related cases pending before other judges of this Court or  
13 before other courts;

14 10. Suggested changes, if necessary, in the timing, form, or requirement for  
15 disclosures under Rule 26(a), Federal Rules of Civil Procedure, including a  
16 statement of when Initial Disclosures were made or will be made;

17 11. Proposed specific dates for each of the following:

18 a. A deadline for the completion of fact discovery;<sup>1</sup>

19 b. Dates for full and complete expert disclosures under Federal Rule of  
20 Civil Procedure 26(a)(2)(A)-(C);

21 c. A deadline for completion of all expert depositions;

22 d. A deadline for filing dispositive motions;

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25 \_\_\_\_\_  
26 <sup>1</sup>The discovery deadline is the date by which all discovery must be completed.  
27 Discovery requests must be served and depositions noticed sufficiently in advance of this  
28 date to ensure reasonable completion by this deadline, including time to resolve discovery  
disputes. Absent extraordinary circumstances, the Court will not entertain discovery disputes  
after this deadline.

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e. A date by which the parties shall have engaged in good faith settlement talks;

12. The scope of discovery and whether discovery should be conducted in phases or should be limited to or focused upon particular issues. For example, where dispositive motions will be filed (*e.g.*, motions for summary judgment or a defense relying on the statute of limitations) counsel should consider limiting discovery to the issue at hand until the court has ruled on the motion;

13. Suggested changes, if any, in the limitations on discovery imposed by the Federal Rules of Civil Procedure and LRCiv 16.2;

14. Estimated date that the case will be ready for trial, the estimated length of trial, and any suggestions for shortening the trial;

15. Whether a jury trial has been requested and whether the request for a jury trial is contested. If the request for a jury trial is contested, the Proposed Case Management Plan shall set forth the reasons that a trial by jury is in dispute;

16. The prospects for settlement, including any request to have a settlement conference before another United States District Court Judge or Magistrate Judge, or other request of the court for assistance in settlement efforts; and

17. Any other matters which counsel feel will aid the Court in resolving this dispute in a just, speedy, and inexpensive manner.

**IT IS FURTHER ORDERED** that all deadlines to which the parties stipulate in the Proposed Case Management Plan shall fall on a Friday barring extenuating circumstances which make doing so impracticable.

**IT IS FURTHER ORDERED** that counsel shall jointly file their Proposed Case Management Plan with the Clerk of the Court **not less than five (5) business days** before the Preliminary Pretrial Conference. Absent extraordinary circumstances, no extensions of time will be granted.

1           **IT IS FURTHER ORDERED** that it is the responsibility of counsel for the  
2 Plaintiff(s) to initiate the communications necessary to prepare the joint Proposed Case  
3 Management Plan. Once contacted by counsel for Plaintiff(s), counsel for Defendant(s)  
4 shall act in an expeditious manner to effectuate the preparation of the Case Management  
5 Plan.

6           **IT IS FURTHER ORDERED** that counsel for all parties are expected to comply  
7 with Rule 26 of the Federal Rules of Civil Procedure, and to minimize the expense of  
8 discovery.

9           **IT IS FURTHER ORDERED** that the Court, after consultation with counsel and  
10 the parties, will enter a Rule 16(b) Scheduling Order concerning, inter alia, discovery and  
11 dispositive motions. (See Attached) To the extent that the Court's Rule 16 Scheduling  
12 Order differs from the parties' Proposed Case Management Plan, the provisions of the  
13 Court's Order shall supersede the parties' Proposed Case Management Plan and shall  
14 control the course of this action unless modified by subsequent Order of this Court. The  
15 parties and their counsel are all cautioned that the deadlines set in the Rule 16 Scheduling  
16 Order shall be strictly enforced.

17           **IT IS FURTHER ORDERED** that counsel review the requirements of LRCiv 7.1  
18 and LRCiv 7.2, Rules of Practice of the United States District Court for the District of  
19 Arizona, with their administrative/support personnel to ensure that all pleadings are in  
20 compliance with the rules.

21           **IT IS FURTHER ORDERED** that this Court views the Preliminary Pretrial  
22 Conference as critical to its case management responsibilities and the responsibilities of  
23 the parties under Rule 1 of the Federal Rules of Civil Procedure. **FAILURE TO**  
24 **COMPLY WITH EVERY PROVISION OF THIS ORDER MAY LEAD TO**  
25 **SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 16(f).**

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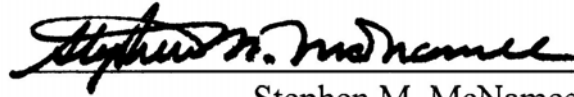
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**IT IS FURTHER ORDERED** that the Clerk of the Court send copies of this Order to any party appearing in propria persona.

DATED this 8<sup>th</sup> day of July, 2013.



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Stephen M. McNamee  
Senior United States District Judge

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**WO**

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

,  
  
Plaintiff,  
  
v.  
  
,  
  
Defendants.

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No. CV- - -PHX-SMM

**RULE 16 SCHEDULING ORDER**

On \_\_\_\_\_, 20\_\_\_, a Preliminary Pretrial Conference was held in open Court pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. Prior to the conference, the parties filed a Rule 26(f) Case Management Plan. Pursuant to the terms of the Case Management Plan, and the representations made by the parties at the Rule 16 Preliminary Pretrial Conference, all parties were ordered to comply with the deadlines established in this Order.

**IT IS HEREBY ORDERED** that the current provisions of the Federal Rules of Civil Procedure shall apply to all proceedings concerning this case.

**IT IS FURTHER ORDERED** that all Initial Disclosures as defined in Federal Rule of Civil Procedure 26(a), if not already exchanged prior to the time of this Preliminary Pretrial Conference, shall be made **no later than five (5) days** after date of



1 entry of this Order or, in the alternative, no later than \_\_\_\_\_

2 **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of  
3 Civil Procedure 26(a), the parties shall file with the Clerk of the Court a Notice of Initial  
4 Disclosure, rather than copies of the actual disclosures.

5 **IT IS FURTHER ORDERED** that any amendment to the Complaint shall be  
6 filed no later than \_\_\_\_\_. Any  
7 amendment to the Answer shall be filed no later than  
8 \_\_\_\_\_.

9 **IT IS FURTHER ORDERED** that all discovery, answers to interrogatories, and  
10 supplements to interrogatories must be completed by \_\_\_\_\_.  
11 In no event, however, shall this provision alter the duties and obligations imposed upon  
12 the parties by Federal Rule of Civil Procedure 26(e). This Order contemplates that each  
13 party will conduct discovery in such a manner as to complete, within the deadline, any  
14 and all discovery. "Last minute" or "eleventh hour" discovery which results in  
15 insufficient time to undertake additional discovery and which requires an extension of the  
16 discovery deadline will be met with disfavor, and could result in denial of an extension,  
17 exclusion of evidence, or the imposition of other sanctions.

18 **IT IS FURTHER ORDERED** that discovery by interrogatory shall generally be  
19 governed by Federal Rule of Civil Procedure 33. However, notwithstanding Federal Rule  
20 of Civil Procedure 33, there is a limit of \_\_\_\_\_ interrogatories, including  
21 discrete subparts, applicable to this case.

22 **IT IS FURTHER ORDERED** that requests for admissions shall be governed by  
23 Federal Rule of Civil Procedure 36. The parties shall serve no more than \_\_\_\_\_  
24 requests for admissions.

25 **IT IS FURTHER ORDERED** reminding counsel of their duty under Rule 26(e)  
26 of the Federal Rules of Civil Procedure to supplement all Rule 26(a) disclosures and  
27 responses to discovery requests. Pursuant to Rule 26(e)(1), any additions or other  
28 changes to information previously disclosed must be made prior to the time that Rule

1 26(a)(3) Pretrial Disclosures are due. Since this Court effectively requires all Rule  
2 26(a)(3) Pretrial Disclosures to be contained in the Proposed Final Pretrial Order, this  
3 Order contemplates that all exhibits and witnesses that may be offered at trial will have  
4 been disclosed before the close of discovery as established by the provisions of this  
5 Order. This Order therefore supersedes the “thirty-day before trial” disclosure deadline  
6 contained in that Rule. Therefore (1) failure to have timely supplemented a Rule 26(a)  
7 disclosure, including but not limited to witnesses and exhibits, or (2) a failure to have  
8 timely supplemented responses to any valid discovery requests, or (3) attempting to  
9 include any witnesses or exhibits in the Proposed Final Pretrial Order that were not  
10 previously disclosed in a timely manner as to allow for meaningful discovery prior to the  
11 discovery cutoff date as established by this Order, may result in the exclusion of such  
12 evidence at trial or the imposition of other sanctions.

13 **IT IS FURTHER ORDERED** that, **in the event of a discovery dispute, the**  
14 **parties shall contact the Court to request a telephonic conference prior to filing any**  
15 **discovery motions.** The parties shall not contact the Court regarding a discovery dispute  
16 unless they have been unable to resolve the dispute themselves, despite personal  
17 consultation and sincere efforts to do so. The parties shall not file any written materials  
18 related to a discovery dispute or discovery motion without express leave of Court. If the  
19 Court does order written submissions, the movant shall include a statement certifying that  
20 counsel could not satisfactorily resolve the matter despite personal consultation and  
21 sincere efforts to do so, in accordance with LRCiv 7.2(j) of the Rules of Practice of the  
22 United States District Court for the District of Arizona.

23 **IT IS FURTHER ORDERED** that the Plaintiff(s) shall disclose the identity of  
24 any person who may be used at trial to present evidence under Federal Rules of Evidence  
25 701, 702, 703, 704, and 705 no later than  
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1 \_\_\_\_\_.<sup>2</sup> The Defendant(s) shall disclose  
2 the identity of any person who may be used at trial to present evidence under Federal  
3 Rules of Evidence 701, 702, 703, 704, or 705 no later than  
4 \_\_\_\_\_. Rebuttal experts if any, shall be disclosed  
5 no later than \_\_\_\_\_. No deposition of any expert witnesses  
6 shall occur before the disclosures concerning expert witnesses mandated by this Order are  
7 made. Depositions of all expert witnesses must be concluded by \_\_\_\_\_.

8 **IT IS FURTHER ORDERED** that the disclosures of the identities of any persons  
9 who may be used at trial to present evidence under Federal Rules of Evidence 701, 702,  
10 703, 704, or 705 shall also include all of the disclosures required by Federal Rule of Civil  
11 Procedure 26(a)(2)(B) if the witness is either (1) retained or specifically employed to  
12 provide expert testimony in the case, or (2) is an agent or employee of the party offering  
13 the testimony whose duties regularly involve giving expert testimony.

14 **IT IS FURTHER ORDERED** that depositions shall be limited as provided by  
15 Rules 30 and 31 of the Federal Rules of Civil Procedure unless the parties otherwise  
16 stipulate in writing when permitted to do so pursuant to the Rules or when granted  
17 permission to depart from the provisions of the Rules by Order of this Court.  
18 Notwithstanding any provision in the Federal Rules of Civil Procedure or the Local  
19 Rules, the parties shall conduct no more than \_\_\_\_\_ depositions.

20 **IT IS FURTHER ORDERED** pursuant to Federal Rule of Civil Procedure  
21 30(d)(1) that there shall be a time limit of \_\_\_\_\_ hours<sup>3</sup> to conduct a deposition of  
22 any witness in this case. Additional time shall be allowed where the deponent or a party  
23 impedes or delays the examination. This time limit may only be extended by Order of  
24 this Court upon motion of any party that demonstrates good cause for doing so. Counsel  
25 \_\_\_\_\_

26 <sup>2</sup> The parties are hereby given notice that this Order requires disclosure greater than that  
27 required by Federal Rule of Civil Procedure 26(a)(2).

28 <sup>3</sup> The Court finds that a presumptive limit of seven (7) hours is sufficient for  
depositions in a standard track civil case.

1 shall conduct themselves courteously and professionally, especially during the taking of  
2 depositions. Any objections made during the course of a deposition must be in  
3 accordance with Rule 30(c)(2) of the Federal Rules of Civil Procedure.

4 **IT IS FURTHER ORDERED** that notwithstanding any provisions of the Federal  
5 Rules of Civil Procedure or any other provisions of this Order, non-party witnesses shall  
6 not be permitted to attend, either physically, electronically, or otherwise, the deposition of  
7 any other witness in this case without an Order of this Court to the contrary.

8 **IT IS FURTHER ORDERED** that all dispositive motions shall be filed no later  
9 than \_\_\_\_\_. Such motions must be, in all respects, in  
10 full compliance with the Rules of Practice of the United States District Court for the  
11 District of Arizona.

12 **IT IS FURTHER ORDERED** that no submissions to the Court shall contain any  
13 footnotes in excess of five (5) lines.

14 **IT IS FURTHER ORDERED** that all parties are hereby specifically admonished  
15 that failure to respond to a motion by serving and filing an answering memorandum  
16 within the time period expressly provided for in LRCiv 7.2 of the Rules of Practice of the  
17 United States District Court for the District of Arizona may be deemed a consent to the  
18 denial or granting of the motion and the Court may then dispose of the motion summarily.

19 **IT IS FURTHER ORDERED** that the parties shall not notice oral argument on  
20 any motion. Instead, a party desiring oral argument on a motion shall request argument  
21 by placing "Oral Argument Requested" immediately below the title of such motion,  
22 pursuant to LRCiv 7.2(f) of the Rules of Practice of the United States District Court for  
23 the District of Arizona. The Court will then issue a minute order scheduling the oral  
24 argument.

25 Oral argument shall be scheduled at the request of a party on all motions to dismiss  
26 and motions for summary judgment. On all other motions on which a party requests oral  
27 argument, the Court will determine whether oral argument is necessary. FURTHER,  
28 THE PARTIES ARE REMINDED THAT OBTAINING A HEARING DATE IS

1 PURELY ADMINISTRIAL. ACCORDINGLY, REGARDLESS OF A HEARING  
2 DATE, THE COURT MAY, AT ANY TIME AFTER THE MOTION IS FULLY  
3 BRIEFED, DETERMINE THAT A HEARING IS UNWARRANTED AND RULE ON  
4 THE MOTION WITHOUT ORAL ARGUMENT.

5 **IT IS FURTHER ORDERED** that any and all motions, requests, or stipulations  
6 for extensions of time shall be made in accordance with the provisions of LRCiv 7.3 of  
7 the Rules of Practice of the United States District Court for the District of Arizona.  
8 Notwithstanding this directive, however, if such a motion, request, or stipulation seeks an  
9 extension of time in which to file a memorandum in response or in reply to a motion  
10 previously noticed for oral argument, under no circumstances shall such a motion,  
11 request, or stipulation seek an extension that would preclude the Court from having at  
12 least thirty (30) days from the due date for the filing of the reply memorandum to  
13 consider the merits of the underlying motion unless the motion, request, or stipulation  
14 also seeks to vacate and reschedule the oral argument. Any motion, request, or  
15 stipulation that so seeks both an extension of time and rescheduling of a hearing shall  
16 contain a memorandum of points and authorities which demonstrates good cause for the  
17 Court to grant the requested extension.

18 **IT IS FURTHER ORDERED** that, if no dispositive motions are pending before  
19 the Court after the dispositive motions deadline has passed, Plaintiff(s) shall file a Notice  
20 of Readiness for Order Re: Final Pretrial Conference within ten (10) days of the  
21 dispositive motions deadline.

22 **IT IS FURTHER ORDERED** that, if dispositive motions are pending before the  
23 Court following the dispositive motions deadline, the Court will issue an Order Re: Final  
24 Pretrial Conference following its resolution of the dispositive motions, if necessary.

25 **IT IS FURTHER ORDERED** that the Order Re: Final Pretrial Conference shall:  
26 1) set deadlines for the filing of and response to motions in limine; 2) instruct the parties  
27 on their duties in preparing for the Final Pretrial Conference and for trial; and 3) include a  
28 form for the completion of the parties' Proposed Pretrial Form of Order.

1           **IT IS ORDERED** that the attorneys for each party who will be responsible for  
2 trial of the lawsuit shall **APPEAR** and **PARTICIPATE** in a Final Pretrial Conference on  
3 \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_m.  
4 in courtroom # 605 on the sixth floor of the United States Courthouse, 401 West  
5 Washington Street, Phoenix, Arizona. Because the Final Pretrial Conference is held for  
6 the benefit of all parties, and further because the presence of all parties will facilitate  
7 frank discussion of the pertinent issues in the lawsuit, **each party, or a representative**  
8 **with binding settlement authority if the party is an entity**, shall attend the Final  
9 Pretrial Conference. At the Final Pretrial Conference, the Court shall set a firm trial date.

10           **IT IS FURTHER ORDERED** that the parties shall keep the Court informed  
11 regarding the possibility of settlement and should settlement be reached, the parties shall  
12 file a Notice of Settlement with the Clerk of the Court.

13           **IT IS FURTHER ORDERED** that this Court views compliance with the  
14 provisions of this Order as critical to its case management responsibilities and the  
15 responsibilities of the parties under Rule 16 of the Federal Rules of Civil Procedure.

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