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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEGALZOOM.COM INC

Plaintiffs,

v.

ROCKET LAWYER INCORPORATED

Defendants.

CASE NO:
2:12-cv-09942-GAF-AGR

CASE MANAGEMENT AND
SCHEDULING ORDER
**SEE LAST PAGE FOR
PRETRIAL AND TRIAL DATES**

The purpose of this Order is to enable the parties and their counsel to know well in advance the schedule to which they will be expected to adhere. SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES. Ordinarily the dates set forth on the last page are determined after consultation with the parties at the Rule 26(f) Scheduling Conference, and this Order is distributed to them at that time. Accordingly, the dates and requirements are firm. The Court is very unlikely to grant continuances, even if stipulated by the parties, unless the parties establish good cause through a concrete showing. **Because this order, in some respects modifies the applicable Local Rule of Civil Procedure, counsel are advised to read it carefully to avoid default on the obligations established herein. Counsel are advised to pay particular attention to the requirements of the Court in**

1 respect to the filing of motions for summary judgment and documents to be
2 submitted at the pre-trial conference and trial.

3 **I. DISCOVERY CUTOFF**

4 All discovery shall be completed by the discovery cutoff on the last page.

5 **THIS IS NOT THE DATE BY WHICH DISCOVERY REQUESTS MUST BE**
6 **SERVED; IT IS THE DATE BY WHICH ALL DISCOVERY IS TO BE**
7 **COMPLETED.**

8 Any motion challenging the adequacy of responses to discovery must be filed
9 timely, served and calendared sufficiently in advance of the discovery cutoff date
10 to permit the responses to be obtained before that date, if the motion is granted.
11 The Court requires compliance with Local Rule 37-1 and 37-2 in the preparation
12 and filing of discovery motions. Except in the case of an extreme emergency which
13 was not created by the lawyer briefing the motion, discovery motions may not be
14 heard on ex parte application.

15 In an effort to provide further guidance to the parties, the Court notes the
16 following:

17 1. Discovery. All depositions shall be scheduled to commence
18 sufficiently in advance of the discovery cutoff date to permit their
19 completion and to permit the deposing party enough time to bring any
20 discovery motions concerning the deposition prior to the cutoff date.

21 2. Written Discovery. All interrogatories, requests for production
22 of documents, and requests for admissions shall be served sufficiently in
23 advance of the discovery cutoff date to permit the discovering party enough
24 time to challenge (via motion practice) responses deemed to be deficient.

25 3. Discovery Motions. Whenever possible, the Court expects the
26 parties to resolve discovery problems among themselves in a courteous,
27 reasonable and professional manner. If they do so, resort to the Court for
28 guidance in discovery is seldom necessary. The Magistrate Judge assigned

1 to this case will rule on discovery motions.

2 4. Expert Discovery. Expert discovery is to be concluded by the
3 cutoff date. Accordingly, the disclosure of expert witnesses in full compliance
4 with Rule 26(a)(2), of the Federal Rules of Civil Procedure is ordered no later
5 than seventy (70) days before the discovery cutoff. Counter-designations
6 are to be made pursuant to Federal Rule of Civil Procedure 26(a)(2)(C).

7 5. Rule 26(e)(1) Supplementation. The parties are under a continuing
8 obligation to supplement their Rule 26(a) disclosures; the Court expects the
9 parties to disclose such materials immediately upon identification.

10 **II. MOTIONS AND MOTION CUTOFF DATE**

11 **A. GENERAL PROVISIONS**

12 All law and motion matters, except for motions in limine, must be set for
13 hearing (not filing) by the motion cutoff date specified on the last page.

14 The parties must adhere to the requirements of the Local Rules. See C. D.
15 Cal. R. 7-1 et seq. If any party does not oppose a motion, that party shall submit
16 a written statement in accordance with Local Rule 7-16 that it does not oppose the
17 motion. The parties should note that failure to meet the time limits set forth in Local
18 Rule 7 may be deemed consent to the granting of the motion. C. D. Cal. R. 7-12.
19 The Court will not decide late-filed motions.

20 Motions should be filed: 28 days before the hearing date

21 Opposition is due: 21 days before the hearing date

22 Reply is due: 14 days before the hearing date

23 To insure that the Court receives oppositions and replies in a timely fashion,
24 chamber's copies *conformed to reflect that they have been e-filed*, should be
25 deposited in the drop box in the back entrance way to the chambers of Courtroom
26 740 in accordance with Local Rules.

27 Issues left undetermined after the passage of the motion cutoff date should be
28 listed as issues for trial in the pre-trial conference order. As an exception to the

1 above, motions in limine dealing with evidentiary matters may be heard pursuant to
2 the schedule attached hereto; however, the Court will not hear or resolve summary
3 judgment motions disguised as motions in limine. In addition, delay which interferes
4 with preparation by the Court and its staff may cause imposition of sanctions
5 under Local Rule 83–7.

6 Ex parte practice is strongly discouraged. See Mission Power Eng. Co. v.
7 Continental Casualty Co., 883 F.Supp. 488 (C.D. Cal. 1995). The Court will
8 require strict adherence to proper ex parte procedures for any ex parte application
9 filed with the Court. Id. at 492; See C.D. Cal. R. 7–19.

10 **B. APPLICATIONS AND STIPULATIONS TO EXTEND TIME**

11 Applications to extend the time to file any required document or to continue
12 any pretrial or trial date must set forth:

- 13 (i) the existing due date or hearing date;
- 14 (ii) specific, concrete reasons supporting good cause for granting the
15 extension. In this regard, a statement that an extension "will promote settlement"
16 is insufficient. The requesting party or parties must indicate the status of ongoing
17 negotiations: Have written proposals been exchanged? Is counsel in the process of
18 reviewing a draft settlement agreement? Has a mediator been selected?
- 19 (iii) whether there have been prior requests for extensions, and whether
20 these were granted or denied by the Court.

21 The parties requesting the extension must provide the Court with a proposed
22 order setting forth the proposed new dates and/or proposed new schedule.

23 **C. SUMMARY JUDGMENT MOTIONS**

24 As caseloads increase, the Court is seeing a corresponding increase in the
25 filing of motions for summary judgment. These motions frequently do not comply
26 with the requirements of the Local Rules in one or more respects, and there are
27 ambiguities in the Local Rules regarding the preparation of the Separate Statement
28 of Undisputed Facts and related materials. As a result the Court is receiving

1 documents in a wide variety of formats, some that are not in compliance and some
2 that may technically comply with the literal language of the rule, but which are
3 confusing, difficult to decipher and interfere with the Court's ability to address these
4 motions in an efficient and expeditious manner. To increase the Court's efficiency,
5 and to assist counsel in structuring and focusing these motions, the Court is
6 issuing the following order regarding the filing motions for summary judgment in
7 this Court. The Court will require strict adherence to these requirements.

8 1. Separate Statement Of Undisputed Facts and Statement of Genuine Issues

9 The Separate Statement of Undisputed Facts is to be prepared in a two column
10 format. The left hand column should set forth the allegedly undisputed fact. The
11 right hand column should set forth the evidence that supports the factual statement.
12 The fact statements should be set forth in sequentially numbered paragraphs. Each
13 paragraph should contain a narrowly focused statement of fact. The Court has
14 observed cases where an allegedly undisputed fact was set forth in three pages of
15 text. This is unacceptable. Each numbered paragraph should address a single
16 subject in as concise a manner as possible.

17 The opposing party's statement of genuine issues must be in two columns and
18 track the movant's separate statement exactly as prepared. The document must be
19 in two columns; the left hand column must restate the allegedly undisputed fact,
20 and the right hand column must indicate either undisputed, or disputed. The
21 opposing party may dispute all or only a portion of the statement, but if disputing
22 only a portion, must clearly indicate what part is being disputed. Where the
23 opposing party is disputing the fact in whole or part, the opposing party must, in
24 the right hand column, label and restate the moving party's evidence in support
25 of the fact, followed by the opposing party's evidence controverting the fact. Where
26 the opposing party is disputing the fact on the basis of an evidentiary objection,
27 the party must cite to the evidence alleged to be objectionable and state the ground

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1 of the objection and nothing more. **No argument should be set forth in this**
2 **document.**

3 The opposing party may submit additional material facts that bear on or relate
4 the issues raised by the movant, which shall follow the format described above for
5 the moving party's separate statement. These additional facts shall follow the
6 movant's facts, shall continue in sequentially numbered paragraphs (i.e., if
7 movant's last statement of fact was set forth in paragraph 30, then the first new
8 fact will be set forth in paragraph 31), and shall set forth in the right hand column
9 the evidence that supports that statement.

10 The moving party, in its reply, shall respond to the additional facts in the
11 same manner and format that the opposition party is required to adhere to in
12 responding to the statement of undisputed facts, as described above.

13 2. Supporting Evidence

14 No party should submit any evidence other than the specific items of evidence
15 or testimony necessary to support or controvert a proposed statement of undisputed
16 fact. Thus, for example, the entire transcript of a deposition, entire sets of
17 interrogatory responses, and documents that do not specifically support or
18 controvert material in the separate statements, should not be submitted in support
19 or opposition to a motion for summary judgment. Any such material will not be
20 considered.

21 Evidence submitted in support or opposition to a motion should be submitted
22 either by way of stipulation or as exhibits to declarations sufficient to authenticate
23 the proffered evidence, and should not be attached to the Memorandum of Points
24 and Authorities. The Court will accept counsel's authentication of deposition
25 transcripts, of written discovery responses, and of the receipt of documents in
26 discovery if the fact that the document was in the opponent's possession is of
27 independent significance. Documentary evidence as to which there is no
28 stipulation regarding foundation must be accompanied by the testimony, either by

1 declaration or properly authenticated deposition transcript, of a witness who can
2 establish its authenticity.

3 3. Objections to Evidence

4 If a party disputes a fact based in whole or in part on an evidentiary objection,
5 the ground of the objection, as indicated above, should be stated in the separate
6 statement but not argued in that document. Evidentiary objections are to be
7 addressed in a separate memorandum to be filed with the opposition or reply brief
8 of the party. This memorandum should be organized **to track the paragraph**
9 **numbers of the separate statement in sequence.** It should identify the
10 specific item of evidence to which objection is made, the ground of the
11 objection, and a very brief argument with citation to authority as to why the
12 objection is well taken. The following is an example of the format contemplated
13 by the Court:

14 Separate Statement Paragraph 1: Objection to the supporting deposition
15 transcript of Jane Smith at 60:1–10 on the grounds that the statement
16 constitutes inadmissible hearsay and no exception is applicable. To the
17 extent it is offered to prove her state of mind, it is irrelevant since her state
18 of mind is not in issue. Fed. R. Evid. 801, 802.

19
20 **N.B: DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS**
21 **TO THE OPPONENT’S STATEMENTS OF UNDISPUTED FACT: THESE**
22 **WILL BE DISREGARDED AND OVERRULED.**

23 4. The Memorandum of Points and Authorities

24 The movant’s memorandum of points and authorities should be in the usual
25 form required under Local Rule 7 and should contain a narrative statement of facts
26 as to those aspects of the case that are before the Court. All facts should be
27 supported with citations to the paragraph number in the Separate Statement that
28 supports the factual assertion **and not to the underlying evidence.**

1 Unless the case involves some unusual application of Rule 56, the motion
2 need only contain a brief statement of the Rule 56 standard; the Court is familiar
3 with the Rule and with its interpretation under Celotex and its progeny. If at all
4 possible, the argument should be organized to focus on the pertinent elements of
5 the cause(s) of action or defense(s) in issue, with the purpose of showing the
6 existence or non–existence of a genuine issue of material fact for trial on that
7 element of the claim or defense.

8 Likewise, the opposition memorandum of points and authorities should be
9 in the usual form required by Local Rule 7, and where the opposition memorandum
10 sets forth facts, the memorandum should cite to paragraphs in the separate statement
11 if they are not in dispute, to the evidence that contravenes the fact where the fact is
12 in dispute, or, if the fact is contravened by an additional fact in the statement of
13 genuine issues, the citation should be to such fact by paragraph number.

14 5. Timing

15 In virtually every case, the Court expects that the moving party will provide
16 more than the minimum twenty–eight (28) day notice for such motions. The moving
17 party should deliver to chambers a copy of a diskette, in WordPerfect format
18 (9.0 or earlier versions), containing the Statement of Uncontroverted Facts and
19 Conclusions of Law. ***[NOTE: Parties need not wait until the motion cutoff to
20 bring motions for summary judgment or partial summary judgment. Early
21 completion of non–expert discovery and filing of motions for summary
22 judgment may eliminate or reduce the need for expensive expert depositions
23 which are normally conducted in the last stages of discovery.]***

24 **D. ORAL ARGUMENT**

25 If the Court concludes that a motion can be resolved without argument, the
26 Court will notify the parties in advance.

27 **E. MOTIONS IN LIMINE**

28 The parties must file motions in limine addressing the admissibility of

1 evidence in accordance with Local Rule 7–3 by the date specified on the last
2 page. The parties shall file their opposing and reply papers in accordance with
3 Local Rules 7–9 and 7–10 respectively.

4 **III. PRE–TRIAL CONFERENCE AND LOCAL RULE 9 FILINGS**

5 **A. GENERAL PROVISIONS**

6 The Pre–Trial Conference (“PTC”) will be held at 3:30 P.M. on the date
7 specified, unless the Court expressly waived a PTC at the Status Conference. (In
8 the rare cases where the Court waives a PTC, the parties must follow Local
9 Rule 16–11 – specifically 16–11.2.) If adjustments in the Court’s calendar to
10 accommodate congestion become necessary, the Court may re–calendar the PTC
11 instead of the trial date. Therefore, the parties should assume that if the PTC
12 goes forward, the trial will go forward without continuance, although some brief
13 period of trailing may prove necessary.

14 The lead trial attorney on behalf of each party shall attend both the PTC
15 and all meetings of the parties in preparation of the PTC, unless excused for
16 good cause shown in advance of the PTC.

17 At the PTC, the parties should be prepared to discuss means of streamlining
18 the trial, including, but not limited to: bifurcation; presentation of foundational and
19 non–critical testimony and direct testimony by deposition excerpts; narrative
20 summaries and/or stipulations as to the content of testimony; presentation of
21 testimony on direct examination by affidavit or by declaration subject to cross–
22 examination; and qualification of experts by admitted resumes. The Court will
23 also discuss settlement.

24 **B. FORM OF PRE–TRIAL CONFERENCE ORDER (“PTCO”)**

25 The proposed PTCO shall be lodged fourteen (14) calendar days before the
26 PTC. Adherence to this time requirement is necessary for in–chambers preparation
27 of the matter. The form of the proposed PTCO shall comply with Appendix A to
28 the Local Rules and the following:

1 1. Place in "ALL CAPS" and in **bold** the separately numbered headings for
2 each category in the PTCO (*e.g.*, "**1. THE PARTIES**" or "**7. CLAIMS AND**
3 **DEFENSES OF THE PARTIES**".)

4 2. Include a Table of Contents at the beginning.

5 3. In specifying the surviving pleadings under Section 1, please state which
6 claims or counterclaims have been dismissed or abandoned. *E.g.* "Plaintiff's second
7 cause of action for breach of fiduciary duty has been dismissed." Also, in multiple
8 party cases where not all claims or counterclaims will be prosecuted against all
9 remaining parties on the other side, please specify to which party each claim or
10 counterclaim is directed.

11 4. In drafting Sections 5 and 6 of the PTCO, the Court expects that the
12 parties will attempt to agree on and set forth as many non-contested facts as
13 possible. The Court will usually read the uncontested facts to the jury at the start
14 of the trial. A carefully drafted and comprehensively stated stipulation of facts will
15 reduce the length of trial and increase jury understanding of the case.

16 5. *In specifying the parties' claims and defenses under Section 7, each*
17 *party shall closely follow the examples set forth in Appendix A of the Local Rules.*
18 *As those examples demonstrate, the parties should attempt to state issues in terms*
19 *of **the elements of the claims or defenses** (ultimate facts), not in the form of*
20 *evidentiary fact issues, which outline the elements of the claims and defenses. The*
21 *elements to most claims and defense can be found in the Ninth Circuit Model Jury*
22 *Instructions, the California Book of Approved Jury Instructions (BAJI), and Devitt*
23 *& Blackmar. Counsel are reminded that the purpose of this section is to focus and*
24 *clarify the issues to be presented at trial. No argument is to be included in this*
25 *section.*

26 6. The Court may well submit fact issues to the jury in the form of findings
27 a special verdict. The issues of fact should track the elements of a claim or defense
28 on which the jury will be required to make findings.

1 **C. RULE 16 FILINGS; MEMORANDA; WITNESS LISTS;**
2 **EXHIBIT LISTS**

3 The parties must comply fully with the requirements of Local Rule 16. They
4 shall file carefully prepared Memoranda of Contentions of Fact and Law (which
5 may also serve as the trial brief), along with their respective Witness Lists and
6 Exhibit Lists, all in accordance with Local Rules 16–3, 16–4, 16–5 and 16–6. See
7 the last page for dates.

8 **D. JURY INSTRUCTIONS; VERDICT FORMS; SPECIAL**
9 **INTERROGATORIES**

10 1. Fourteen (14) days before the Rule 16 meeting, the parties shall
11 exchange proposed jury instructions, verdict forms and special interrogatories.
12 Seven (7) days before the meeting, counsel shall exchange written objections, if
13 any, to proposed jury instructions, verdicts and special interrogatories. At the
14 Rule 16 meeting, the parties shall confer with the objective of submitting one set
15 of agreed upon substantive instructions, verdict forms and, if necessary, special
16 interrogatories. "Substantive jury instructions" means all instructions relating to
17 the elements of all claims and defenses in the case. The Court would appreciate
18 the parties delivering a chamber's copy of these filings in an electronic format
19 compatible with WordPerfect at the time the documents are filed.

20 2. If the parties cannot agree upon one complete set of substantive
21 instructions, verdict forms and/or special interrogatories, they shall file two
22 documents with the Court: a joint document reflecting the agreed upon instructions,
23 verdict forms, and a second document in the form of a joint statement regarding the
24 disputed instructions, verdicts and interrogatories in the following format for each
25 instruction, verdict or interrogatory in issue:

- 26 (a) A separate page containing the text of the disputed language with
27 with an identification of the party proposing it;
28 (b)) Following the instruction, the opposing party's statement of

1 objections to the instruction along with legal authority in support of
2 the argument (not to exceed one page) and proposed alternative
3 language where appropriate;

4 (c) The proposing party's response to the objection with legal
5 authority supporting the proposed language, not to exceed *one* page.

6 Both the agreed upon set of instructions, and the joint statement re disputed
7 instructions are to be filed with the Pre-Trial Conference Order and other Rule 16
8 documents fourteen (14) days before the Pre-Trial Conference.

9 3. All proposed jury instructions shall be in the format specified by Local
10 Rule 51-2. The parties need not submit a separate copy of instructions without
11 citations to authority.

12 4. A table of contents shall be included with all jury instructions submitted
13 to the Court. The table of contents shall set forth the following:

- 14 (a) The number of the instruction;
- 15 (b) A brief title of the instruction;
- 16 (c) The source of the instruction; and
- 17 (d) The page number of the instruction.

18 For example:

19 <u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page Number</u>
20 1	Burden of Proof	9th Cir. 12.2	5

21
22 5. The Court directs counsel to use the instructions from the *Manual of*
23 *Model Jury Instructions for the Ninth Circuit* (West 1997) where applicable.
24 Where California law is to be applied and the above instructions are not applicable,
25 the Court prefers counsel to use the CACI forms. If neither of these sources is
26 applicable, counsel are directed to use the instructions in Devitt, Blackmar and
27 Wolff, *Federal Jury Practice and Instructions*.

28 6. Modifications of instructions from the foregoing sources (or any other

1 form instructions) must specifically state the modification made to the original
2 form instruction and the authority supporting the modification.

3 **E. JOINT STATEMENT OF THE CASE AND REQUESTS FOR**
4 **VOIR DIRE**

5 At the Pre-Trial Conference, the parties shall lodge their proposed voir dire
6 questions and their joint statement of the case which the Court shall read to all
7 prospective jurors prior to the commencement of voir dire. The statement should
8 be not longer than two or three paragraphs.

9 The Court conducts voir dire of all prospective jurors. The parties need not
10 submit requests for standard voir dire questions, such as education, current
11 occupation, marital status, prior jury service, etc., but should include only
12 proposed questions specifically tailored to the parties and issues of the case.

13 **G. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

14 For a non-jury trial, the parties shall lodge their proposed findings of fact
15 and conclusions of law in accordance with Local Rule 52-1 not later than one week
16 before trial. The Court would appreciate the parties delivering to chambers a copy
17 of these findings on disk in WordPerfect 9.0 format. Please see the Court's Civil
18 Trial Order.

19 **IV. SETTLEMENT**

20 Local Rule 16-15.2 provides that the Settlement Conference shall be
21 concluded not later than 45 days before the Pretrial Conference. This Court
22 requires a slightly different approach. The Settlement Conference shall take
23 place not later than three weeks before the Pre-Trial Conference, which is after
24 discovery is closed and motions have been heard. The Court expects that
25 completion of all discovery and dispositive motions will help the parties assess
26 their positions before they complete the costly pre-trial process under Local
27 Rule 16. But sometimes parties find it more difficult to settle after they incurred
28 the cost of all discovery and motion practice. The Court therefore strongly

1 encourages counsel and the parties to pursue settlement earlier. In any event, as
2 indicated in the Schedule of Pretrial Dates attached hereto, the parties must file
3 a Status Report re Settlement at the time that they lodge the Proposed Pretrial
4 Conference Order, indicating whether they have conducted the Local Rule 16
5 Settlement Conference and/or what additional steps are being taken to achieve
6 settlement.

7 This Court will not conduct settlement conferences in non-jury cases which
8 he is to try. In jury cases, the Court will conduct a settlement conference at the
9 parties' joint request if three conditions exist:

- 10 1. The parties are satisfied that the fact issues in the case will be tried to
11 a jury.
- 12 2. All significant pre-trial rulings which the Court must make have been
13 made.
- 14 3. The parties desire the Court to conduct the conference, understanding
15 that if settlement fails, the Court will preside over trial of the case.

16 If the parties are inclined to select this Court to conduct a settlement
17 conference, the parties should consult the Court's Standing Order re Settlement
18 Conference so that they fully understand the Court's requirements for the
19 settlement conference. That order will govern the settlement conference procedures
20 before this Court, but may also serve as a useful reference for settlement
21 conferences conducted pursuant to the other available procedures. Copies of
22 that order and all other standard orders of this Court are available through the
23 Courtroom Deputy Clerk or on the Central District of California website, at
24 "www.cacd.uscourts.gov."

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V. CONCLUSION

The Court thanks the parties and their counsel for their anticipated cooperation in carrying out these requirements.

IT IS SO ORDERED.

DATED: April 11, 2013



Gary A. Feess
United States District Judge

JUDGE GARY ALLEN FEESS
SCHEDULE OF TRIAL AND PRETRIAL DATES¹

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial Estimated length: <u>4-5</u> days	8:30 am				JURY TRIAL: 3/4/2014
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	9:30 am	-1			2/24/14
[Court trial] File Findings of Fact and Conclusions of Law; Hearing on Motions in Limine		-1			
Pretrial Conference; Motions in Limine to be filed; Proposed Voir Dire Qs Lodged and Agreed-to Statement of Case	3:30 pm	-4			2/3/2014
Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit & Witness Lists; File Status Report re Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.		-6			1/21/2014
Last date to conduct Settlement Conference		-8			1/17/2014
Last day for hearing motions	9:30 am	-9			1/6/2014
Discovery cut-off [Note: Expert disclosure no later than 70 days prior to this date.]		-10			12/19/2013
Last to Amend Pleadings or Add Parties					8/29/2013

¹ Review the Court's Order re "Rule 26(f) Scheduling Conference" to be sure of the meaning of these terms.