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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

H & M GOPHER CONTROL, et al.,)	Case No.: 1:17-CV-01700- JLT
Plaintiffs,)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
v.)	Pleading Amendment Deadline: 9/14/2018
BENCHMARK PEST CONTROL, INC., et al.,)	Claim Construction Briefing:
Defendants.)	Joint Statement: 2/22/2019
)	Opening Brief: 4/5/2019
)	Responding Brief: 4/19/2019
)	Rebuttal Brief: 4/26/2019
)	Hearing: 5/20/2019
		Discovery Deadlines:
		Non-Expert: 1/17/2019
		Expert: 3/28/2019
		Mid-Discovery Status Conference: 11/13/2018 at 8:30 a.m.
		Non-Dispositive Motion Deadlines:
		Filing: 4/22/2019
		Hearing: 5/20/2019
		Dispositive Motion Deadlines:
		Filing: 6/10/2019
		Hearing: 7/8/2019
		Settlement Conference: 2/5/2019, 1:00 p.m.
		Pre-Trial Conference:
		8/5/2019 at 10:00 a.m.
		510 19 th Street, Bakersfield, CA
		Trial: 9/30/2019 at 8:30 a.m.
		510 19 th Street, Bakersfield, CA
		Jury trial: 5-7 days

1 **I. Date of Scheduling Conference**

2 August 4, 2018.

3 **II. Appearances of Counsel**

4 Matthew McCartney and Andrew Dallmann appeared on behalf of Plaintiffs.

5 James Duncan appeared on behalf of Defendants.

6 **III. Pleading Amendment Deadline**

7 Any requested pleading amendments are ordered to be filed, either through a stipulation or
8 motion to amend, no later than **September 14, 2018**.

9 **IV. Fictitiously-Named Defendants**

10 All claims as to “Doe” Defendants, including any counterclaims and cross-claims, are hereby
11 **DISMISSED**.

12 **V. Discovery Plan and Cut-Off Date**

13 The parties have exchanged the initial disclosures required by Fed. R. Civ. P. 26(a)(1).

14 **A. Non-expert and Expert Discovery**

15 The parties are ordered to complete all discovery pertaining to non-experts on or before
16 **January 17, 2019**, and all discovery pertaining to experts on or before **March 28, 2019**.

17 The parties are directed to disclose all expert witnesses, in writing, on or **January 28, 2019**, and
18 to disclose all rebuttal experts on or before **February 26, 2019**. The written designation of retained
19 and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C)**
20 **and shall include all information required thereunder**. Failure to designate experts in compliance
21 with this order may result in the Court excluding the testimony or other evidence offered through such
22 experts that are not disclosed pursuant to this order.

23 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
24 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
25 included in the designation. Failure to comply will result in the imposition of sanctions, which may
26 include striking the expert designation and preclusion of expert testimony.

27 The provisions of Fed. R. Civ. P. 26(e) regarding a party’s duty to timely supplement
28 disclosures and responses to discovery requests will be strictly enforced.

1 **B. Mid-Discovery Status Conference**

2 A mid-discovery status conference is scheduled for **November 13, 2018** at 8:30 a.m. before the
3 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
4 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
5 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
6 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
7 completed as well as any impediments to completing the discovery within the deadlines set forth in this
8 order. In addition, the plaintiffs’ counsel SHALL detail whether they will need to rely on expert
9 discovery determination of the claim construction.

10 Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
11 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the
12 intent to appear telephonically no later than five court days before the noticed hearing date.

13 **C. Claim Construction Briefing and Hearing**

14 The parties SHALL meet and confer to address the terms before filing a Joint Claim
15 Construction and Prehearing Statement no later than **February 22, 2019**. The Joint Statement shall
16 include the following information:

- 17 1. The construction of the terms on which the parties agree;
- 18 2. A brief description of the parties’ proposed construction of each disputed term,
19 which identifies all references from the specification or prosecution history that
20 support that construction and identifies any extrinsic evidence which support the
21 support the construction;
- 22 3. The anticipated length of time necessary for the Claim Construction Hearing; and
- 23 4. An identification of any factual findings requested from the Court related to
24 claim construction.

25 Plaintiffs SHALL file their opening claim construction brief no later than **April 5, 2019**.
26 Defendants SHALL file their responding claim construction brief on or before **April 19, 2019**. Any
27 rebuttal claim construction brief by Plaintiffs SHALL be filed no later than **April 26, 2019**.

28 The claim construction motion will be heard on **May 20, 2019** at 9:00 a.m., located at 510 19th

1 Street, Bakersfield, California.

2 **VI. Pre-Trial Motion Schedule**

3 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
4 than **April 22, 2019**, and heard on or before **May 20, 2019**. The Court hears non-dispositive motions at
5 9:00 a.m. at the United States District Courthouse in Bakersfield, California.

6 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
7 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
8 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
9 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
10 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
11 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
12 obligation of the moving party to arrange and originate the conference call to the court. To schedule
13 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
14 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
15 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
16 **from the Court's calendar.**

17 All dispositive pre-trial motions shall be filed no later than **June 10, 2019**, and heard no later
18 than **July 8, 2019**, before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the
19 United States District Courthouse in Bakersfield, California. In scheduling such motions, **counsel shall**
20 **comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.**

21 **VII. Motions for Summary Judgment or Summary Adjudication**

22 **At least 21 days before** filing a motion for summary judgment or motion for summary
23 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
24 to be raised in the motion.

25 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
26 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
27 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
28 issues for review by the court; 5) explore the possibility of settlement before the parties incur the

1 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

2 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
3 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
4 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
5 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
6 statement of undisputed facts.

7 In the notice of motion, the moving party **SHALL** certify that the parties have met and
8 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.
9 **Failure to comply may result in the motion being stricken.**

10 **VIII. Pre-Trial Conference**

11 **August 5, 2019**, at 8:30 a.m., located at the United States District Courthouse in Bakersfield,
12 California, before the Honorable Jennifer L. Thurston, United States Magistrate Judge.

13 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
14 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
15 directly to Judge Thurston's chambers, by email at JLTorders@caed.uscourts.gov.

16 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
17 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
18 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
19 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
20 Court to explain the nature of the case to the jury during voir dire.

21 **IX. Trial Date**

22 **September 30, 2019**, at 8:30 a.m. at the United States District Courthouse in Bakersfield,
23 California, before the Honorable Jennifer L. Thurston, United States Magistrate Judge.

24 A. This is a jury trial.

25 B. Counsels' Estimate of Trial Time: 5-7 days.

26 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
27 California, Rule 285.

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1 **X. Settlement Conference**

2 A Settlement Conference is scheduled for **February 5, 2019** at 1:00 p.m., courtroom 10, before
3 the Honorable Erica P. Grosjean, located at the Robert E. Coyle Federal Courthouse at 2500 Tulare
4 Street, Fresno, California.

5 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case**
6 **shall appear** at the Settlement Conference **with the parties** and the person or persons having **full**
7 **authority** to negotiate and settle the case **on any reasonable terms**¹ discussed at the conference.
8 Consideration of settlement is a serious matter that requires preparation prior to the settlement
9 conference. Set forth below are the procedures the Court will employ, absent good cause, in
10 conducting the conference.

11 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
12 fax or e-mail, a written itemization of damages and a meaningful² settlement demand which includes
13 a brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before**
14 the settlement conference, Defendant **SHALL** respond via fax or e-mail, with an acceptance of the
15 offer or with a meaningful counteroffer, which includes a brief explanation of why such a settlement
16 is appropriate.

17 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to
18 their Confidential Settlement Conference Statement, as described below. Copies of these documents
19 shall not be filed on the court docket.

20 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

21 **At least five court days before** the settlement conference, the parties shall submit, directly to
22 Judge Grosjean's chambers by e-mail to EPGOrders@caed.uscourts.gov, a Confidential Settlement
23 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
24 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference

25 _____
26 ¹ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements
are subject to approval by legislative bodies, executive committees, boards of directors or the like may be represented by
a person whose recommendations about settlement are relied upon by the ultimate decision makers.

27 ² "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the offering
party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party.
28 If, however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this
should trigger a recognition the case is not in a settlement posture and the parties should confer about continuing the
settlement conference via stipulation.

1 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
2 Settlement Conference indicated prominently thereon.

3 The Confidential Settlement Conference Statement shall include the following:

4 A. A brief statement of the facts of the case.

5 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
6 which the claims are founded; a forthright evaluation of the parties' likelihood of
7 prevailing on the claims and defenses; and a description of the major issues in dispute.

8 C. A summary of the proceedings to date.

9 D. An estimate of the cost and time to be expended for further discovery, pretrial and
10 trial.

11 E. The relief sought.

12 F. The party's position on settlement, including present demands and offers and a history
13 of past settlement discussions, offers and demands.

14 **XI. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**
15 **Trial**

16 Not applicable at this time.

17 **XII. Related Matters Pending**

18 There are no pending related matters.

19 **XIII. Compliance with Federal Procedure**

20 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
21 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
22 amendments thereto. The Court must insist upon compliance with these Rules to efficiently handle its
23 increasing case load, and sanctions will be imposed for failure to follow both the Federal Rules of Civil
24 Procedure and the Local Rules of Practice for the Eastern District of California.

25 **XIV. Effect of this Order**

26 The foregoing order represents the best estimate of the court and counsel as to the agenda most
27 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
28 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered

1 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
2 subsequent status conference.

3 **The dates set in this Order are considered to be firm and will not be modified absent a**
4 **showing of good cause even if the request to modify is made by stipulation.** Stipulations
5 extending the deadlines contained herein will not be considered unless they are accompanied by
6 affidavits or declarations, and where appropriate attached exhibits, which establish good cause
7 for granting the relief requested.

8 Failure to comply with this order may result in the imposition of sanctions.

9
10 IT IS SO ORDERED.

11 Dated: August 6, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE