



1 II. JURY/NON-JURY

2 Plaintiffs have demanded a jury trial.

3 III. STATEMENT TO BE READ TO JURY

4 Seven (7) days prior to trial the parties shall E-file a joint  
5 statement of the case that may be read to the jury at the beginning  
6 of jury selection.

7 IV. UNDISPUTED FACTS

8 The parties agree that the following facts are not in dispute,  
9 and they stipulate to these facts for purposes of trial.

10 1. Plaintiff Madelaine Durand is an individual who resides  
11 in Washoe County, Nevada.

12 2. Plaintiff Edwin Durand is an individual who resides in  
13 Washoe County, Nevada.

14 3. Defendant Candice L. Stephenson is an individual who  
15 resides in Placer County, California.

16 4. Defendant J. Wayne Strauch is an individual who resides  
17 in Marion County, Oregon and has extensive contacts within the  
18 State of California.

19 5. The subject Westinghouse Airbrake Company Articulated  
20 Loader model 1200 was located at 2024 Taylor Road, Roseville,  
21 California.

22 6. 2024 Taylor Road, Roseville, California is owned by  
23 Defendant J. Wayne Strauch.

24 7. On April 18, 2008 the Defendants J. Wayne Strauch and  
25 Candice Stephenson sold the subject Loader to Richard Van Tassel.

26 8. On April 18, 2008 Richard Van Tassel met Defendant  
27 Candice L. Stephenson at her home located at 111 Bonny Knoll Road,  
28 Roseville, California and gave her a check in the amount of

1 \$6,000.00 made out to the Strauch Administrative Trust, the  
2 purchase price of the Loader.

3 9. The copy of the check from Richard Van Tassel to the  
4 Strauch Administrative Trust for \$6,000 dated April 18, 2008 is  
5 deemed authentic.

6 10. Defendant Stephenson told CHP Investigating Officer Bruce  
7 Ogden that the Loader had been sold for \$6,000.

8 11. Stephenson admitted having a conversation with Mr. Durand  
9 after the Loader was sold.

10 12. The Loader was moved off the property located at 2024  
11 Taylor Road, Roseville, California in April 2008.

12 13. Defendant Strauch had a telephone conversation with Mr.  
13 Durand after the Loader was removed from 2024 Taylor Road,  
14 Roseville, California wherein Mr. Durand stated that he (Durand)  
15 owned the Loader.

16 14. Both Candice L. Stephenson and J. Wayne Strauch are  
17 Trustees on the Strauch Administrative Trust.

18 15. Before Marjorie Strauch died she was a Trustee on the  
19 Strauch Administrative Trust.

20 16. Marjorie Strauch died on June 26, 1999.

21 17. Both Defendants Candice L. Stephenson and J. Wayne  
22 Strauch are Marjorie Strauch's heirs.

23 18. Defendant Stephenson knew that her mother had sold the HD  
24 41 dozer.

25 19. Defendant Stephenson's mother told her that she sold the  
26 HD 41 dozer to a Mr. Brown.

27 20. Defendant J. Wayne Strauch knew that the HD 41 dozer had  
28 been sold.

1 V. DISPUTED FACTUAL ISSUES

2 The parties agree that the following factual issues are  
3 disputed:

4 1. Whether Durand owned the subject Loader at the time of  
5 the alleged conversion?

6 2. Whether Durand had the right to possession of the subject  
7 Loader at the time of the alleged conversion?

8 3. Whether the Defendants had the right to sell the Loader  
9 at the time of the alleged conversion?

10 4. Whether Durand had abandoned the Loader?

11 5. Whether Durand had a "For Sale" sign attached to the  
12 Loader?

13 6. The value of the Loader as of April 18, 2008, the time of  
14 the alleged conversion.

15 VI. DISPUTED EVIDENTIARY ISSUES

16 1. Durand anticipates hearsay objections to statements by  
17 Richard Van Tassel that the Defendants told him they knew the  
18 Loader had been sold but could not find the owner.

19 2. Should the Defendants include Mr. Rick Churches as a  
20 witness, Durand anticipates filing a motion in limine.

21 3. Strauch's statement that he knew his mother had sold the  
22 Loader is admitted pursuant to F.R.C.P. Rule 36(a)(3), but the  
23 statement is not admissible on grounds that it is confusing and  
24 incomplete.

25 4. Strauch's statement that he told Durand that the persons  
26 who had stolen his pumpkin patch equipment must have stolen the  
27 Loader is admitted pursuant to F.R.C.P. Rule 36(a)(3).

28 5. Defendants contend that item 2 may be resolved by a

1 motion in limine. Defendants also anticipate challenging the  
2 admissibility of various documents proffered by plaintiffs. The  
3 objections will, in some instances, depend upon the purpose(s) for  
4 which plaintiffs offer the document(s).

5 VII. RELIEF SOUGHT

6 Durands seek money damages between \$120,000 to \$250,000, a  
7 fair compensation for the time and money properly expended in  
8 pursuit of the property, interest from the time of conversion and  
9 all costs allowed by law. **[Defendants to submit statement  
10 regarding their Counterclaim to be included in this section.]**

11 VIII. POINTS OF LAW

12 Trial briefs shall be E-filed with the court no later than  
13 seven (7) days prior to the date of trial, i.e., January 7, 2013.  
14 Any points of law not previously argued to the Court should be  
15 briefed in the trial briefs.

16 IX. ABANDONED ISSUES

17 The Durands' contend that their Complaint requesting damages  
18 in the amount of \$600,000 was abandoned back in 2009.

19 Defendants dispute any attempt to abandon the Noble Murray  
20 Appraisal and/or the damage claim in the amount of \$600,000.  
21 Defendants intend to offer this appraisal, and Plaintiffs'  
22 representations to this Court that accompanied it, for multiple  
23 purposes under Rules 403-404, 607-609, and 613 under the Federal  
24 Rules of Evidence. Among other things, Defendants contend these  
25 statements are appropriately offered to the trier of fact for  
26 impeachment purposes, and/or to negate Plaintiffs' credibility as  
27 witnesses at trial.

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1 X. WITNESSES

2 Plaintiffs anticipate calling the following witnesses:

- 3 1. Madelaine Durand.
- 4 2. Edwin Durand.
- 5 3. Timothy Fadda.
- 6 4. Candice L. Stephenson by Deposition and Interrogatory.
- 7 5. J. Wayne Strauch by Deposition, Interrogatory, and

8 Admissions.

9 Rebuttal witnesses:

- 10 1. Richard Van Tassel.
- 11 2. Kimberly Pilant.

12 Defendants anticipate calling the following witnesses:

- 13 1. Madelaine Durand.
- 14 2. Edwin Durand.
- 15 3. Candice Stephenson.
- 16 4. J. Wayne Strauch.
- 17 5. Rick Churches.
- 18 6. Ted Mitchell.
- 19 7. Jim Taylor.
- 20 8. Greg Reed.
- 21 9. David Willard.
- 22 10. James Dobbas

23 Each party may call a witness designated by the other.

24 A. No other witnesses will be permitted to testify unless:

25 (1) The party offering the witness demonstrates that the  
26 witness is for the purpose of rebutting evidence which could not be  
27 reasonably anticipated at the Pretrial Conference, or

28 (2) The witness was discovered after the Pretrial

1 Conference and the proffering party makes the showing required in  
2 "B" below.

3 B. Upon the post-Pretrial discovery of witnesses, the  
4 attorney shall promptly inform the court and opposing parties of  
5 the existence of the unlisted witnesses so that the court may  
6 consider at trial whether the witnesses shall be permitted to  
7 testify. The evidence will not be permitted unless:

8 (1) The witnesses could not reasonably have been  
9 discovered prior to Pretrial;

10 (2) The court and opposing counsel were promptly  
11 notified upon discovery of the witnesses;

12 (3) If time permitted, counsel proffered the witnesses  
13 for deposition;

14 (4) If time did not permit, a reasonable summary of the  
15 witnesses' testimony was provided opposing counsel.

16 XI. EXHIBITS, SCHEDULES AND SUMMARIES

17 Plaintiff intends to introduce the following exhibits:

18 1. Pictures of the Loader.

19 2. Bill of Sale of the Loader and Dozer between Francis  
20 Brown and Eric Andersen.

21 3. Bill of Sale of the Loader and Dozer between Andersen and  
22 Durand.

23 4. Telephone bill from February 1996.

24 5. Telephone bill from August 2008.

25 6. Telephone bill from September 2008.

26 7. Telephone bill from October 2008.

27 8. Time line of telephone calls 2008.

28 9. Verification of telephone numbers for government agencies

1 contacted 2008.

2 10. Stolen Vehicle Report.

3 11. Copy of CHP Officer Bruce Ogden's business card.

4 12. Letter dated January 10, 2009 to Strauch and Stephenson  
5 including proofs of receipt.

6 13. Letter dated February 2, 2009 to Strauch and Stephenson  
7 including proofs of receipt.

8 14. Declaration of Candice Stephenson dated November 6, 2009.

9 15. State of California Secretary of State certified  
10 document.

11 16. Strauch's Request for Admissions mailed January 22, 2010  
12 - never answered.

13 17. Stephenson's Responses to Request for Admissions, Set No.  
14 One dated March 3, 2010.

15 18. Stephenson's Responses to Interrogatories Set No. One  
16 dated March 3, 2010.

17 19. Stephenson's Responses to Interrogatories Set No. One  
18 dated March 15, 2010.

19 20. Stephenson's Responses to Interrogatories Set No. One  
20 dated April 17, 2010.

21 21. Stephenson's Responses to Interrogatories Set No. Two  
22 dated May 5, 2010.

23 22. Strauch's Responses to Interrogatories Set No. One dated  
24 April 14, 2010.

25 23. Strauch's Responses to Interrogatories Set No. Two dated  
26 May 6, 2010.

27 24. Strauch' Deposition dated May 3, 2010.

28 25. Stephenson' Deposition dated March 15, 2010.



- 1 26. Declaration of Rick Churches dated May 12, 2010.
- 2 27. Letter from Francis Brown dated February 25, 1996.
- 3 28. Telephone bill from 2001 showing calls to Noble Murray.
- 4 29. Telephone bill from 2003 showing calls to Noble Murray.
- 5 30. Letter dated January 11, 2001 from Edwin Durand to Noble
- 6 Murray.
- 7 31. Email dated February 7, 2001 from Murray to Durand.
- 8 32. Email dated February 8, 2001 from Durand to Murray.
- 9 33. Email dated February 8, 2001 from Durand to Murray cc
- 10 Kimberly Pilant.
- 11 34. March 12, 2001 letter from Murray.
- 12 35. March 14, 2001 letter from the Governor of Montana to
- 13 Durand.
- 14 36. Email from Gregg Hoss dated November 19, 2010 verifying
- 15 2001 dozernet listings and sales of comparables.
- 16 37. Hoss Equipment listings of comparables from 2001.
- 17 38. Miscellaneous listings of comparables from 2001.
- 18 39. Affidavit of Richard Van Tassel dated May 20, 2010.
- 19 40. Affidavit of Richard Van Tassel dated August 6, 2010.
- 20 41. Declaration of Timothy Fadda dated October 11, 2010.
- 21 42. Declaration of Timothy Fadda dated June 1, 2010.
- 22 43. Timothy Fadda's October 2007 letter.
- 23 44. Timothy Fadda's Expert Witness Report filed August 16,
- 24 2012.
- 25 45. Deed of Trust dated 12/28/1990.
- 26 46. Affidavit of Kimberly Pilant.
- 27 Defendant intends to introduce the following exhibits:
- 28 A. Heavy Equipment Appraisal - Appraiser Noble Murray -

1 February 2006.

2 B. Plaintiffs' 2009 comparable listings.

3 C. Transcript of May 3, 2010 deposition of Edwin Durand.

4 D. Transcript of May 3, 2010 deposition of Madelaine Durand.

5 E. May 20, 2010 Affidavit of Richard Van Tassel.

6 F. June 4, 2010 Declaration of Edwin Durand.

7 G. June 4, 2010 Declaration of Madelaine Durand.

8 H. July 15, 2010 Order to Show Cause.

9 I. August 6, 2010 Plaintiffs' Authentication of Noble Murray

10 Appraisal.

11 J. February 7, 2011 email allegedly between Noble Murray and

12 Edwin Durand.

13 K. February 8, 2011 email allegedly between Edwin Durand and

14 Noble Murray.

15 L. March 12, 2001 purported letter from Noble Murray to

16 Edwin Durand.

17 M. Noble Murray handwriting exemplars from the Special

18 Collections Department of the University of Nevada, Reno, Mathewson

19 - IGT Knowledge Center.

20 N. 2001 Hoss Equipment Listings.

21 O. Plaintiffs' 2001 comparable listings.

22 P. August 5, 2010 Affidavit of Kimberly Pilant.

23 Q. August 6, 2010 Affidavit of Richard Van Tassel.

24 R. August 11, 2010 Declaration of Edwin and Madelaine

25 Durand.

26 S. August 23, 2010 Order Re: In Camera Review.

27 T. Plaintiff's Request for Reconsideration dated October 13,

28 2010.

1 U. October 13, 2010 Declaration of Madelaine Durand.

2 V. June 1, 2010 Declaration of Timothy Fadda.

3 W. Expert Witness Report by Timothy Fadda dated August 15,  
4 2010.

5 X. October 11, 2010 Declaration of Timothy Fadda.

6 Y. Plaintiff's responses to Defendant's Stephenson's Request  
7 for Production of Documents, Set No. One dated April 28, 2010.

8 Z. Plaintiff's responses to Defendant's Stephenson's  
9 Interrogatories, Set No. One dated April 28, 2010.

10 Each party may use an exhibit designated by the other.

11 A. No other exhibits will be permitted to be introduced  
12 unless:

13 (1) The party proffering the exhibit demonstrates that  
14 the exhibit is for the purpose of rebutting evidence which could  
15 not be reasonably anticipated at the Pretrial Conference, or

16 (2) The exhibit was discovered after the Pretrial  
17 Conference and the proffering party makes the showing required in  
18 paragraph "B," below.

19 B. Upon the post-Pretrial discovery of exhibits, the  
20 attorneys shall promptly inform the court and opposing counsel of  
21 the existence of such exhibits so that the court may consider at  
22 trial their admissibility. The exhibits will not be received  
23 unless the proffering party demonstrates:

24 (1) The exhibits could not reasonably have been  
25 discovered prior to Pretrial;

26 (2) The court and counsel were promptly informed of  
27 their existence;

28 (3) Counsel forwarded a copy of the exhibit(s) (if

1 physically possible) to opposing counsel. If the exhibit(s) may  
2 not be copied, the proffering counsel must show that he has made  
3 the exhibit(s) reasonably available for inspection by opposing  
4 counsel.

5 As to each exhibit, each party is ordered to exchange copies  
6 of the exhibit not later than January 2, 2013. Each party is then  
7 granted five (5) days to file and serve objections to any of the  
8 exhibits. In making the objection, the party is to set forth the  
9 grounds for the objection. The parties shall pre-mark their  
10 respective exhibits in accord with the Court's Pretrial Order.  
11 Exhibit stickers may be obtained through the Clerk's Office. An  
12 original and one (1) copy of the exhibits shall be presented to  
13 Harry Vine, Deputy Courtroom Clerk, at 8:30 a.m. on the date set  
14 for trial or at such earlier time as may be agreed upon. Mr. Vine  
15 can be contacted at (916) 930-4091 or via e-mail at:  
16 [hvine@caed.uscourts.gov](mailto:hvine@caed.uscourts.gov). As to each exhibit which is not objected  
17 to, it shall be marked and may be received into evidence on motion  
18 and will require no further foundation. Each exhibit which is  
19 objected to will be marked for identification only.

## 20 XII. DISCOVERY DOCUMENTS

21 See Sections XVI C, XVI D and XVI E.

## 22 XIII. FURTHER DISCOVERY OR MOTIONS

23 Pursuant to the court's Status Conference Order, all discovery  
24 and law and motion was to have been conducted so as to be completed  
25 as of the date of the Pretrial Conference. That order is  
26 confirmed. The parties are free to do anything they desire  
27 pursuant to informal agreement. However, any such agreement will  
28 not be enforceable in this court.

1 XIV. STIPULATIONS

2 None.

3 XV. AMENDMENTS/DISMISSALS

4 None.

5 XVI. FURTHER TRIAL PREPARATION

6 A. Counsel are directed to Local Rule 285 regarding the  
7 contents of trial briefs. Such briefs should be E-filed seven (7)  
8 days prior to trial, i.e., January 7, 2013.

9 B. Counsel are further directed to confer and to attempt to  
10 agree upon a joint set of jury instructions. The joint set of  
11 instructions shall be lodged via ECF with the court clerk seven (7)  
12 calendar days prior to the date of the trial, i.e., January 7,  
13 2013, and shall be identified as the "Jury Instructions Without  
14 Objection." As to instructions as to which there is dispute the  
15 parties shall submit the instruction(s) via ECF as its package of  
16 proposed jury instructions three days before trial, i.e., January  
17 11, 2013. This package of proposed instructions should not include  
18 the "Jury Instructions Without Objection" and should be clearly  
19 identified as "Disputed Objections" on the proposed instructions.

20 The parties shall e-mail a set of all proposed jury  
21 instructions in word or wpd format to the Court's Judicial  
22 Assistant, Jane Pratt, at: [jpratt@caed.uscourts.gov](mailto:jpratt@caed.uscourts.gov).

23 C. It is the duty of counsel to ensure that any deposition  
24 which is to be used at trial has been lodged with the Clerk of the  
25 Court pursuant to Local Rule 133(j). The depositions shall be  
26 lodged with the court clerk seven (7) calendar days prior to the  
27 date of the trial. Counsel are cautioned that a failure to  
28 discharge this duty may result in the court precluding use of the

1 deposition or imposition of such other sanctions as the court deems  
2 appropriate.

3 D. The parties are ordered to E-file with the court and  
4 exchange between themselves not later than one (1) week before the  
5 trial a statement designating portions of depositions intended to  
6 be offered or read into evidence (except for portions to be used  
7 only for impeachment or rebuttal).

8 E. The parties are ordered to E-file with the court and  
9 exchange between themselves not later than one (1) week before  
10 trial the portions of Answers to Interrogatories or Requests for  
11 Admission which the respective parties intend to offer or read into  
12 evidence at the trial (except portions to be used only for  
13 impeachment or rebuttal).

14 F. Each party may submit proposed voir dire questions the  
15 party would like the court to put to prospective jurors during jury  
16 selection. Proposed voir dire should be submitted via ECF one (1)  
17 week prior to trial.

18 G. Each party may submit a proposed verdict form that the  
19 party would like the Court to use in this case. Proposed verdict  
20 forms should be submitted via ECF one (1) week prior to trial.

21 H. In limine motions shall be E-filed separately at least  
22 ten (10) days prior to trial, i.e., January 4, 2013. Opposition  
23 briefs shall be E-filed five (5) days prior to trial, i.e., January  
24 9, 2013. No reply briefs may be filed.

25 XVII. SETTLEMENT NEGOTIATIONS

26 No further formal Settlement Conference will be set in this  
27 case.

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XVIII. AGREED STATEMENTS

See paragraph III, *supra*.

XIX. SEPARATE TRIAL OF ISSUES

None.

XX. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

Appointment by the Court of impartial expert witnesses and limitations on experts are not necessary.

XXI. ATTORNEYS' FEES

Not applicable.

XXII. MISCELLANEOUS

None.

XXIII. ESTIMATE OF TRIAL TIME/TRIAL DATE

The parties estimate three (3) to four (4) court days for trial. Trial will commence on January 14, 2013, at 9:00 a.m.

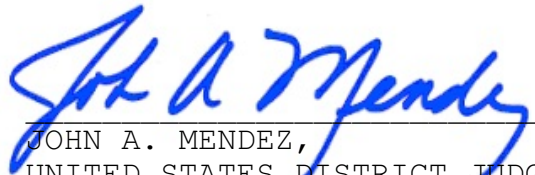
Counsel are to call Harry Vine, Courtroom Deputy, at (916) 930-4091, one week prior to trial to ascertain the status of the trial date.

XXIV. OBJECTIONS TO PRETRIAL ORDER

Each party is granted seven (7) days from the date of this Pretrial Order to object to it via ECF.

IT IS SO ORDERED.

DATED: November 19, 2012.

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE