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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

YESENIA MELGAR,  
Plaintiff,  
v.  
ZICAM, LLC. and MATRIX  
INITIATIVES, INC.,  
Defendants.

No. 2:14-cv-00160-MCE-AC

**SUPPLEMENTAL PRETRIAL  
SCHEDULING ORDER**

After review of the March 1, 2017, Joint Status Report (ECF No. 142), the Court makes the following Supplemental Pretrial Scheduling Order.

**FINAL PRETRIAL CONFERENCE**

A Final Pretrial Conference is set on January 11, 2018, at 2:00 p.m. in courtroom 7. At least one of the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the case and equal authorization to make commitments on behalf of the client.

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1 Counsel for all parties are to be fully prepared for trial at the time of the Final  
2 Pretrial Conference, with no matters remaining to be accomplished except production of  
3 witnesses for oral testimony.

4 The parties shall file, not later than December 11, 2017, a Joint Final Pretrial  
5 Conference Statement. The provisions of Local Rule 281 shall apply with respect to the  
6 matters to be included in the Joint Final Pretrial Conference Statement. In addition to  
7 those subjects listed in Local Rule 281(b), the parties are to provide the Court with a  
8 plain, concise statement that identifies every non-discovery motion tendered to the Court  
9 and its resolution. Failure to comply with Local Rule 281, as modified by this Trial  
10 Setting Order, may be grounds for sanctions.

11 At the time of filing the Joint Final Pretrial Conference Statement, counsel shall  
12 also electronically mail to the Court in digital format compatible with Microsoft Word, the  
13 Joint Final Pretrial Statement in its entirety including the witness and exhibit lists. **These**  
14 **documents shall be sent to mceorders@caed.uscourts.gov.**

15 The parties should identify first the core undisputed facts relevant to all claims.  
16 The parties should then, in a concise manner, identify those undisputed core facts that  
17 are relevant to each claim. The disputed facts should be identified in the same manner.  
18 Where the parties are unable to agree as to what disputed facts are properly before the  
19 Court for trial, they should nevertheless list all disputed facts asserted by each party.  
20 Each disputed fact or undisputed fact should be separately numbered or lettered.

21 Each party shall identify and concisely list each disputed evidentiary issue which  
22 will be the subject of a motion in limine.

23 Each party shall identify the points of law which concisely describe the legal  
24 issues of the trial which will be discussed in the parties' respective trial briefs. Points of  
25 law should reflect issues derived from the core undisputed and disputed facts. Parties  
26 shall not include argument or authorities with any point of law.

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1 Each party shall confirm the number of court days required to submit the case to  
2 the jury. The parties shall further confirm how many court days they will each require to  
3 present their cases, inclusive of opening statements and closing arguments. Plaintiff's  
4 estimate shall also include the time necessary for jury selection, and Defendant's  
5 estimate shall include the time necessary to finalize jury instructions and to instruct the  
6 jury. If the parties later submit a revised trial length estimate, the Court will attempt to  
7 accommodate them, but, due to its impacted docket, cannot guarantee that it will be able  
8 to do so. Counsel shall be prepared at the Final Pretrial Conference to choose and set  
9 with the Court a trial date.

10 The parties are reminded that pursuant to Local Rule 281 they are required to list  
11 in the Joint Final Pretrial Conference Statement all witnesses and exhibits they propose  
12 to offer at trial. After the name of each witness, each party shall provide a brief  
13 statement of the nature of the testimony to be proffered. The parties may file a joint list  
14 or each party may file separate lists. These list(s) shall not be contained in the body of  
15 the Joint Final Pretrial Conference Statement itself, but shall be attached as separate  
16 documents to be used as addenda to the Final Pretrial Order.

17 Plaintiff's(s') exhibits shall be listed numerically. Defendant's(s') exhibits shall be  
18 listed alphabetically. The parties shall use the standard exhibit stickers provided by the  
19 Court Clerk's Office: pink for plaintiff(s) and blue for defendant(s). In the event that the  
20 alphabet is exhausted, the exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. After  
21 three letters, note the number of letters in parenthesis (i.e., "4A") to reduce confusion at  
22 trial. Placement of the exhibit sticker shall not overlie any part of the exhibit to be  
23 offered. All multi-page exhibits shall be stapled or otherwise fastened together and each  
24 page within the exhibit shall be numbered. All photographs shall be marked individually.  
25 The list of exhibits shall not include excerpts of depositions, which may be used to  
26 impeach witnesses. In the event that Plaintiff(s) and Defendant(s) offer the same exhibit  
27 during trial, that exhibit shall be referred to by the designation the exhibit is first  
28 identified.

1 The Court cautions the parties to pay attention to this detail so that all concerned will not  
2 be confused by one exhibit being identified with both a number and a letter.

3 The Final Pretrial Order will contain a stringent standard for the offering at trial of  
4 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned  
5 that the standard will be strictly applied. On the other hand, the listing of exhibits or  
6 witnesses that a party does not intend to offer will be viewed as an abuse of the Court's  
7 processes.

8 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of  
9 Civil Procedure it will be their duty at the Final Pretrial Conference to aid the Court in: (a)  
10 the formulation and simplification of issues and the elimination of frivolous claims or  
11 defenses; (b) the settling of facts that should properly be admitted; and (c) the avoidance  
12 of unnecessary proof and cumulative evidence. Counsel must cooperatively prepare the  
13 Joint Final Pretrial Conference Statement and participate in good faith at the Final  
14 Pretrial Conference with these aims in mind. A failure to do so may result in the  
15 imposition of sanctions which may include monetary sanctions, orders precluding proof,  
16 elimination of claims or defenses, or such other sanctions as the Court deems  
17 appropriate.

18 **TRIAL BRIEFS**

19 The parties shall file trial briefs not later than December 11, 2017. Counsel are  
20 directed to Local Rule 285 regarding the content of trial briefs.

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**MOTIONS IN LIMINE**

Any evidentiary or procedural motions are to be filed by December 11, 2017. Oppositions must be filed by December 28, 2017, and any reply must be filed by January 4, 2018. The motions will be heard by the Court at the same time as the Final Pretrial Conference.

IT IS SO ORDERED.

Dated: March 13, 2017

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE