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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

	)	
	)	
E-SMART TECHNOLOGIES INC., et	)	No. C06-5528 MHP (BZ)
al.	)	
	)	<b>ORDER SCHEDULING</b>
	)	<b>SETTLEMENT CONFERENCE</b>
Plaintiff(s),	)	
	)	
v.	)	
	)	
WAYNE DRIZEN, et al.	)	
	)	
Defendant(s).	)	
_____	)	

The above matter was referred to Magistrate Judge Bernard Zimmerman for settlement purposes.

You are hereby notified that a settlement conference is scheduled for **Thursday, July 23, 2009, at 9:00 a.m.**, in Courtroom G, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

It is the responsibility of counsel to ensure that whatever discovery is needed for all sides to evaluate the case for settlement purposes is completed by the date of the settlement conference. Counsel shall cooperate in providing discovery

1 informally and expeditiously.

2       Lead trial counsel shall appear at the Settlement  
3 Conference with the parties. Any party who is not a natural  
4 person shall be represented by the person or persons **not**  
5 **directly involved** in the events which gave rise to the  
6 litigation but with **full** authority to negotiate a settlement. A  
7 person who needs to call another person not present before  
8 accepting, rejecting or making any settlement offer does not  
9 have full authority. If a party is a governmental entity, its  
10 governing body shall designate one of its members or a senior  
11 executive to appear at the Settlement Conference with authority  
12 to participate in the Settlement Conference and, if a tentative  
13 settlement agreement is reached, to recommend the agreement to  
14 the governmental entity for its approval. An insured party  
15 shall appear with a representative of the carrier with full  
16 authority to negotiate up to the limits of coverage. The Court  
17 shall be notified immediately if the carrier declines to attend.  
18 Personal attendance of a party representative will rarely be  
19 excused by the Court, and then only upon separate written  
20 application demonstrating substantial hardship served on  
21 opposing counsel and lodged as early as the basis for the  
22 hardship is known.

23       Each party shall prepare a Settlement Conference Statement,  
24 which must be served on opposing counsel and lodged (not faxed)  
25 with my chambers no later than seven calendar days prior to the  
26 conference. The Statement shall **not** be filed with the Clerk of  
27 the Court. The Statement **may** be submitted on CD-ROM with  
28 hypertext links to exhibits. Otherwise, the portion of exhibits

1 on which the party relies **shall** be highlighted. The Settlement  
2 Conference Statement shall not exceed ten pages of text and  
3 twenty pages of exhibits and shall include the following:

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

5 2. A brief statement of the claims and defenses  
6 including, but not limited to, statutory or other grounds upon  
7 which the claims are founded.

8 3. A summary of the proceedings to date and any pending  
9 motions.

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

12 5. For any party seeking relief, a description of the  
13 relief sought, including an itemization of damages.

14 6. The parties' position on settlement, including present  
15 demands and offers and a history of past settlement discussions.

16 The Court's time can best be used to assist the parties in  
17 completing their negotiations, not in starting them.

18 Accordingly, plaintiff must serve a demand in writing no later  
19 than fourteen days before the conference and defendant must  
20 respond in writing no later than eight days before the

21 conference. If plaintiff seeks attorney's fees and costs,  
22 plaintiff's counsel shall either include the fee claim in the  
23 demand or make a separate, simultaneous demand for fees and

24 costs. Counsel shall be prepared at the conference to provide  
25 sufficient information to defendant to enable the fee claim to  
26 be evaluated for purposes of settlement. The parties are urged

27 to carefully evaluate their case before taking a settlement

28 position since extreme positions hinder the settlement process.


1 Along with the Statement each party shall lodge with the  
2 court a document of no more than three pages containing a **candid**  
3 evaluation of the parties' likelihood of prevailing on the  
4 claims and defenses, and any other information that party wishes  
5 not to share with opposing counsel. The more candid the parties  
6 are, the more productive the conference will be. This document  
7 shall not be served on opposing counsel.

8 It is not unusual for conferences to last three or more  
9 hours. Parties are encouraged to participate and frankly  
10 discuss their case. Statements they make during the conference  
11 will not be admissible at trial in the event the case does not  
12 settle. The parties should be prepared to discuss such issues  
13 as:

- 14 1. Their settlement objectives.
- 15 2. Any impediments to settlement they perceive.
- 16 3. Whether they have enough information to discuss  
17 settlement. If not, what additional information is needed.
- 18 4. The possibility of a creative resolution of the dispute.

19 The parties shall notify Magistrate Judge Zimmerman's  
20 chambers immediately if this case settles prior to the date set  
21 for settlement conference. Counsel shall provide a copy of this  
22 order to each party who will participate in the conference.

23 Dated: June 30, 2009

24   
25 \_\_\_\_\_  
26 Bernard Zimmerman  
27 United States Magistrate Judge  
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