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**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PICKETFENCE, INC,

No. C 07-1551 JL

Plaintiff,

CASE MANAGEMENT AND  
PRETRIAL ORDER

v.

R.R. DONNELLEY & SONS COMPANY,  
ET AL.,

Defendants.

\_\_\_\_\_  
Pursuant to Fed. R. Civ. P. 16 and Civ. L.R. 16-10(b), the following case  
management and pretrial order is entered:

1. TRIAL DATE

- a. Jury trial will begin on June 15, 2009 at 9:30 a.m. in Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102.
- b. The length of the trial will be not more than 10 days.

2. DISCOVERY

Designation of experts deadline November 20, 2008. (Rebuttal experts due January 1, 2009).

All discovery shall be completed by February 11, 2009.

In the event of a discovery dispute the parties shall use the following  
procedure:

1 Parties shall meet and confer in person, or, if counsel are located outside the Bay  
2 Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of  
3 letters, telephone calls, or facsimile transmissions does not satisfy the requirement to meet  
4 and confer.

5 If, after a good faith effort, the parties have not resolved their dispute, they shall  
6 prepare a concise joint statement, of five pages or less, stating the nature and status of  
7 their dispute. The parties shall not file affidavits or exhibits. If a joint statement is not  
8 possible, each side may submit a two-page individual statement. The Court will advise the  
9 parties regarding the need, if any, for formal briefing or a hearing.

10 3. MOTIONS

11 All dispositive motions shall be served and filed not less than **thirty-five (35)** days  
12 prior to the scheduled hearing date. Any opposition shall be served and filed no later than  
13 **twenty-one (21)** days prior to the hearing date. Any reply to the opposition shall be served  
14 and filed no later than **fourteen (14)** days prior to the hearing. Prior to a dispositive motion,  
15 the parties shall meet and confer and, at the time the motion is filed, submit a joint  
16 statement of undisputed facts.

17 Dispositive motions shall be filed by March 18, 2009 with a hearing date of April 22,  
18 2009.

19 4. PRETRIAL CONFERENCE

20 a. A final pretrial conference shall be held on **May 20, 2009, at 11:00**  
21 **a.m.**, in Courtroom F, 15th Floor. Each party shall attend personally or by counsel who will  
22 try the case.

23 b. **Not less than thirty (30) days** prior to the date of the pretrial  
24 conference, all counsel or parties shall meet and fulfill the requirements of Civil Local Rule  
25 16-10(b).

26 c. **Not less than twenty (20) days** prior to the pretrial conference,  
27 counsel or parties shall  
28

1 (l) serve and file a joint pretrial statement pursuant to Local Rule 16-10  
2 (b);

3 The pretrial statement shall include the disclosures required by Fed. R. Civ. P.  
4 26(a)(3) as well as the following:

5 THE ACTION

6 Substance of the Action

7 Relief Prayed

8 FACTUAL BASIS FOR THE ACTION

9 Undisputed Facts

10 Disputed Factual Issues

11 Agreed Statement

12 Stipulations

13 DISPUTED LEGAL ISSUES

14 (List)

15 TRIAL PREPARATION

16 Witnesses to be Called

17 Exhibits, Schedules and Summaries;

18 Trial

19 Estimate of Trial Time

20 Use of Discovery Responses at Trial

21 Further Discovery or Motions

22 TRIAL ALTERNATIVES AND OPTIONS

23 Settlement Discussions

24 Amendments - Dismissals

25 Bifurcation, Separate Trial of Issues

26 MISCELLANEOUS

27 Any other concerns of the parties

28

1 d. At the same time that the parties file their joint pretrial statement they  
2 shall also:

3 (ii) Serve and file trial briefs, which shall specify each cause of  
4 action and defense remaining to be tried along with a statement of the  
5 applicable legal standard (no opposition shall be filed);

6 (iii) Serve and file motions *in limine*, which shall be contained in  
7 one document. Motions in limine will be decided at the Pretrial  
8 Conference.

9 e. Serve and file a list of excerpts from discovery that will be offered at  
10 trial, specifying the witness, page and line references and whether the excerpt is to be  
11 offered in lieu of testimony or as impeachment;

12 f. Serve and file a list of witnesses likely to be called at trial, in person or  
13 by deposition, other than solely for impeachment or rebuttal, with a brief statement  
14 describing the substance of the testimony to be given;

15 g. Serve and file a numerical list of exhibits (including demonstrative  
16 exhibits that may be admitted into evidence but not those that are purely illustrative), with a  
17 brief statement describing the substance and purpose of each exhibit and the name of the  
18 sponsoring witness;

19 h. Exchange exhibits which shall be premarked, tabbed and in binders  
20 (plaintiff shall use numbers and defendant shall use letters); and deliver the original and  
21 **two** duplicate sets of all premarked exhibits to chambers (exhibits are not to be filed) at  
22 least one week before trial.

23 (See Label)

24

25 UNITED STATES DISTRICT COURT  
26 NORTHERN DISTRICT OF CALIFORNIA

27

28 Case No. \_\_\_\_\_

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Exhibit No. \_\_\_\_\_

Date entered: \_\_\_\_\_

RICHARD W. WIEKING, Clerk

By: \_\_\_\_\_

Deputy Clerk

j. Serve and file proposed joint voir dire questions and joint jury instructions for cases to be tried by jury (further instructions regarding jury instructions below);

k. Serve and file proposed findings of fact and conclusions of law for cases to be tried by the Court.

l. Serve and file a proposed verdict form which contains no reference to submitting party.

m. **Two courtesy copies** of trial briefs and motions in limine shall be provided.

n. No party shall be permitted to call any witness or offer any exhibit in its case in chief that is not disclosed in these pretrial filings without leave of court and for good cause.

5. **Not less than nine calendar days** prior to the pretrial conference, counsel or parties shall serve and file any opposition or objection to those items required by section 3 (e), (f), (i),(j), (k) and (l) of this order. Additionally, counsel or parties shall file any objections to the qualifications of expert witnesses contained in the opposing party's witness list. Objections not filed as required will be deemed waived. No replies shall be filed. All motions and objections shall be heard at the pretrial conference unless otherwise ordered.

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6. JURY TRIAL

a. Counsel shall submit an **agreed upon set** of additional voir dire questions to be posed by the Court. Any voir dire questions on which counsel cannot agree may be submitted separately. Counsel will be allowed brief follow-up voir dire after the Court's questioning.

b. The following jury instructions from the Manual of Model Civil Jury Instructions for the Ninth Circuit (April 2007) will be given absent objection: 1.1B, 1.1C, 1.3, 1.6 - 1.14, 1.18, 1.19, 2.1 - 2.4, 2.11, 3.1 - 3.4.. The Ninth Circuit Manual of Model Civil Jury Instructions is available on the web site for the U.S. District Court for the Northern District of California at [www.cand.uscourts.gov](http://www.cand.uscourts.gov). Click on the 9<sup>th</sup> Circuit home page button at the lower left of the first screen and then choose the Manual of Model Civil Jury Instructions from the list on the right hand side of the next screen. Counsel shall also submit an agreed upon set of case-specific instructions, using the Ninth Circuit Manual of Model Civil Jury Instructions where appropriate. Do not submit duplicates of those listed above. Any instructions to which counsel cannot agree may be submitted separately. Each requested instruction shall be typed in full on a separate page with citations to the authority upon which it is based and a reference to the party submitting it. A **second blind copy** of each instruction and verdict form shall also be submitted omitting the citation to authority and the reference to the submitting party.

7. All documents filed with the Clerk of the Court shall list the civil case number followed by the initials "JL." One copy shall be clearly marked as a **chambers** copy.

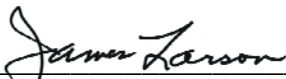
Plaintiff shall re-file the second amended complaint.

The parties shall appear for a further case management conference on April 26 at 10:30 a.m. Counsel shall provide the court with an updated case management conference statement a few days prior to the conference.

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IT IS SO ORDERED.

DATED: September 29, 2008

  
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James Larson  
Chief Magistrate Judge