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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREA GORDON,	)	
	)	
Plaintiffs,	)	No. C08-3630 BZ
	)	
v.	)	<b>ORDER SCHEDULING</b>
	)	<b>JURY TRIAL AND</b>
THE BAY AREA AIR QUALITY	)	<b>PRETRIAL MATTERS</b>
MANAGEMENT DISTRICT,	)	
	)	
Defendants.	)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the joint Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

- 1. DATES
- Trial Date: **Monday, 11/2/2009, 5 days**
- Pretrial Conference: **Tuesday, 10/20/2009, 4:00 p.m.**
- Last Day to Hear Dispositive Motions: **Wednesday, 9/23/2009**
- Last Day for Expert Discovery: **Friday, 7/31/2009**
- Last Day for Rebuttal Expert Disclosure: **Friday, 7/24/2009**
- Last Day for Expert Disclosure: **Friday, 7/17/2009**
- Close of Non-expert Discovery: **Friday, 7/10/2009**

1     2.     DISCLOSURE AND DISCOVERY

2             The parties are reminded that a failure to voluntarily  
3 disclose information pursuant to Federal Rule of Civil  
4 Procedure 26(a) or to supplement disclosures or discovery  
5 responses pursuant to Rule 26(e) may result in exclusionary  
6 sanctions. Thirty days prior to the close of non-expert  
7 discovery, lead counsel for each party shall serve and file a  
8 certification that all supplementation has been completed.

9             In the event a discovery dispute arises, **lead counsel** for  
10 each party shall meet in person or, if counsel are outside the  
11 Bay Area, by telephone and make a good faith effort to resolve  
12 their dispute. Exchanging letters or telephone messages about  
13 the dispute is insufficient. The Court does not read  
14 subsequent positioning letters; parties shall instead make a  
15 contemporaneous record of their meeting using a tape recorder  
16 or a court reporter.

17             In the event they cannot resolve their dispute, the  
18 parties must participate in a telephone conference with the  
19 Court **before** filing any discovery motions or other papers.  
20 The party seeking discovery shall request a conference in a  
21 letter filed electronically not exceeding two pages (with no  
22 attachments) which briefly explains the nature of the action  
23 and the issues in dispute. Other parties shall reply in  
24 similar fashion within two days of receiving the letter  
25 requesting the conference. The Court will contact the parties  
26 to schedule the conference.

27     3.     MOTIONS

28             Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions  
2 for **summary judgment** shall be accompanied by a statement of  
3 the material facts not in dispute supported by citations to  
4 admissible evidence. The parties shall file a joint statement  
5 of undisputed facts where possible. If the parties are unable  
6 to reach complete agreement after meeting and conferring, they  
7 shall file a joint statement of the undisputed facts about  
8 which they do agree. Any party may then file a separate  
9 statement of the additional facts that the party contends are  
10 undisputed. A party who without substantial justification  
11 contends that a fact is in dispute is subject to sanctions.

12 A Chambers copy of all briefs shall be e-mailed in  
13 WordPerfect or Word format to the following address:

14 [bzpo@cand.uscourts.gov](mailto:bzpo@cand.uscourts.gov).

15 4. MEDIATION

16 This matter is referred for a Mediation to be conducted  
17 by **February 15, 2009**, if possible. The parties shall promptly  
18 notify the Court whether the case is resolved at the  
19 Mediation.

20 5. SETTLEMENT

21 This case is referred for assignment to a Magistrate  
22 Judge to conduct a settlement conference in June or July of  
23 2009 in the event the case does not resolve at Mediation.  
24 Counsel will be contacted by that judge's chambers with a date  
25 and time for the conference.

26 6. PRETRIAL CONFERENCE

27 Not less than thirty days prior to the date of the  
28 pretrial conference, the parties shall meet and take all steps

1 necessary to fulfill the requirements of this Order.

2 Not less than twenty-one days prior to the pretrial  
3 conference, the parties shall: (1) serve and file a joint  
4 pretrial statement, containing the information listed in  
5 **Attachment 1**, and a proposed pretrial order; (2) serve and  
6 file trial briefs, Daubert motions, motions *in limine*, and  
7 statements designating excerpts from discovery that will be  
8 offered at trial (specifying the witness and page and line  
9 references); (3) exchange exhibits, agree on and number a  
10 joint set of exhibits and number separately those exhibits to  
11 which the parties cannot agree; (4) deliver all marked trial  
12 exhibits directly to the courtroom clerk, Ms. Voltz; (5)  
13 deliver one extra set of all marked exhibits directly to  
14 Chambers; and (6) submit all exhibits in three-ring binders.  
15 Each exhibit shall be marked with an exhibit label as  
16 contained in **Attachment 2**. The exhibits shall also be  
17 separated with correctly marked side tabs so that they are  
18 easy to find.

19 No party shall be permitted to call any witness or offer  
20 any exhibit in its case in chief that is not disclosed at  
21 pretrial, without leave of Court and for good cause.

22 Lead trial counsel for each party shall meet and confer  
23 in an effort to resolve all disputes regarding anticipated  
24 testimony, witnesses and exhibits. All Daubert motions,  
25 motions *in limine*, and objections will be heard at the  
26 pretrial conference. Not less than eleven days prior to the  
27 pretrial conference, the parties shall serve and file any  
28 objections to witnesses or exhibits or to the qualifications

1 of an expert witness. Oppositions shall be filed and served  
2 not less than eleven days prior to the conference. There  
3 shall be no replies.

4 Not less than twenty-one days prior to the pretrial  
5 conference the parties shall serve and file requested voir  
6 dire questions, jury instructions, and forms of verdict. The  
7 following jury instructions from the *Manual of Model Civil*  
8 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be  
9 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,  
10 3.1-3.3. Do not submit a copy of these instructions. Counsel  
11 shall submit a joint set of case specific instructions. Any  
12 instructions on which the parties cannot agree may be  
13 submitted separately. The Ninth Circuit Manual should be used  
14 where possible. Each requested instruction shall be typed in  
15 full on a separate page with citations to the authority upon  
16 which it is based. Proposed jury instructions taken from the  
17 Ninth Circuit Manual need only contain a citation to that  
18 source. Any modifications made to proposed instructions taken  
19 from a manual of model instructions must be clearly indicated.  
20 In addition, all proposed jury instructions should conform to  
21 the format of the Example Jury Instruction attached to this  
22 Order. Not less than eleven days prior to the pretrial  
23 conference, the parties shall serve and file any objections to  
24 separately proposed jury instructions.

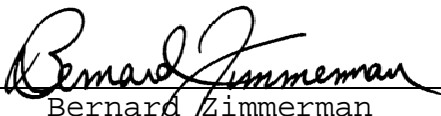
25 Jury instructions that the Court has given in prior cases  
26 may be downloaded from the Northern District website at  
27 <http://www.cand.uscourts.gov>. (Instructions are located on  
28 the "Judge Information" page for Magistrate Judge Zimmerman).

1 The Court will generally give the same instructions in cases  
2 involving similar claims unless a party establishes, with  
3 supporting authorities, that the instruction is no longer  
4 correct or that a different instruction should be given. CACI  
5 instructions generally will be given instead of BAJI  
6 instructions.

7 A copy of all pretrial submissions, except for exhibits,  
8 shall be e-mailed in WordPerfect or Word format to the  
9 following address: bzpo@cand.uscourts.gov.

10 At the time of filing the original with the Clerk's  
11 Office, two copies of all documents (but only one copy of the  
12 exhibits) shall be delivered directly to Chambers (Room 15-  
13 6688). Chambers' copies of all pretrial documents shall be  
14 three-hole punched at the side, suitable for insertion into  
15 standard, three-ring binders.

16 Dated: November 12, 2008

17   
18 \_\_\_\_\_  
19 Bernard Zimmerman  
20 United States Magistrate Judge

19 G:\BZALL\BZCASES\GORDON\SCHEDULING ORDER.wpd  
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1 **ATTACHMENT 1**

2 The parties shall file a joint pretrial conference  
3 statement containing the following information:

4 (1) **The Action.**

5 (A) Substance of the Action. A  
6 brief description of the  
7 substance of claims and  
8 defenses which remain to be  
9 decided.

10 (B) Relief Prayed. A detailed  
11 statement of each party's  
12 position on the relief  
13 claimed, particularly  
14 itemizing all elements of  
15 damages claimed as well as  
16 witnesses, documents or other  
17 evidentiary material to be  
18 presented concerning the  
19 amount of those damages.

20 (2) **The Factual Basis of the Action.**

21 (A) Undisputed Facts. A plain and  
22 concise statement of all  
23 relevant facts not reasonably  
24 disputable, as well as which  
25 facts parties will stipulate  
26 for incorporation into the  
27 trial record without the  
28 necessity of supporting  
testimony or exhibits.

(B) Disputed Factual Issues. A  
plain and concise statement of  
all disputed factual issues  
which remain to be decided.

(C) Agreed Statement. A statement  
assessing whether all or part  
of the action may be presented  
upon an agreed statement of  
facts.

(D) Stipulations. A statement of  
stipulations requested or  
proposed for pretrial or trial  
purposes.

(3) **Trial Preparation.**

A brief description of the efforts the parties have

1 made to resolve disputes over anticipated testimony,  
2 exhibits and witnesses.

3 (A) Witnesses to be Called. In  
4 lieu of FRCP 26(a)(3)(A), a  
5 list of all witnesses likely  
6 to be called at trial, other  
7 than solely for impeachment or  
8 rebuttal, together with a  
9 brief statement following each  
10 name describing the substance  
11 of the testimony to be given.

12 (B) Estimate of Trial Time. An  
13 estimate of the number of  
14 court days needed for the  
15 presentation of each party's  
16 case, indicating possible  
17 reductions in time through  
18 proposed stipulations, agreed  
19 statements of facts, or  
20 expedited means of presenting  
21 testimony and exhibits.

22 (C) Use of Discovery Responses. In  
23 lieu of FRCP 26(a)(3)(B), cite  
24 possible presentation at trial  
25 of evidence, other than solely  
26 for impeachment or rebuttal,  
27 through use of excerpts from  
28 depositions, from  
interrogatory answers, or from  
responses to requests for  
admission. Counsel shall  
state any objections to use of  
these materials and that  
counsel has conferred  
respecting such objections.

(D) Further Discovery or Motions.  
A statement of all remaining  
motions, including Daubert  
motions.

23 (4) **Trial Alternatives and Options.**

24 (A) Settlement Discussion. A  
25 statement summarizing the  
26 status of settlement  
27 negotiations and indicating  
28 whether further negotiations  
are likely to be productive.

(B) Amendments, Dismissals. A  
statement of requested or



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proposed amendments to  
pleadings or dismissals of  
parties, claims or defenses.

(C) Bifurcation, Separate Trial of  
Issues. A statement of whether  
bifurcation or a separate  
trial of specific issues is  
feasible and desired.

(5) **Miscellaneous.**

Any other subjects relevant to the trial of the action,  
or material to its just, speedy and inexpensive  
determination.

**ATTACHMENT 2**

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**USDC**  
Case No. CV08-03630 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
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Date Entered \_\_\_\_\_

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**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

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