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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	No. C08-4089 BZ
Plaintiff(s),)	
)	ORDER SCHEDULING
v.)	JURY TRIAL AND
)	PRETRIAL MATTERS
JOHN EARL BRAKE,)	
)	
Defendant(s).)	
)	
_____)	

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, 1/11/2010, 8 days**
- Pretrial Conference: **Tuesday, 12/22/2009, 4 p.m.**
- Last Day to Hear Dispositive Motions: **Wednesday, 11/18/2009**
- Last Day for Expert Discovery: **Friday, 10/9/2009**
- Last Day for Rebuttal Expert Disclosure: **Friday, 10/2/2009**
- Last Day for Expert Disclosure: **Friday, 9/25/2009**

1 Close of Non-expert Discovery: **Friday, 9/18/2009**

2 2. DISCLOSURE AND DISCOVERY

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

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

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

28 ///

1 3. MOTIONS

2 Consult Civil Local Rules 7-1 through 7-5 and this
3 Court's standing orders regarding motion practice. Motions
4 for **summary judgment** shall be accompanied by a statement of
5 the material facts not in dispute supported by citations to
6 admissible evidence. The parties shall file a joint statement
7 of undisputed facts where possible. If the parties are unable
8 to reach complete agreement after meeting and conferring, they
9 shall file a joint statement of the undisputed facts about
10 which they do agree. Any party may then file a separate
11 statement of the additional facts that the party contends are
12 undisputed. A party who without substantial justification
13 contends that a fact is in dispute is subject to sanctions.
14 If plaintiff decides to proceed with this case without an
15 attorney, he may wish to consult a manual the Court has
16 adopted to assist *pro se* litigants in presenting their case.
17 This manual is available in the Clerk's Office and online at
18 <http://www.cand.uscourts.gov>.

19 Plaintiff is advised that "[a] motion for summary
20 judgment under Rule 56 of the Federal Rules of Civil Procedure
21 will, if granted, end your case. Rule 56 tells you what you
22 must do in order to oppose a motion for summary judgment.
23 Generally, summary judgment must be granted when there is no
24 genuine issue of material fact--that is, if there is no real
25 dispute about any fact that would affect the result of your
26 case, the party who asked for summary judgment is entitled to
27 judgment as a matter of law, which will end your case. When a
28 party you are suing makes a motion for summary judgment that

1 is properly supported by declarations (or other sworn
2 testimony), you cannot simply rely on what your complaint
3 says. Instead, you must set out specific facts in
4 declarations, depositions, answers to interrogatories, or
5 authenticated documents, as provided in Rule 56(e), that
6 contradict the facts shown in the defendant's declarations and
7 documents and show that there is a genuine issue of material
8 fact for trial. If you do not submit your own evidence in
9 opposition, summary judgment, if appropriate, may be entered
10 against you. If summary judgment is granted, your case will
11 be dismissed and there will be no trial." Rand v. Rowland,
12 154 F.3d 952, 963 (9th Cir. 1998).

13 In addition to **lodging** a Chambers copy of all papers, a
14 copy of all briefs shall be e-mailed in WordPerfect or Word
15 format to the following address: bzpo@cand.uscourts.gov

16 4. SETTLEMENT

17 This case is referred for assignment to a Magistrate
18 Judge to conduct a settlement conference in late February or
19 March of 2009. Counsel will be contacted by that judge's
20 chambers with a date and time for the conference.

21 5. PRETRIAL CONFERENCE

22 Not less than thirty days prior to the date of the
23 pretrial conference, the parties shall meet and take all steps
24 necessary to fulfill the requirements of this Order.

25 Not less than twenty-one days prior to the pretrial
26 conference, the parties shall: (1) serve and file a joint
27 pretrial statement, containing the information listed in
28 **Attachment 1**, and a proposed pretrial order; (2) serve and

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

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

17 Lead trial counsel for each party shall meet and confer
18 in an effort to resolve all disputes regarding anticipated
19 testimony, witnesses and exhibits. All Daubert motions,
20 motions *in limine*, and objections will be heard at the
21 pretrial conference. Not less than eleven days prior to the
22 pretrial conference, the parties shall serve and file any
23 objections to witnesses or exhibits or to the qualifications
24 of an expert witness. Oppositions shall be filed and served
25 not less than eleven days prior to the conference. There
26 shall be no replies.

27 Not less than twenty-one days prior to the pretrial
28 conference the parties shall serve and file requested voir

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

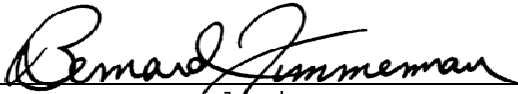
20 Jury instructions that the Court has given in prior cases
21 may be downloaded from the Northern District website at
22 **<http://www.cand.uscourts.gov>**. (Instructions are located on
23 the "Judge Information" page for Magistrate Judge Zimmerman).
24 The Court will generally give the same instructions in cases
25 involving similar claims unless a party establishes, with
26 supporting authorities, that the instruction is no longer
27 correct or that a different instruction should be given. CACI
28 instructions generally will be given instead of BAJI

1 instructions.

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

5 At the time of filing the original with the Clerk's
6 Office, two copies of all documents (but only one copy of the
7 exhibits) shall be delivered directly to Chambers (Room 15-
8 6688). Chambers' copies of all pretrial documents shall be
9 three-hole punched at the side, suitable for insertion into
10 standard, three-ring binders.

11 Dated: January 13, 2009

12 
13 _____
14 Bernard Zimmerman
15 United States Magistrate Judge

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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
29 testimony or exhibits.

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

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

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

43 (3) **Trial Preparation.**

44 A brief description of the efforts the parties have
45 made to resolve disputes over anticipated testimony,

1 exhibits and witnesses.

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

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

21 (C) Use of Discovery Responses. In
22 lieu of FRCP 26(a)(3)(B), cite
23 possible presentation at trial
24 of evidence, other than solely
25 for impeachment or rebuttal,
26 through use of excerpts from
27 depositions, from
28 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.

(4) Trial Alternatives and Options.

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

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

USDC
Case No. CV08-04089 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04089 BZ
DEFT Exhibit No. _____

Date Entered _____

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USDC
Case No. CV08-04089 BZ
DEFT Exhibit No. _____

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