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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RESILIENT FLOOR COVERING)	
PENSION FUND, et al.,)	
)	No. C08-5561 BZ
Plaintiff(s),)	
)	ORDER SCHEDULING
v.)	COURT TRIAL AND
)	PRETRIAL MATTERS
M&M INSTALLATION, INC., et)	
al,)	
)	
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, 10/19/2009, 2 days**
- Pretrial Conference: **Tuesday, 9/29/2009, 4 p.m.**
- Last Day to Hear Dispositive Motions: **Wednesday, 8/12/2009**
- Last Day for Expert Discovery: **Friday, 7/3/2009**
- Last Day for Rebuttal Expert Disclosure: **Friday, 6/26/2009**
- Last Day for Expert Disclosure: **Friday, 6/19/2009**
- Close of Non-expert Discovery: **Friday, 7/3/2009**

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 Summary judgment motions shall be filed as follows: 1)
13 Plaintiffs' motion for summary judgment shall be filed by **June**
14 **17, 2009**; 2) Defendants' opposition and any cross-motion for
15 summary judgment shall be filed by **July 1, 2009**; 3)
16 Plaintiffs' reply to defendants' opposition and opposition to
17 defendants' cross-motion shall be filed by **July 15, 2009**; 4)
18 defendants' reply shall be filed by **July 29, 2009**; and 5) a
19 hearing on the motions is set for **August 12, 2009**.

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

23 4. MEDIATION

24 By agreement of the parties, this matter has been
25 referred to the ADR Department to schedule a mediation to be
26 conducted within 60 days, if possible. The parties shall
27 promptly notify the Court whether the case is resolved at the
28 Mediation.

1 5. SETTLEMENT

2 This case is referred for assignment to a magistrate
3 judge to conduct a settlement conference in September of 2009.
4 Counsel will be contacted by that judge's chambers with a date
5 and time for the conference.

6 6. PRETRIAL CONFERENCE

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

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

27 No party shall be permitted to call any witness or offer
28 any exhibit in its case in chief that is not disclosed at

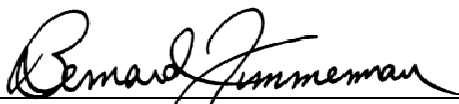
1 pretrial, without leave of Court and for good cause.

2 Lead trial counsel for each party shall meet and confer
3 in an effort to resolve all disputes regarding anticipated
4 testimony, witnesses and exhibits. Not less than eleven days
5 prior to the pretrial conference, the parties shall serve and
6 file any objections to witnesses or exhibits or to the
7 qualifications of an expert witness, and any oppositions to
8 Daubert motions. There shall be no replies.

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

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

18 Dated: March 24, 2009

19 
20 _____
21 Bernard Zimmerman
22 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
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. CV08-05561 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-05561 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

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JOINT Exhibit No. _____

Date Entered _____

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USDC
Case No. CV08-05561 BZ
PLNTF Exhibit No. _____

Date Entered _____

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Date Entered _____

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