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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN,	)	
	)	
Plaintiff(s),	)	No. C09-227 BZ
	)	
v.	)	<b>ORDER SCHEDULING</b>
	)	<b>JURY TRIAL AND</b>
ALVIN FLORIDA, JR., et al.,	)	<b>PRETRIAL MATTERS</b>
	)	
	)	
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, 5/3/2010, 5 days**  
 Pretrial Conference: **Tuesday, 4/13/2010, 4:00 p.m.**  
 Last Day to Hear Dispositive Motions: **Wednesday, 3/17/2010**  
 Last Day for Expert Discovery: **Friday, 2/5/2010**  
 Last Day for Rebuttal Expert Disclosure: **Friday, 1/29/2010**  
 Last Day for Expert Disclosure: **Friday, 1/22/2010**  
 Close of Non-expert Discovery: **Friday, 1/15/2010**

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 If plaintiff decides to proceed with this case without an  
13 attorney, he may wish to consult a manual the Court has  
14 adopted to assist *pro se* litigants in presenting their case.  
15 This manual is available in the Clerk's Office and online at  
16 **<http://www.cand.uscourts.gov>**.

17 Plaintiff is advised that "[a] motion for summary  
18 judgment under Rule 56 of the Federal Rules of Civil Procedure  
19 will, if granted, end your case. Rule 56 tells you what you  
20 must do in order to oppose a motion for summary judgment.  
21 Generally, summary judgment must be granted when there is no  
22 genuine issue of material fact--that is, if there is no real  
23 dispute about any fact that would affect the result of your  
24 case, the party who asked for summary judgment is entitled to  
25 judgment as a matter of law, which will end your case. When a  
26 party you are suing makes a motion for summary judgment that  
27 is properly supported by declarations (or other sworn  
28 testimony), you cannot simply rely on what your complaint

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

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

14 4. SETTLEMENT

15 This case is referred to Magistrate Judge Laporte to  
16 conduct a settlement conference on November 4, 2009, in  
17 conjunction with the conference previously scheduled in  
18 Brosnan v. Florida, C08-5216.

19 5. PRETRIAL CONFERENCE

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

23 Not less than twenty-one days prior to the pretrial  
24 conference, the parties shall: (1) serve and file a joint  
25 pretrial statement, containing the information listed in  
26 **Attachment 1**, and a proposed pretrial order; (2) serve and  
27 file trial briefs, Daubert motions, motions *in limine*, and  
28 statements designating excerpts from discovery that will be

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

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

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

25 Not less than twenty-one days prior to the pretrial  
26 conference the parties shall serve and file requested voir  
27 dire questions, jury instructions, and forms of verdict. The  
28 following jury instructions from the *Manual of Model Civil*

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

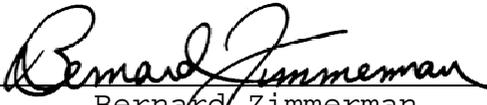
18 Jury instructions that the Court has given in prior cases  
19 may be downloaded from the Northern District website at  
20 **<http://www.cand.uscourts.gov>**. (Instructions are located on  
21 the "Judge Information" page for Magistrate Judge Zimmerman).  
22 The Court will generally give the same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

28 A copy of all pretrial submissions, except for exhibits,

1 shall be e-mailed in WordPerfect or Word format to the  
2 following address: bzpo@cand.uscourts.gov.

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

9 Dated: May 19, 2009

10   
11 Bernard Zimmerman  
United States Magistrate Judge

12  
13 G:\BZALL\BZCASES\BROSNAN V. FLORIDA\RELATED CASE DOCUMENTS\PRETRIAL SCHEDULING  
14 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. CV09-00227 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

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**USDC**  
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**PLNTF** Exhibit No. \_\_\_\_\_

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

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Case No. CV09-00227 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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

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