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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOVENDER FLEMING,)	
)	
Plaintiff(s),)	No. C 09-1613 BZ
)	
v.)	
)	ORDER SCHEDULING
NADIA CLARK, et al.,)	JURY TRIAL AND
)	PRETRIAL MATTERS
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, 6/14/2010, 5 days**
- Pretrial Conference: **Tuesday, 5/25/2010, 4 p.m.**
- Last Day to Hear Dispositive Motions: **Wednesday, 3/31/2010**
- Last Day for Expert Discovery: **Friday, 2/26/2010**
- Last Day for Rebuttal Expert Disclosure: **Friday, 2/19/2010**
- Last Day for Expert Disclosure: **Friday, 2/12/2010**
- Close of Non-expert Discovery: **Friday, 2/5/2010**
- ///

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 Absent further order of the Court, each side is limited
28 to five depositions, excluding parties and expert witnesses.

1 Plaintiff withdrew his requests for other limitations.

2 3. MOTIONS

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

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

18 4. SETTLEMENT

19 This case is referred for assignment to a Magistrate
20 Judge to conduct a settlement conference in October 2009, if
21 possible. Counsel will be contacted by that judge's chambers
22 with a date and time for the conference.

23 5. PRETRIAL CONFERENCE

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

27 Not less than twenty-one days prior to the pretrial
28 conference, the parties shall: (1) serve and file a joint

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

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

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

28 Not less than twenty-one days prior to the pretrial

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

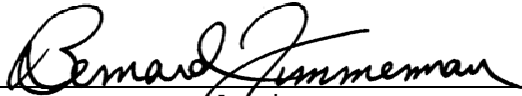
21 Jury instructions that the Court has given in prior cases
22 may be downloaded from the Northern District website at
23 **<http://www.cand.uscourts.gov>**. (Instructions are located on
24 the "Judge Information" page for Magistrate Judge Zimmerman).
25 The Court will generally give the same instructions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

1 instructions generally will be given instead of BAJI
2 instructions.

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

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

12 Dated: August 12, 2009

13 
14 _____
15 Bernard Zimmerman
16 United States Magistrate Judge

17 G:\BZALL\BZCASES\FLEMING V. CLARK\Pretrial 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. CV09-01613 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

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USDC
Case No. CV09-01613 BZ
PLNTF Exhibit No. _____

Date Entered _____

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USDC
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DEFT Exhibit No. _____

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