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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FIRE INNOVATIONS, LLC,)	
)	
Plaintiff(s),)	No. C09-1703 BZ
)	
V.)	ORDER SCHEDULING
)	JURY TRIAL AND
)	PRETRIAL MATTERS
)	
RIT RESCUE & ESCAPE SYSTEMS,)	
INC.,)	
)	
Defendant(s).)	
_____)	

Following a Status Conference, **IT IS HEREBY ORDERED** that:

1. DATES
Trial Date: **Monday, 2/7/2011, 10 days**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily disclose information pursuant to Federal Rule of Civil Procedure 26(a) or to supplement disclosures or discovery responses pursuant to Rule 26(e) may result in exclusionary sanctions. Thirty days prior to the close of non-expert discovery, lead counsel for each party shall serve and file a

1 certification that all supplementation has been completed.

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

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

20 3. MOTIONS

21 Consult Civil Local Rules 7-1 through 7-5 and this
22 Court's standing orders regarding motion practice. Motions
23 for **summary judgment** shall be accompanied by a statement of
24 the material facts not in dispute supported by citations to
25 admissible evidence. The parties shall file a joint statement
26 of undisputed facts where possible. If the parties are unable
27 to reach complete agreement after meeting and conferring, they
28 shall file a joint statement of the undisputed facts about

1 which they do agree. Any party may then file a separate
2 statement of the additional facts that the party contends are
3 undisputed. A party who without substantial justification
4 contends that a fact is in dispute is subject to sanctions.

5 A Chambers copy of all briefs shall be e-mailed in
6 WordPerfect or Word format to the following address:
7 bzpo@cand.uscourts.gov.

8 4. SETTLEMENT

9 This case is referred for assignment to a Magistrate
10 Judge to conduct a settlement conference in **JUNE OR JULY of**
11 **2010**. Counsel will be contacted by that judge's chambers with
12 a date and time for the conference.

13 5. PRETRIAL CONFERENCE

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

17 Not less than twenty-one days prior to the pretrial
18 conference, the parties shall: (1) serve and file a joint
19 pretrial statement, containing the information listed in
20 **Attachment 1**, and a proposed pretrial order; (2) serve and
21 file trial briefs, Daubert motions, motions *in limine*, and
22 statements designating excerpts from discovery that will be
23 offered at trial (specifying the witness and page and line
24 references); (3) exchange exhibits, agree on and number a
25 joint set of exhibits and number separately those exhibits to
26 which the parties cannot agree; (4) deliver all marked trial
27 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver
28 one extra set of all marked exhibits directly to Chambers; and

1 (6) submit all exhibits in three-ring binders. Each exhibit
2 shall be marked with an exhibit label as contained in
3 **Attachment 2**. The exhibits shall also be separated with
4 correctly marked side tabs so that they are easy to find.

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

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

18 Not less than twenty-one days prior to the pretrial
19 conference the parties shall serve and file requested voir
20 dire questions, jury instructions, and forms of verdict. The
21 following jury instructions from the *Manual of Model Civil*
22 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be
23 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
24 3.1-3.3. Do not submit a copy of these instructions. Counsel
25 shall submit a joint set of case specific instructions. Any
26 instructions on which the parties cannot agree may be
27 submitted separately. The Ninth Circuit Manual should be used
28 where possible. Each requested instruction shall be typed in

1 full on a separate page with citations to the authority upon
2 which it is based. Proposed jury instructions taken from the
3 Ninth Circuit Manual need only contain a citation to that
4 source. Any modifications made to proposed instructions taken
5 from a manual of model instructions must be clearly indicated.
6 In addition, all proposed jury instructions should conform to
7 the format of the Example Jury Instruction attached to this
8 Order. Not less than eleven days prior to the pretrial
9 conference, the parties shall serve and file any objections to
10 separately proposed jury instructions.


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

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

24 At the time of filing the original with the Clerk's
25 Office, two copies of all documents (but only one copy of the
26 exhibits) shall be delivered directly to Chambers (Room 15-
27 6688). Chambers' copies of all pretrial documents shall be
28 three-hole punched at the side, suitable for insertion into

1 standard, three-ring binders.

2 Dated: January 5, 2010

3 
4 _____
5 Bernard Zimmerman
6 United States Magistrate Judge

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EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

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A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

_____ 's Proposed Instruction No. _____.
(Party)

[Title]

[Text]

[Authority]

_____ GIVEN _____ REFUSED _____ GIVEN AS MODIFIED

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.

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(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

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USDC
Case No. CV08-04196 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
JOINT Exhibit No. _____

Date Entered _____

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Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
PLNTF Exhibit No. _____

Date Entered _____

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DEFT Exhibit No. _____

Date Entered _____

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