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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENCOMPASS HOLDINGS, INC.,)	
)	
Plaintiff(s),)	No. C09-1816 BZ
)	
v.)	
)	ORDER SCHEDULING
CAREY F. DALY II, et al.,)	JURY TRIAL AND
)	PRETRIAL MATTERS
Defendant(s).)	
)	
_____)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. **IT IS FURTHER ORDERED** that:

- 1. DATES
- Trial Date: **Monday, 12/12/2011, 8:30 a.m., 5 days**
- Pretrial Conference: **Tuesday, 11/22/2011, 4:00 p.m.**
- Last Day to Hear Dispositive Motions: **10/19/2011**
- Last Day for Expert Discovery: **9/9/2011**
- Last Day for Rebuttal Expert Disclosure: **9/2/2011**
- Last Day for Expert Disclosure: **8/26/2011**
- Close of Non-expert Discovery: **8/19/2011**

1 Last Day to Exchange Initial Disclosures: **2/15/2011**

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

17 4. SETTLEMENT

18 This case is referred for assignment to a Magistrate
19 Judge to conduct a settlement conference in **May or June 2011**.
20 Counsel will be contacted by that Judge's chambers with a date
21 and time for the conference.

22 5. PRETRIAL CONFERENCE

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

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

1 **Attachment 1**, and a proposed pretrial order; (2) serve and
2 file trial briefs, Daubert motions, motions *in limine*, and
3 statements designating excerpts from discovery that will be
4 offered at trial (specifying the witness and page and line
5 references); (3) exchange exhibits, agree on and number a
6 joint set of exhibits and number separately those exhibits to
7 which the parties cannot agree; (4) deliver all marked trial
8 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver
9 one extra set of all marked exhibits directly to Chambers; and
10 (6) submit all exhibits in three-ring binders no wider than
11 three inches. Each exhibit shall be marked with an exhibit
12 label as contained in **Attachment 2**. The exhibits shall also
13 be separated with correctly marked side tabs so that they are
14 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. Oppositions to any motions shall be
23 filed and served not less than **eleven days** prior to the
24 conference. There shall be no replies. Not less than **eleven**
25 **days** prior to the pretrial conference, the parties shall serve
26 and file any objections to witnesses or exhibits or to the
27 qualifications of an expert witness. Oppositions shall be
28 filed **five days** prior to the conference. There shall be no

1 replies.

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

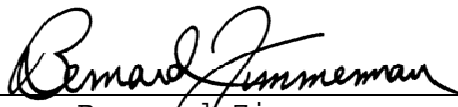
23 Jury instructions that the Court has given in prior cases
24 may be downloaded from the Northern District website at
25 **<http://www.cand.uscourts.gov>**. (Instructions are located on
26 the "Judge Information" page for Magistrate Judge Zimmerman).
27 The Court will generally give the same instructions in cases
28 involving similar claims unless a party establishes, with

1 supporting authorities, that the instruction is no longer
2 correct or that a different instruction should be given. CACI
3 instructions generally will be given instead of BAJI
4 instructions.

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

8 At the time of filing the original with the Clerk's
9 Office, two copies of all documents (but only one copy of the
10 exhibits) shall be delivered directly to Chambers (Room 15-
11 6688). Chambers' copies of all pretrial documents shall be
12 three-hole punched at the side, suitable for insertion into
13 standard, three-ring binders no wider than three inches.

14 Dated: February 3, 2011

15 
16 _____
Bernard Zimmerman
United States Magistrate Judge

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EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

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
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

1 proposed amendments to
2 pleadings or dismissals of
 parties, claims or defenses.

3 (C) Bifurcation, Separate Trial of
4 Issues. A statement of whether
5 bifurcation or a separate
 trial of specific issues is
 feasible and desired.

6 (5) **Miscellaneous.**

7 Any other subjects relevant to the trial of the action,
8 or material to its just, speedy and inexpensive
 determination.

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ATTACHMENT 2

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Case No. CV09-1816 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

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USDC
Case No. CV09-1816 BZ
PLNTF Exhibit No. _____

Date Entered _____

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DEFT Exhibit No. _____

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