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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENCOMPASS HOLDINGS, INC.,)	
)	
Plaintiff(s),)	No. C09-1816 BZ
)	
v.)	ORDER SCHEDULING COURT TRIAL
)	AND PRETRIAL MATTERS
CAREY F. DALY II, et al.,)	
)	
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, 11/15/2010, 5 days**
- Pretrial Conference: **Tuesday, 11/9/2010, 4 p.m.**
- Last Day to Hear Dispositive Motions: **Wednesday, 8/25/2010**
- Last Day for Expert Discovery: **Friday, 7/16/2010**
- Last Day for Rebuttal Expert Disclosure: **Friday, 7/9/2010**
- Last Day for Expert Disclosure: **Friday, 7/2/2010**
- Close of Non-expert Discovery: **Friday, 6/25/2010**

1 Supplemental Case Management Conference: **Monday, 3/1/2010**

2 Supplemental Joint Statement Due: **Monday, 2/22/2010**

3 Rule 26 Disclosures Due: **Friday, 2/12/2010**

4 Amended Answer to Cross Complaint Due: **Friday, 1/29/2010**

5 Amended Answer and Cross Complaint Due: **Friday, 1/22/2010**

6 Amended Complaint Due: **Tuesday, 1/12/2010**

7 2. DISCLOSURE AND DISCOVERY

8 The parties are reminded that a failure to voluntarily
9 disclose information pursuant to Federal Rule of Civil
10 Procedure 26(a) or to supplement disclosures or discovery
11 responses pursuant to Rule 26(e) may result in exclusionary
12 sanctions. Thirty days prior to the close of non-expert
13 discovery, lead counsel for each party shall serve and file a
14 certification that all supplementation has been completed.

15 In the event a discovery dispute arises, **lead counsel** for
16 each party shall meet in person or, if counsel are outside the
17 Bay Area, by telephone and make a good faith effort to resolve
18 their dispute. Exchanging letters or telephone messages about
19 the dispute is insufficient. The Court does not read
20 subsequent positioning letters; parties shall instead make a
21 contemporaneous record of their meeting using a tape recorder
22 or a court reporter.

23 In the event they cannot resolve their dispute, the
24 parties must participate in a telephone conference with the
25 Court **before** filing any discovery motions or other papers.
26 The party seeking discovery shall request a conference in a
27 letter filed electronically not exceeding two pages (with no
28 attachments) which briefly explains the nature of the action

1 and the issues in dispute. Other parties shall reply in
2 similar fashion within two days of receiving the letter
3 requesting the conference. The Court will contact the parties
4 to schedule the conference.

5 3. MOTIONS

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

18 In addition to **lodging** a Chambers copy of all papers, a
19 Chambers copy of all briefs shall be e-mailed in WordPerfect
20 or Word format to the following address:

21 bzpo@cand.uscourts.gov.

22 4. MEDIATION

23 By agreement of the parties, this matter is referred to
24 the ADR Department to schedule a Mediation in **MARCH or APRIL**
25 **of 2010**. The parties shall promptly notify the Court whether
26 the case is resolved at the Mediation.

27 5. PRETRIAL CONFERENCE

28 Not less than thirty days prior to the date of the

1 pretrial conference, the parties shall meet and take all steps
2 necessary to fulfill the requirements of this Order.

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

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

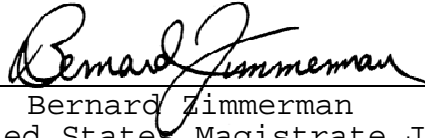
23 Lead trial counsel for each party shall meet and confer
24 in an effort to resolve all disputes regarding anticipated
25 testimony, witnesses and exhibits. Not less than eleven days
26 prior to the pretrial conference, the parties shall serve and
27 file any objections to witnesses or exhibits or to the
28 qualifications of an expert witness, and any oppositions to

1 Daubert motions. There shall be no replies.

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

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

11 Dated: December 22, 2009

12 

13 _____
Bernard Zimmerman
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
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
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 _____

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JOINT Exhibit No. _____

Date Entered _____

Signature _____

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Date Entered _____

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USDC
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PLNTF Exhibit No. _____

Date Entered _____

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