

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHERYL JONES,	)	
	)	
Plaintiff(s),	)	No. C 09-2880 BZ
	)	
v.	)	<b>ORDER SCHEDULING</b>
	)	<b>JURY TRIAL AND</b>
BARRY WILLIAMS, 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, 8/23/2010, 7 days**  
 Pretrial Conference: **Tuesday, 8/3/2010, 4 p.m.**  
 Last Day to Hear Dispositive Motions: **Wednesday, 6/30/2010**  
 Last Day for Expert Discovery: **Friday, 5/21/2010**  
 Last Day for Rebuttal Expert Disclosure: **Friday, 5/14/2010**  
 Last Day for Expert Disclosure: **Friday, 5/7/2010**  
 Close of Non-expert Discovery: **Friday, 4/30/2010**

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

15 4. SETTLEMENT

16 The parties have agreed to an early neutral evaluation  
17 before Nancy Hudgins, Esq on January 14-15, 2009.

18 This case is referred for assignment to a Magistrate  
19 Judge to conduct a settlement conference in **JUNE of 2010**.  
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**, a joint jury questionnaire and a proposed  
2 pretrial order; (2) serve and file trial briefs, Daubert  
3 motions, motions *in limine*, and statements designating  
4 excerpts from discovery that will be offered at trial  
5 (specifying the witness and page and line references); (3)  
6 exchange exhibits, agree on and number a joint set of exhibits  
7 and number separately those exhibits to which the parties  
8 cannot agree; (4) deliver all marked trial exhibits directly  
9 to the courtroom clerk, Ms. Yiu; (5) deliver one extra set of  
10 all marked exhibits directly to Chambers; and (6) submit all  
11 exhibits in three-ring binders. Each exhibit shall be marked  
12 with an exhibit label as contained in **Attachment 2**. The  
13 exhibits shall also be separated with correctly marked side  
14 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.

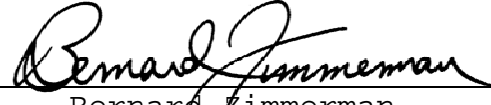
21 Jury instructions that the Court has given in prior cases  
22 may be downloaded from the Northern District website at  
23 **<http://www.cand.uscourts.gov>**. (Instructions are located on  
24 the "Judge Information" page for Magistrate Judge Zimmerman).  
25 The Court will generally give the same 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](mailto: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: December 1, 2009

13   
14 \_\_\_\_\_  
Bernard Zimmerman  
United States Magistrate Judge

15 G:\BZALL\BZCASES\JONES v. WILLIAMS\PRE-TRIAL SCHEDULING ORDER.wpd

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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



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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(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**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**USDC**  
Case No. CV08-04196 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---

**USDC**  
Case No. CV08-04196 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

---

---