

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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, 10/25/2010, 3 days**

Pretrial Conference: **Tuesday, 9/28/2010, 4:00 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**

1 Close of Non-expert Discovery: **Friday, 6/25/2010**

2 Last Day to Amend Complaint or Seek Leave to Amend: **Thursday,**  
3 **12/31/2010**

4 2. **DISCLOSURE AND DISCOVERY**

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

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

20 In the event they cannot resolve their dispute, the  
21 parties must participate in a telephone conference with the  
22 Court **before** filing any discovery motions or other papers.  
23 The party seeking discovery shall request a conference in a  
24 letter filed electronically not exceeding two pages (with no  
25 attachments) which briefly explains the nature of the action  
26 and the issues in dispute. Other parties shall reply in  
27 similar fashion within two days of receiving the letter  
28 requesting the conference. The Court will contact the parties

1 to schedule the conference.

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 A Chambers copy of all briefs shall be e-mailed in  
16 WordPerfect or Word format to the following address:  
17 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 **July of 2010**.  
21 Counsel will be contacted by that judge's chambers with a date  
22 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. Yu; (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.

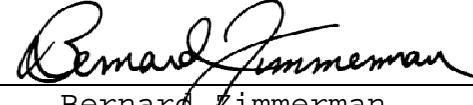
21 Jury instructions that the Court has given in prior cases  
22 may be downloaded from the Northern District website at  
23 <http://www.cand.uscourts.gov>. (Instructions are located on  
24 the "Judge Information" page for Magistrate Judge Zimmerman).  
25 The Court will generally give the same instructions 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](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: October 27, 2009

13   
14 Bernard Zimmerman  
United States Magistrate Judge

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**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

### ( 1 ) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
- (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the 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.

29 (D) Further Discovery or Motions.  
30 A statement of all remaining  
31 motions, including Daubert  
32 motions.

33 (4) **Trial Alternatives and Options.**

34 (A) Settlement Discussion. A  
35 statement summarizing the  
36 status of settlement  
37 negotiations and indicating  
38 whether further negotiations  
39 are likely to be productive.

40 (B) Amendments, Dismissals. A  
41 statement of requested or  
42 proposed amendments to  
43 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.

