

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                          |   |                         |
|--------------------------|---|-------------------------|
| ROBERT DABNEY, et al.,   | ) |                         |
|                          | ) |                         |
| Plaintiff(s),            | ) | No. C09-4116 BZ         |
|                          | ) |                         |
| v.                       | ) | <b>ORDER SCHEDULING</b> |
|                          | ) | <b>JURY TRIAL AND</b>   |
| CITY OF HAYWARD, et al., | ) | <b>PRETRIAL MATTERS</b> |
|                          | ) |                         |
| Defendant(s).            | ) |                         |

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Following the Case Management Conference, **IT IS HEREBY ORDERED** that:

1. DATES

Trial Date: **Monday, 2/14/2011, 5 days**

Pretrial Conference: **Tuesday, 1/25/2011, 4:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 12/15/2010**

Last Day for Expert Discovery: **Friday, 11/5/2010**

Last Day for Rebuttal Expert Disclosure: **Friday, 10/29/2010**

Last Day for Expert Disclosure: **Friday, 10/22/2010**

Close of Non-expert Discovery: **Friday, 10/15/2010**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily

1 disclose information pursuant to Federal Rule of Civil  
2 Procedure 26(a) or to supplement disclosures or discovery  
3 responses pursuant to Rule 26(e) may result in exclusionary  
4 sanctions. Thirty days prior to the close of non-expert  
5 discovery, lead counsel for each party shall serve and file a  
6 certification that all supplementation has been completed.

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

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

### 25 3. MOTIONS

26 Consult Civil Local Rules 7-1 through 7-5 and this  
27 Court's standing orders regarding motion practice. Motions  
28 for **summary judgment** shall be accompanied by a statement of

1 the material facts not in dispute supported by citations to  
2 admissible evidence. The parties shall file a joint statement  
3 of undisputed facts where possible. If the parties are unable  
4 to reach complete agreement after meeting and conferring, they  
5 shall file a joint statement of the undisputed facts about  
6 which they do agree. Any party may then file a separate  
7 statement of the additional facts that the party contends are  
8 undisputed. A party who without substantial justification  
9 contends that a fact is in dispute is subject to sanctions.

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

13 4. SETTLEMENT

14 This case is referred for assignment to a Magistrate  
15 Judge to conduct a settlement conference in **APRIL of 2010**, if  
16 possible. Counsel will be contacted by that judge's chambers  
17 with a date and time for the conference.

18 5. PRETRIAL CONFERENCE

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

22 Not less than twenty-one days prior to the pretrial  
23 conference, the parties shall: (1) serve and file a joint  
24 pretrial statement, containing the information listed in  
25 **Attachment 1**, and a proposed pretrial order; (2) serve and  
26 file trial briefs, Daubert motions, motions *in limine*, and  
27 statements designating excerpts from discovery that will be  
28 offered at trial (specifying the witness and page and line

1 references); (3) exchange exhibits, agree on and number a  
2 joint set of exhibits and number separately those exhibits to  
3 which the parties cannot agree; (4) deliver all marked trial  
4 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver  
5 one extra set of all marked exhibits directly to Chambers; and  
6 (6) submit all exhibits in three-ring binders. Each exhibit  
7 shall be marked with an exhibit label as contained in  
8 **Attachment 2**. The exhibits shall also be separated with  
9 correctly marked side tabs so that they are easy to find.

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

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

23 Not less than twenty-one days prior to the pretrial  
24 conference the parties shall serve and file requested voir  
25 dire questions, jury instructions, and forms of verdict. The  
26 following jury instructions from the *Manual of Model Civil*  
27 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be  
28 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,

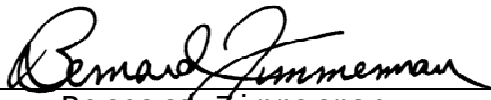
1 3.1-3.3. Do not submit a copy of these instructions. Counsel  
2 shall submit a joint set of case specific instructions. Any  
3 instructions on which the parties cannot agree may be  
4 submitted separately. The Ninth Circuit Manual should be used  
5 where possible. Each requested instruction shall be typed in  
6 full on a separate page with citations to the authority upon  
7 which it is based. Proposed jury instructions taken from the  
8 Ninth Circuit Manual need only contain a citation to that  
9 source. Any modifications made to proposed instructions taken  
10 from a manual of model instructions must be clearly indicated.  
11 In addition, all proposed jury instructions should conform to  
12 the format of the Example Jury Instruction attached to this  
13 Order. Not less than eleven days prior to the pretrial  
14 conference, the parties shall serve and file any objections to  
15 separately proposed jury instructions.

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

26 A copy of all pretrial submissions, except for exhibits,  
27 shall be e-mailed in WordPerfect or Word format to the  
28 following address: [bzpo@cand.uscourts.gov](mailto:bzpo@cand.uscourts.gov)

1 At the time of filing the original with the Clerk's  
2 Office, two copies of all documents (but only one copy of the  
3 exhibits) shall be delivered directly to Chambers (Room 15-  
4 6688). Chambers' copies of all pretrial documents shall be  
5 three-hole punched at the side, suitable for insertion into  
6 standard, three-ring binders.

7 Dated: January 13, 2010

8   
9 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

**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, exhibits and witnesses.

(A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from 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.

#### **(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.

1 (B) Amendments, Dismissals. A  
2 statement of requested or  
3 proposed amendments to  
4 pleadings or dismissals of  
5 parties, claims or defenses.

6 (C) Bifurcation, Separate Trial of  
7 Issues. A statement of whether  
8 bifurcation or a separate  
9 trial of specific issues is  
10 feasible and desired.

11 (5) **Miscellaneous.**

12 Any other subjects relevant to the trial of the action,  
13 or material to its just, speedy and inexpensive  
14 determination.

ATTACHMENT 2

**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 \_\_\_\_\_