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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
	)	No. C09-4593 BZ
Plaintiff(s),	)	
	)	<b>ORDER SCHEDULING</b>
v.	)	<b>JURY TRIAL AND</b>
	)	<b>PRETRIAL MATTERS</b>
ABM INDUSTRIES, INC.,	)	
	)	
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, 10/03/2011, 8:30 a.m., 20 days**  
 Pretrial Conference: **Tuesday, 9/13/2011, 4:00 p.m.**  
 Last Day to Hear Dispositive Motions: **8/3/2011**  
 Last Day for Expert Discovery: **7/1/2011**  
 Last Day for Rebuttal Expert Disclosure: **6/24/2011**  
 Last Day for Expert Disclosure: **6/17/2011**  
 Close of Non-expert Discovery: **6/10/2011**

1 A Case Status Conference is scheduled for **February 7, 2011** at  
2 **4:00 pm.**

3 2. DISCLOSURE AND DISCOVERY

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

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

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

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  
7 statement of undisputed facts where possible. If the parties  
8 are unable to reach complete agreement after meeting and  
9 conferring, they shall file a joint statement of the  
10 undisputed facts about which they do agree. Any party may  
11 then file a separate statement of the additional facts that  
12 the party contends are undisputed. A party who without  
13 substantial justification contends that a fact is in dispute  
14 is subject to sanctions.

15 In addition to **lodging** a Chambers copy of all papers, a  
16 copy of all briefs shall be e-mailed in WordPerfect or Word  
17 format to the following address: 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 **April or May of**  
21 **2011**. Counsel will be contacted by that judge's chambers with  
22 a date 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  
26 steps 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. Yiu; (5)  
10 deliver one extra set of all marked exhibits directly to  
11 Chambers; and (6) submit all exhibits in three-ring binders  
12 no wider than three inches. Each exhibit shall be marked  
13 with an exhibit label as contained in **Attachment 2**. The  
14 exhibits shall also be separated with correctly marked side  
15 tabs so that they are easy to find.

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

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

1 be filed **five days** prior to the conference. There shall be  
2 no replies.

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

25 Jury instructions that the Court has given in prior  
26 cases may be downloaded from the Northern District website at  
27 **<http://www.cand.uscourts.gov>**. (Instructions are located on  
28 the "Judge Information" page for Magistrate Judge Zimmerman).

1 The Court will generally give the same instructions in cases  
2 involving similar claims unless a party establishes, with  
3 supporting authorities, that the instruction is no longer  
4 correct or that a different instruction should be given.  
5 CACI instructions generally will be given instead of BAJI  
6 instructions.

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

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

16 Dated: November 3, 2010



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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



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.

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(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. CV09-04593 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

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**USDC**  
Case No. CV09-04593 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

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

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**USDC**  
Case No. CV09-04593 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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

Signature \_\_\_\_\_

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**USDC**  
Case No. CV09-04593 BZ  
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Date Entered \_\_\_\_\_

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