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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CATAPHORA INC.,)
)
Plaintiff(s),) No. C09-5749 BZ
)
v.)
)
JERROLD SETH PARKER, et al.,) **SECOND ORDER SCHEDULING**
) **JURY TRIAL AND**
) **PRETRIAL MATTERS**
Defendant(s).)
_____)

Following the pretrial conference, **IT IS HEREBY ORDERED** that the trial is continued. Discovery is reopened for the limited purpose of defendant taking discovery with respect to plaintiff's newly disclosed theory for damages. Defendant must complete this discovery by **May 18, 2011**. Defendant is also granted leave to file a motion for summary judgment. Based on the parties' stipulation, plaintiffs second and third claims for relief against defendant Leonard Davis are dismissed. **IT IS FURTHER ORDERED** as follows:

- 1. DATES
Trial Date: **Monday, 9/12/2011, 5 days**
Pretrial Conference: **Tuesday, 8/23/2011, 4:00 p.m.**

1 Last Day for Court to Hear Defendant's Motion for Summary
2 Judgment: **Wednesday, 7/20/2011**

3 2. DISCOVERY

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

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

22 3. MOTIONS

23 Consult Civil Local Rules 7-1 through 7-5 and this
24 Court's standing orders regarding motion practice. Motions
25 for **summary judgment** shall be accompanied by a statement of
26 the material facts not in dispute supported by citations to
27 admissible evidence. The parties shall file a joint statement
28 of undisputed facts where possible. If the parties are unable

1 to reach complete agreement after meeting and conferring, they
2 shall file a joint statement of the undisputed facts about
3 which they do agree. Any party may then file a separate
4 statement of the additional facts that the party contends are
5 undisputed. A party who without substantial justification
6 contends that a fact is in dispute is subject to sanctions.

7 In addition to **lodging** a Chambers copy of all papers, a
8 copy of all briefs shall be e-mailed in WordPerfect or Word
9 format to the following address: bzpo@cand.uscourts.gov.

10 4. PRETRIAL CONFERENCE

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

14 Not less than twenty-one days prior to the pretrial
15 conference, the parties shall: (1) serve and file a joint
16 pretrial statement, containing the information listed in
17 **Attachment 1**, and a proposed pretrial order; (2) serve and
18 file trial briefs, Daubert motions, motions *in limine*, and
19 statements designating excerpts from discovery that will be
20 offered at trial (specifying the witness and page and line
21 references); (3) exchange exhibits, agree on and number a
22 joint set of exhibits and number separately those exhibits to
23 which the parties cannot agree; (4) deliver all marked trial
24 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver
25 one extra set of all marked exhibits directly to Chambers; and
26 (6) submit all exhibits in three-ring binders no wider than
27 three inches. Each exhibit shall be marked with an exhibit
28 label as contained in **Attachment 2**. The exhibits shall also

1 be separated with correctly marked side tabs so that they are
2 easy to find.

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

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

18 Not less than twenty-one days prior to the pretrial
19 conference the parties shall serve and file requested voir
20 dire questions, jury instructions, and forms of verdict. The
21 following jury instructions from the *Manual of Model Civil*
22 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be
23 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
24 3.1-3.3. Do not submit a copy of these instructions. Counsel
25 shall submit a joint set of case specific instructions. Any
26 instructions on which the parties cannot agree may be
27 submitted separately. The Ninth Circuit Manual should be used
28 where possible. Each requested instruction shall be typed in

1 full on a separate page with citations to the authority upon
2 which it is based. Proposed jury instructions taken from the
3 Ninth Circuit Manual need only contain a citation to that
4 source. Any modifications made to proposed instructions taken
5 from a manual of model instructions must be clearly indicated.
6 In addition, all proposed jury instructions should conform to
7 the format of the Example Jury Instruction attached to this
8 Order. Not less than eleven days prior to the pretrial
9 conference, the parties shall serve and file any objections to
10 separately proposed jury instructions.

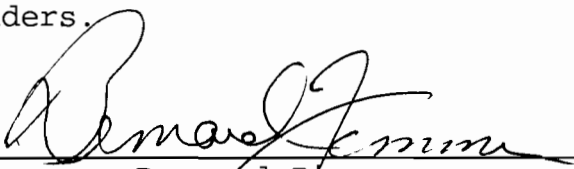
11 Jury instructions that the Court has given in prior cases
12 may be downloaded from the Northern District website at
13 **<http://www.cand.uscourts.gov>**. (Instructions are located on
14 the "Judge Information" page for Magistrate Judge Zimmerman).
15 The Court will generally give the same instructions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

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

24 At the time of filing the original with the Clerk's
25 Office, two copies of all documents (but only one copy of the
26 exhibits) shall be delivered directly to Chambers (Room 15-
27 6688). Chambers' copies of all pretrial documents shall be
28 three-hole punched at the side, suitable for insertion into

1 standard, three-ring binders.

2 Dated: March 8, 2011

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4 Bernard Zimmerman
5 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

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.

(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

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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

USDC
Case No. CV09-05749 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-05749 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

USDC
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DEFT Exhibit No. _____

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Signature _____
