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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CATAPHORA INC.,)	
)	
Plaintiff(s),)	No. C09-5749 BZ
)	
v.)	
)	ORDER SCHEDULING
JERROLD SETH PARKER, et al.,)	JURY TRIAL AND
)	PRETRIAL MATTERS
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, 3/21/2011, 5 days**
 Pretrial Conference: **Tuesday, 3/1/2011, 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**

1 Initial Disclosures Due: **Monday, 7/19/2010**

2 2. DISCLOSURE AND DISCOVERY

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

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

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

1 3. MOTIONS

2 Plaintiff's Motion for Summary Judgment Due: **Monday, 8/16/2010**

3 Opposition Due: **Monday, 9/6/2010**

4 Reply Due: **Wednesday, 9/15/2010**

5 Hearing on Plaintiff's Summary Judgment Motion: **Wednesday,**
6 **10/27/2010**

7 Consult Civil Local Rules 7-1 through 7-5 and this
8 Court's standing orders regarding motion practice. Motions
9 for **summary judgment** shall be accompanied by a statement of
10 the material facts not in dispute supported by citations to
11 admissible evidence. The parties shall file a joint statement
12 of undisputed facts where possible. If the parties are unable
13 to reach complete agreement after meeting and conferring, they
14 shall file a joint statement of the undisputed facts about
15 which they do agree. Any party may then file a separate
16 statement of the additional facts that the party contends are
17 undisputed. A party who without substantial justification
18 contends that a fact is in dispute is subject to sanctions.

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

22 4. SETTLEMENT

23 This case is referred for assignment to a Magistrate
24 Judge to conduct a settlement conference in November or
25 December of 2010. Counsel will be contacted by that judge's
26 chambers with a date and time for the conference.

27 5. PRETRIAL CONFERENCE

28 Not less than thirty days prior to the date of the

1 pretrial conference, the parties shall meet and take all steps
2 necessary to fulfill the requirements of this Order.

3 Not less than twenty-one days prior to the pretrial
4 conference, the parties shall: (1) serve and file a joint
5 pretrial statement, containing the information listed in
6 **Attachment 1**, and a proposed pretrial order; (2) serve and
7 file trial briefs, Daubert motions, motions *in limine*, and
8 statements designating excerpts from discovery that will be
9 offered at trial (specifying the witness and page and line
10 references); (3) exchange exhibits, agree on and number a
11 joint set of exhibits and number separately those exhibits to
12 which the parties cannot agree; (4) deliver all marked trial
13 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver
14 one extra set of all marked exhibits directly to Chambers; and
15 (6) submit all exhibits in three-ring binders. Each exhibit
16 shall be marked with an exhibit label as contained in
17 **Attachment 2**. The exhibits shall also be separated with
18 correctly marked side tabs so that they are easy to find.

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

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

1 **days** prior to the pretrial conference, the parties shall serve
2 and file any objections to witnesses or exhibits or to the
3 qualifications of an expert witness. Oppositions shall be
4 filed **five days** prior to the conference. There shall be no
5 replies.

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

27 Jury instructions that the Court has given in prior cases
28 may be downloaded from the Northern District website at

1 **http:\\www.cand.uscourts.gov.** (Instructions are located on
2 the "Judge Information" page for Magistrate Judge Zimmerman).
3 The Court will generally give the same instructions in cases
4 involving similar claims unless a party establishes, with
5 supporting authorities, that the instruction is no longer
6 correct or that a different instruction should be given. CACI
7 instructions generally will be given instead of BAJI
8 instructions.

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

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

18 Dated: June 22, 2010

19 

20 _____
21 Bernard Zimmerman
22 United States Magistrate Judge
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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.

(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

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

Date Entered _____

Signature _____

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

Date Entered _____

Signature _____

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DEFT Exhibit No. _____

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