

1 They shall meet in Mountain View, at the offices of Digital
2 Insight and/or in Silicon Valley at the offices of MShift or in
3 any other place to which they both agree. The principals are
4 urged to explore a creative, business resolution of their
5 dispute. If the case settles, the parties are to notify the
6 Court immediately.

7 Each party shall provide the other informally,
8 expeditiously and pursuant to Federal Rule of Evidence 408 with
9 all information reasonably needed to further the progress of
10 the settlement negotiations. Confidential information may be
11 provided subject to a protective order.

12 If there is no settlement, it is **ORDERED** that a telephonic
13 conference is scheduled for July 12, 2010, at 1:30 p.m., to
14 discuss the status of the negotiations. Counsel for the
15 parties shall contact **CourtCall**, telephonic court appearances
16 at 1-888-882-6878, and make arrangements for the telephonic
17 conference call. The principals need not participate.

18 It is further **ORDERED** that a Settlement Conference is
19 scheduled for August 3, 2010, at 9:00 a.m., in Courtroom G,
20 15th Floor, Federal Building, 450 Golden Gate Avenue, San
21 Francisco, California 94102. Counsel who will try the case
22 shall appear at the Settlement Conference with the party
23 principals who met earlier. The negotiations will be
24 principally among the party principals in my presence.

25 Each party shall prepare a Settlement Conference
26 Statement, which must be served on opposing counsel and lodged
27 (not faxed) with my chambers no later than seven calendar days
28 prior to the conference. The Statement shall **not** be filed with

1 the Clerk of the Court. The Statement **may** be submitted on CD-
2 ROM with hypertext links to exhibits. Otherwise, the portion
3 of exhibits on which the party relies **shall** be highlighted.
4 The Settlement Conference Statement shall not exceed ten pages
5 of text and twenty pages of exhibits and shall include the
6 following:

- 7 1. A brief statement of the facts of the case.
- 8 2. A brief statement of the claims and defenses
9 including, but not limited to, statutory or other grounds upon
10 which the claims are founded.
- 11 3. A summary of any related litigation.
- 12 4. A summary of the proceedings to date and any pending
13 motions.
- 14 5. An estimate of the cost and time to be expended for
15 further discovery, pretrial and trial.
- 16 6. The relief sought, including an itemization of
17 damages.
- 18 7. The parties' position on settlement, including
19 present demands and offers and a history of past settlement
20 discussions. The Court's time can best be used to assist the
21 parties in completing their negotiations, not in starting them.
22 So there is no confusion about the parties' settlement
23 position, plaintiff must serve a demand in writing no later
24 than fourteen days before the conference and defendant must
25 respond in writing no later than eight days before the
26 conference. The parties are urged to carefully evaluate their
27 case before taking a settlement position since extreme
28 positions hinder the settlement process.


1 Along with the Statement each party shall lodge with the
2 court a document of no more than three pages containing a
3 **candid** evaluation of the parties' likelihood of prevailing on
4 the claims and defenses, and any other information that party
5 wishes not to share with opposing counsel. The more candid the
6 parties are, the more productive the conference will be. This
7 document shall not be served on opposing counsel.

8 It is not unusual for conferences to last three or more
9 hours. Parties are encouraged to participate and frankly
10 discuss their case. Statements they make during the conference
11 will not be admissible at trial in the event the case does not
12 settle. The parties should be prepared to discuss such issues
13 as:

- 14 1. Their settlement objectives.
- 15 2. Any impediments to settlement they perceive.
- 16 3. Whether they have enough information to discuss
17 settlement. If not, what additional information is needed.
- 18 4. The possibility of a creative resolution of the
19 dispute.

20 The parties shall notify chambers immediately if this case
21 settles prior to the date set for settlement conference.
22 Counsel shall provide a copy of this order to each party who
23 will participate in the conference.

24 Dated: June 8, 2010

25 
26 Bernard Zimmerman
27 United States Magistrate Judge
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