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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ATS PRODUCTS INC.,)	
)	
Plaintiff(s),)	No. C10-4880 BZ
)	
v.)	
)	SECOND TRIAL
FRANK GHIORSO, THERMALGUARD)	SCHEDULING ORDER
TECHNOLOGY LLC, THERMALGUARD)	
LLC,)	
)	
Defendant(s).)	
_____)	

Following the status conference, **IT IS HEREBY ORDERED** as follows:

1. DATES

Trial Date: **Monday, 11/07/2011, 8:30 a.m., 5 days**
Pretrial Conference: **Monday, 9/26/2011, 4:00 p.m.**

2. PRETRIAL CONFERENCE

By **September 5, 2011**, the parties shall meet and take all steps necessary to fulfill the requirements of this Order.

By **September 12, 2011**, the parties shall: (1) serve and file a joint pretrial statement, containing the information listed in **Attachment 1**, and a proposed pretrial order; (2)

1 serve and file trial briefs, Daubert motions, motions in
2 *limine*, and statements designating excerpts from discovery
3 that will be offered at trial (specifying the witness and page
4 and line references); (3) exchange exhibits, agree on and
5 number a joint set of exhibits and number separately those
6 exhibits to which the parties cannot agree; (4) deliver all
7 marked trial exhibits directly to the courtroom clerk; (5)
8 deliver one extra set of all marked exhibits directly to
9 Chambers; and (6) submit all exhibits in three-ring binders no
10 wider than three inches. Each exhibit shall be marked with an
11 exhibit label as contained in **Attachment 2**. The exhibits
12 shall also be separated with correctly marked side tabs so
13 that they are easy to find.

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

17 Lead trial counsel for each party shall meet and confer
18 in an effort to resolve all disputes regarding anticipated
19 testimony, witnesses and exhibits. All Daubert motions,
20 motions *in limine*, and objections will be heard at the
21 pretrial conference. Oppositions to any motions shall be
22 filed and served by **September 19, 2011**. There shall be no
23 replies. By **September 19, 2011**, the parties shall serve and
24 file any objections to witnesses or exhibits or to the
25 qualifications of an expert witness. Oppositions shall be
26 filed by **September 21, 2011**. There shall be no replies.

27 By **September 12, 2011**, the parties shall serve and file
28 requested voir dire questions, jury instructions, and forms of


1 verdict. The following jury instructions from the *Manual of*
2 *Model Civil Jury Instructions for the Ninth Circuit* (2007 ed.)
3 will be given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18,
4 1.19, 2.11, 3.1-3.3. Do not submit a copy of these
5 instructions. Counsel shall submit a joint set of case
6 specific instructions. Any instructions on which the parties
7 cannot agree may be submitted separately. The Ninth Circuit
8 Manual should be used where possible. Each requested
9 instruction shall be typed in full on a separate page with
10 citations to the authority upon which it is based. Proposed
11 jury instructions taken from the Ninth Circuit Manual need
12 only contain a citation to that source. Any modifications
13 made to proposed instructions taken from a manual of model
14 instructions must be clearly indicated. In addition, all
15 proposed jury instructions should conform to the format of the
16 Example Jury Instruction attached to this Order. By **September**
17 **19, 2011**, the parties shall serve and file any objections to
18 separately proposed jury instructions.

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

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

4 At the time of filing the original with the Clerk's
5 Office, two copies of all documents (but only one copy of the
6 exhibits) shall be delivered directly to Chambers (Room 15-
7 6688). Chambers' copies of all pretrial documents shall be
8 three-hole punched at the side, suitable for insertion into
9 standard, three-ring binders no wider than three inches.

10 Dated: August 17, 2011

11 
12 Bernard Zimmerman
13 United States Magistrate Judge

14 G:\BZALL\BZCASES\ATS V. GHIORSO\SECOND TRIAL SCHEDULING ORDER.wpd
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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

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.

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.
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ATTACHMENT 2

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USDC
Case No. CV10-4880 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

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USDC
Case No. CV10-4880 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

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DEFT Exhibit No. _____

Date Entered _____

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