

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 THOMAS BUNDY,  
4 Plaintiff,

5 v.

6 MALNOVE INCORPORATED OF UTAH,  
7 et al.,

8 Defendants.

Case No. [15-cv-03899-MEJ](#)

**ORDER VACATING CMC  
CASE MANAGEMENT ORDER**

9  
10 Pursuant to Federal Rule of Civil Procedure 16, the Court issues the following Case  
11 Management Order. Failure to comply with this Order is cause for sanctions under Rule 16(f).  
12 The December 3, 2015 Case Management Conference is VACATED. All questions should be  
13 directed to Rose Maher, Courtroom Deputy, at (415) 522-4708.

14 **SUMMARY OF CASE MANAGEMENT DEADLINES**

|   |  |
|---|--|
| 15 Deadline to Seek Leave to Amend Pleadings  | 2/29/2016                                  |
| 16 Disclosure of Expert Witnesses   | 4/29/2016                                  |
| 17 Disclosure of Rebuttal Expert Witnesses  | 5/9/2016                                   |
| 18 Close of Discovery   | 5/24/2016                                  |
| 19 Deadline to File Dispositive Motions   | 6/23/2016                                  |
| 20 Hearing on Dispositive Motions   | 7/28/2016 at 10:00 a.m.                    |
| 21 Exchange of Pretrial Disclosures   | 9/28/2016                                  |
| 22 Deadline to File Pretrial Conference Statement<br>and Related Disclosures, Motions in Limine,<br>23 and Trial Briefs and Related Documents | 10/13/2016                                 |
| 24 Deadline to File Motions in Limine Oppositions   | 10/20/2016                                 |
| 25 Pretrial Conference  | 11/3/2016 at 10:00 a.m.                    |
| 26 Final Pretrial Conference  | 12/1/2016 at 10:00 a.m.                    |
| 27 Jury Trial   | 12/12/2016 at 9:30 a.m. (Duration: 5 days) |



1 and noticed for hearing on any available Thursday at 10:00 a.m., without contacting the Court.  
2 All dispositive motions shall be filed, served, and noticed by June 23, 2016. The Court shall hear  
3 dispositive motions on July 28, 2016 at 10:00 a.m. in Courtroom B, located on the 15th Floor of  
4 the Federal Building, 450 Golden Gate Avenue, San Francisco, California.

5 All summary judgment motions shall comply with the following requirements for  
6 statements of facts:

7 (1) Separate Statement of Facts: Any party filing a motion for  
8 summary judgment must file a statement, separate from the motion  
9 and memorandum of law, setting forth each material fact on which  
10 the party relies in support of the motion. Each material fact in the  
11 separate statement must be set forth in a separately numbered  
12 paragraph and must refer to a specific admissible portion of the  
record where the fact finds support (for example, affidavit,  
deposition, discovery response, etc.). A failure to submit a separate  
statement of facts in this form may constitute grounds for denial of  
the motion.

13 (2) Controverting Statement of Facts: Any party opposing a motion  
14 for summary judgment must file a statement, separate from that  
15 party's memorandum of law, setting forth: (a) for each paragraph of  
16 the moving party's separate statement of facts, a correspondingly  
17 numbered paragraph indicating whether the party disputes the  
18 statement of fact set forth in that paragraph and a reference to the  
specific admissible portion of the record supporting the party's  
position if the fact is disputed; and (b) any additional facts that  
establish a genuine issue of material fact or otherwise preclude  
judgment in favor of the moving party. Each additional fact must be  
set forth in a separately numbered paragraph and must refer to a  
specific admissible portion of the record where the fact finds  
support.

19 (3) Reply Statement of Facts: If the party opposing summary  
20 judgment sets forth additional facts, the moving party shall file a  
21 statement, separate from the reply brief, with correspondingly  
22 numbered paragraphs indicating whether the party admits or  
23 disputes the statement of fact set forth in that paragraph and, if  
disputed, a reference to the specific admissible portion of the record  
supporting the party's position. Facts that are not already included  
in the motion and/or opposition are not permitted.

24 (4) Alternative Procedure: As an alternative to filing a statement of  
25 facts and controverting statement of facts, the movant and the party  
26 opposing the motion may jointly file a stipulation signed by the  
27 parties setting forth a statement of the stipulated facts and the  
28 following statement: "The parties agree there is no genuine issue of  
any material fact." As to any stipulated facts, the parties so  
stipulating may state that their stipulations are entered into only for  
the purpose of the motion for summary judgment and are not  
intended to be otherwise binding.

1 **H. Exchange and Filing of Pretrial Disclosures:** By September 28, 2016, lead counsel who  
2 will try the case shall meet and confer with respect to the preparation and content of the joint  
3 pretrial conference statement and shall exchange the papers described in Rule 26(a)(3). These  
4 papers must be filed with the Court by October 13, 2016.

5 **I. Joint Pretrial Conference Statement:** By October 13, 2016, the parties shall file a joint  
6 pretrial conference statement with the following information:

7 (1) Substance of the Action: A brief description of the substance of  
8 claims and defenses which remain to be decided.

9 (2) Relief Prayed: A detailed statement of all the relief claimed,  
10 particularly itemizing all elements of damages claimed as well as  
witnesses, documents or other evidentiary material to be presented  
concerning the amount of damages.

11 (3) Undisputed Facts: A plain and concise statement of all relevant  
12 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.

13 (4) Disputed Factual Issues: A plain and concise statement of all  
14 disputed factual issues which remain to be decided.

15 (5) Disputed Legal Issues: Without extended legal argument, a  
16 concise statement of each disputed point of law concerning liability  
or relief, citing supporting statutes and decisions.

17 (6) Agreed Statement: A statement assessing whether all or part of  
18 the action may be presented upon an agreed statement of facts.

19 (7) Stipulations: A statement of stipulations requested or proposed  
for pretrial or trial purposes.

20 (8) Amendments or Dismissals: A statement of requested or  
21 proposed amendments to pleadings or dismissals of parties, claims,  
or defenses.

22 (9) Estimated Time of Trial: An estimate of the number of hours  
23 needed for the presentation of each party's case.

24 (10) Bifurcation or Separate Trial of Issues: A statement of whether  
bifurcation or a separate trial of specific issues is feasible and  
desired.

25 (11) Settlement: A statement summarizing the status of the parties'  
26 settlement negotiations and indicating whether further negotiations  
are likely to be productive.

27  
28 **J. Witness list:** A witness list shall be provided as an appendix to the joint pretrial conference

1 statement. The following information should be included. For each party, a list of all witnesses to  
2 be called for trial, including those appearing by deposition. For each witness, a statement of the  
3 substance of his or her testimony and an estimate regarding the length of testimony (including  
4 direct and cross-examination).

5 If the witness is an expert witness, the statement should clearly state the expert's theories  
6 and conclusions and the bases therefor, which shall also specify to which disputed fact the  
7 testimony relates, and an estimate of the time required for direct and cross examination. In  
8 addition, the expert's curriculum vitae and report (if any) should be attached. If there are  
9 objections to a live witness's testimony, whether in whole or in part, that objection should be  
10 raised through a motion in limine.

11 No party shall be permitted to offer any witness that is not disclosed in its witness list,  
12 except with leave of the Court for good cause shown.

13 **K. Exhibit list:** A joint list of all exhibits to be offered at trial shall be provided as an  
14 appendix to the joint pretrial conference statement. Plaintiff(s) shall mark the exhibits  
15 numerically; Defendant(s) shall mark the exhibits alphabetically. The list shall state each  
16 proposed exhibit by its number or alphabetical letter, description and sponsoring witness. All  
17 documents shall be authenticated prior to trial. The list shall include a joint exhibit list in tabular  
18 form, with (a) a column that briefly describes the exhibit; (b) a column that describes for what  
19 purpose the party will offer the exhibit and identifies its sponsoring witness; (c) a column that  
20 states any objections to the exhibit; (d) a column that briefly responds to the objections; and (e) a  
21 blank column for the Court's use. Before this list is filed, the parties shall meet and confer, in  
22 person, to consider eliminating duplicate exhibits, and to make a good faith effort to stipulate to  
23 admissibility. No party shall be permitted to offer any exhibit that is not disclosed in its exhibit  
24 list

25 **L. Use of Discovery Responses:** Excerpts of interrogatory responses, responses to requests  
26 for admission, and deposition testimony (with specific line references identified) that each party  
27 intends to present at trial shall be included as an appendix to the joint pretrial conference  
28 statement. If there are objections to the use of written responses, the parties should include a joint

1 memorandum that briefly states the objecting party’s objection and the opposing party’s response.  
2 If there is an objection to the general subject matter of a deponent’s testimony, the objection  
3 should be made through a motion in limine. The Court expects the parties to meet and confer in  
4 good faith in an attempt to resolve specific objections before any statements are filed.

5 **M. Motions in limine:** The parties are directed to meet and confer in person to resolve any  
6 evidentiary disputes prior to filing motions in limine. Any motions in limine shall be filed by  
7 October 13, 2016, with oppositions due by October 20, 2016. Each motion in limine should  
8 address a single topic and contain no more than seven pages of briefing per side. Reply briefs are  
9 not permitted.

10 **N. Trial Briefs:** Each party shall file a trial brief, not to exceed 15 pages absent Court order,  
11 by October 13, 2016. The trial briefs shall: (1) summarize the party’s theory of the case; (2)  
12 identify key evidence; and (3) provide the applicable legal standard, pursuant to Ninth Circuit  
13 authority, for all controlling issues of law, including foreseeable procedural and evidentiary issues.

14 **O. Voir Dire:** In a jury trial, the parties shall file a joint set of requested voir dire to be posed  
15 by the Court, as well as any separate questions upon which counsel cannot agree, by October 13,  
16 2016. These shall also be submitted to the Court on a portable storage device (such as a USB  
17 thumb drive) in Microsoft Word format. Any question on which the parties cannot agree shall be  
18 marked as “disputed” and included within the joint set. Counsel will be allowed brief follow-up  
19 voir dire after the Court’s questioning.

20 **P. Jury Instructions:** In a jury trial, the parties shall file a joint set of proposed jury  
21 instructions by October 13, 2016. These shall also be submitted the to the Court on a portable  
22 storage device in Microsoft Word format. Jury instructions should conform to the Manual of  
23 Model Civil Jury Instructions for the Ninth Circuit. The instructions shall be ordered in a logical  
24 sequence, together with a table of contents. Any instruction on which the parties cannot agree  
25 shall be marked as “disputed” and included within the jointly submitted instructions, in the place  
26 where the party proposing the instruction believes it should be given. Argument for and against  
27 each disputed instruction shall be included on a separate page directly following the disputed  
28 instruction. At the close of Defendant’s case in chief the Court shall hear oral argument on the

1     disputed jury instructions and will then render its rulings.

2     **Q.     Proposed Verdict Forms:** In a jury trial, the parties shall file a joint proposed verdict form  
3     by October 13, 2016. If the parties are unable to stipulate to a verdict form, then each party or side  
4     shall submit a proposed verdict form. The parties shall also submit the forms to the Court on a  
5     portable storage device.

6     **R.     Proposed Findings of Fact and Conclusions of Law:** In a bench trial, each party shall  
7     file proposed findings of fact and conclusions of law by October 13, 2016. The parties shall also  
8     submit the proposed findings to the Court on a portable storage device.

9     **S.     Pretrial Conferences:** The Court shall hold an initial pretrial conference on November 03,  
10    2016 at 10:00 a.m., in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco,  
11    California. Lead counsel who will try the case must attend the pretrial conference. The purpose  
12    of the pretrial conference is for the Court to rule on any issues raised in the pretrial conference  
13    statement, motions in limine, and to discuss the trial of the case. The Court shall hold a final  
14    pretrial conference on December 01, 2016 at 10:00 a.m. in Courtroom B, to address any  
15    outstanding trial issues.

16    **T.     Trial:** The Court shall conduct a jury trial in this matter. The trial shall commence on  
17    December 12, 2016 (Trial schedule: Monday through Friday, 9:30 a.m. to 3:30 p.m.), and last 5  
18    days. In a jury trial, jury selection begins at 9:30 a.m. on the first day of trial.

19           For any documents that will be shown to a witness but not admitted into evidence, counsel  
20    shall bring the original plus three copies of the documents. The original document will be handed  
21    to the Court during testimony and the copies will be given to the witness and opposing counsel  
22    during examination.

23           The parties shall maintain their own exhibits during trial. Plaintiff(s) shall mark the  
24    exhibits numerically; Defendant(s) shall mark the exhibits alphabetically. Exhibits must be  
25    premarked with tags attached to the upper left-hand corner. Sample tags may be obtained from the  
26    Courtroom Deputy and are attached hereto. If a photo or chart is being used as an exhibit, the  
27    exhibit tag should be placed on the back side of the exhibit. The Court will only admit pre-marked  
28    exhibits which were listed on the earlier filed exhibit list. On the day of trial, counsel shall bring

1 the original pre-marked exhibits plus two copies, one for opposing counsel and one (in binders  
2 with appropriate label dividers) for the Court. The exhibit binders are to be given to the  
3 Courtroom Deputy on the morning of the trial.

4 **U. Transcripts and Courtroom Technology:**

5 1) Any party requesting a daily transcript and/or real time reporting shall contact  
6 Debra Campbell, Supervisor Court Reporting Services, at (415) 522-2079, at least 14 days in  
7 advance of the trial date.

8 2) All parties are instructed to review the information regarding the use of courtroom  
9 technology and electronic evidence presentation, which is provided on the Court's web site at  
10 <http://cand.uscourts.gov/courtroomtech>, and to prepare accordingly. Questions and/or requests to  
11 pre-test equipment should be sent to the courtroom deputy.

12 If any party will utilize their own video recording equipment or demonstrative devices, a  
13 signed order will need to be obtained at least 14 days in advance of the trial or hearing date for the  
14 items to clear security.

15 **IT IS SO ORDERED.**

16  
17 Dated: November 25, 2015



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MARIA-ELENA JAMES  
United States Magistrate Judge



