

1 conference. Plaintiff must initiate a conference call at the time noticed and call the
2 court at (510) 637-3909 when all parties are on the line.

3 3. The Court will schedule deadlines for dispositive motions as well as for
4 the cut off of all discovery at the April 1, 2009, case management conference.

5
6 **MEET AND CONFER**

7 4. Not less than **30 days** prior to the date of the Final Pretrial Conference,
8 the parties must meet and take all steps necessary to fulfill the requirements of this
9 order.

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11 **WITNESSES AND DEPOSITION TESTIMONY**

12 5. No less than **15 court days** before the final pretrial conference, each
13 party must file, serve, and separately lodge with chambers a list of witnesses it
14 intends to call on direct examination, in the order that the party expects to call
15 them, with a brief description of the subject areas upon which each witness will
16 testify, a description of the significance (in terms of factual propositions and/or
17 legal theories) of the expected testimony, and an estimate of the time that direct
18 examination will consume. Each party also must file and serve, with its witness
19 list, excerpts from the deposition testimony of witnesses not testifying in person
20 that may be presented at trial, specifically reproducing the pages and marking the
21 lines of the relevant transcript excerpts. Two copies of the witness list and
22 deposition excerpts must be lodged directly with chambers. (Full deposition
23 volumes should not be lodged with the court.)

24 6. The parties will be precluded from offering substantive evidence (i.e.,
25 evidence offered for any purpose other than impeachment) by live testimony
26 through any person not listed on the witness list or by deposition testimony not
27 included in the submitted excerpts, and will be precluded from supplementing the
28 witness list or the deposition excerpts after the deadline set herein for exchanging

1 this material, except upon the express permission of the court. The court will
2 permit the testimony of persons not designated in the witness list or the use of
3 deposition excerpts not timely disclosed only upon a substantial showing that: (a)
4 no party will be prejudiced or suffer undue hardship, (b) the failure to timely
5 designate the witness or testimony was clearly justified, and (c) the interests of
6 justice otherwise warrant permitting the testimony.

7 7. Counsel ordinarily will be permitted at trial to present foundational
8 matter and factual evidence describing the educational and employment
9 background of witnesses in summary, leading form.

10 EXHIBITS

11
12 8. No less than **15 court days** before the final pretrial conference, counsel
13 must **exchange** all exhibits (premarked), including demonstrative exhibits, that
14 they intend to use as part of their case-in-chief at trial.

15 9. Except for purposes of impeachment, the parties will be precluded from
16 offering in evidence, using as demonstrative evidence, or examining any of their
17 witnesses concerning any exhibit not exchanged by this deadline, except upon the
18 express permission of the court. The court will permit supplementation of exhibits
19 after the exchange date only upon a substantial showing that: (a) no party will be
20 prejudiced or suffer undue hardship, (b) the failure to timely designate the exhibit
21 was clearly justified, and (c) the interests of justice otherwise warrant the
22 supplemental designation.

23 10. The court has attached to this Order the form of exhibit labels to be used
24 by each side. Each side should label their exhibits prior to trial. Plaintiffs must
25 label their exhibits numerically as follows: **“Pltf -1, Pltf-2, Pltf-3, etc ...”**
26 Defendants must label their exhibits numerically as follows: **“Def-1, Def-2, Def-3,**
27 **etc.”** Counsel must not write in the space provided for “date entered” or
28 “signature.” The court has also attached to this Order an example of an “Exhibit

1 List.” Each party must create an Exhibit List that is substantially similar to the
2 attached form and, prior to trial, must list the number of each exhibit the party
3 intends to offer at trial and briefly describe each such exhibit.

4 11. No less than **2 court days** before the start of **trial**, each party must
5 deliver to chambers, in looseleaf binders, a sufficient number of complete sets of
6 all documentary exhibits to ensure that the judge, his law clerk, and each juror will
7 have their own set of documentary exhibits during trial. These sets are in addition
8 to exhibits counsel will officially submit to the courtroom deputy at trial and any
9 copies of exhibits counsel will want to show witnesses on the stand. All exhibits
10 must be premarked for identification according to the system set forth herein.

11 **EVIDENTIARY MOTIONS**

12 12. No less than **12 court days** before the final pretrial conference, counsel
13 must meet and confer to resolve any objections to the use of witnesses, deposition
14 excerpts, and/or exhibits.

15 13. The court will entertain foundational objections as to any document only
16 if (1) the document is of real significance in adjudicating the merits of the case and
17 (2) objecting counsel articulates a principled basis for believing that the document
18 is not what it purports to be.

19 14. If, **after meeting and conferring**, a party continues to object to the
20 admission of evidence on either of the following foundational grounds: (1) the
21 authenticity of a document or exhibit, or (2) the qualifications of expert witnesses,
22 the objecting party may file a motion to exclude the evidence, along with any other
23 motions in limine.

24 15. All motions in limine, including those referred to in paragraph 14, must
25 be filed, served and lodged separately with chambers no less than **10 court days**
26 before the final pretrial conference. Failure to file a timely objection may waive a
27 party's right to challenge the admissibility of evidence at trial.
28

1 chambers. The parties must not submit generic instructions; the court uses the
2 instructions approved by the Ninth Circuit for these purposes.

3 22. Proposed jury instructions about which the parties cannot agree also
4 must be set forth in the parties' **joint** submission. In the parties' **joint** submission,
5 (1) the proponent of the instruction must set forth succinctly the basis for his or her
6 request that the instruction be given, with citation to authority, and immediately
7 thereafter, (2) the party opposing use of the instruction must set forth succinctly the
8 basis for his or her opposition, with citation to authority.

9
10 **JOINT PRETRIAL STATEMENTS**

11 23. Counsel must meet to prepare a **joint** pretrial statement. The parties
12 must file the **joint** pretrial statement no later than **15 court days** before the final
13 pretrial conference. Counsel also must deliver two copies of the statement directly
14 to chambers. The joint pretrial statement must contain the following information:

- 15 a. a succinct chronological description of the alleged events and
16 circumstances out of which the parties' claims and defenses arise;
17 b. a brief description of the substance of claims and defenses that remain
18 to be decided, citing the primary sources of legal authority for each
19 such claim or defense;
20 c. a statement of the relief requested, itemizing the elements of damages
21 claimed;
22 d. a statement of any stipulations proposed for pretrial and trial purposes.

23
24 **PRESENTATION TIME LIMITS**

25 24. Counsel are advised that at the final pretrial conference the court will
26 impose time limitations on each side's presentation at trial. Usually, the court
27 imposes "over-all" limits on each side (e.g., 12 hours each), meaning that each
28 party may use the allotted time in whatever manner the party chooses, e.g., making

1 an opening statement, conducting direct and cross-examination, entering
2 documents, performing demonstrations, making closing argument, etc.
3 Accordingly, counsel must attempt to generate a joint proposal with respect to
4 what amount of time will be necessary to present this case, and must be prepared to
5 justify their proposal(s) at the final pretrial conference.

6
7 **SETTLEMENT**

8 25. The court strongly encourages the parties to continue discussing
9 settlement of the case, exploring in good faith all reasonable settlement options.
10 The parties have asked the Court to refer the case to an administrator who will seek
11 to identify a mediator who would be available to facilitate negotiations. This
12 matter is referred to the Court's ADR program. The parties will participate in a
13 court sponsored mediation during the month of March 2009.

14 Plaintiff must notify the court in writing if the parties have not heard from
15 the ADR Department by January 21, 2009.

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FOLLOW UP CASE MANAGEMENT CONFERENCE

26. **On Wednesday, April 1, 2009, at 1:30 p.m.**, the Court will conduct a further case management conference in this action.

27. **By Monday, March 30, 2009, at noon**, the parties must file a brief joint case management conference statement describing what the parties have accomplished prior to that time and what the parties will need to accomplish prior to trial.

IT IS SO ORDERED.

DATED: December 19, 2008



Wayne D. Brazil
United States Magistrate Judge

Copies to:
All parties
WDB, Stats