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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEDINA, ET AL.,

No. C 08-3946 WDB

Plaintiffs,

PRETRIAL ORDER

v.

CITY OF MENLO PARK, ET AL.,

Defendants.
_____ /

On May 19, 2009, the Court held a case management conference in the above-captioned action. For reasons set forth on the record, the Court hereby ORDERS the following:

1. The jury trial shall begin on **Tuesday, August 11, 2009**, at **8:30 a.m.**, in Courtroom 4, Third Floor, United States Courthouse, 1301 Clay Street, Oakland, California.
2. Before filing any motions, counsel for the moving party must meet and confer with opposing counsel, then file a letter to the Court explaining briefly the need and the basis for the motion. Thereafter, the Court will conduct a telephonic conference to set a briefing schedule on the motion.
3. On **July 28, 2009** at **1:30 p.m.**, the Court will hold the final pretrial conference. Lead trial counsel for each party must participate in the conference.

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DISCOVERY

4. The parties will meet and confer to set the discovery cut-off date for non-expert discovery. Discovery cut-off date is defined in Civil Local Rule 26-2. No motions to compel discovery may be filed later than 10 days after the discovery cut-off date.

5. By June 2, 2009, Plaintiffs' counsel will file a letter to the Court stating whether Plaintiffs will call any experts, and, if so, identifying the expert witness(es) and the subject(s) of expert testimony. By June 9, 2009, defense counsel will file a letter to the Court informing whether Defendants will call any experts, who the experts are, and what subjects they will testify about at trial. The parties will further meet and confer to set the last day for expert disclosure and the close of expert discovery.

MEET AND CONFER

6. Not less than **30 days** prior to the date of the Final Pretrial Conference, counsel must meet and take all steps necessary to fulfill the requirements of this order.

WITNESSES AND DEPOSITION TESTIMONY

7. No less than **15 court days** before the final pretrial conference, each party must file, serve, and separately lodge with chambers a list of witnesses it intends to call on direct examination, in the order that the party expects to call them, with a brief description of the subject areas upon which each witness will testify, and an estimate of the time that direct examination will consume. Each party also must file and serve, with its witness list, excerpts from the deposition testimony of witnesses not testifying in person that may be presented at trial, specifically reproducing the pages and marking the lines of the relevant transcript excerpts. Two copies of the witness list and deposition excerpts must be lodged directly with chambers. (Full deposition volumes should not be lodged with the Court.)

8. The parties will be precluded from offering substantive evidence (i.e., evidence offered for any purpose other than impeachment) by live testimony through any person

1 not listed on the witness list or by deposition testimony not included in the submitted
2 excerpts, and will be precluded from supplementing the witness list or the deposition
3 excerpts after the deadline set herein for exchanging this material, except upon the
4 express permission of the Court. The Court will permit the testimony of persons not
5 designated in the witness list or the use of deposition excerpts not timely disclosed only
6 upon a substantial showing that: (a) no party will be prejudiced or suffer undue hardship,
7 (b) the failure to timely designate the witness or testimony was clearly justified, and (c)
8 the interests of justice otherwise warrant permitting the testimony.

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

12 EXHIBITS

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

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

24 12. The Court has attached to this Order the form of exhibit labels to be used by
25 each side. Each side must label its exhibits prior to trial. Plaintiffs must label their
26 exhibits numerically as follows: “**Plaintiffs’** [insert -1, -2, etc].” Defendants must label
27 their exhibits numerically as follows: “**Defendants’** [insert -1, -2, etc].” Counsel must
28 not write in the space provided for “date entered” or “signature.” The Court has attached

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

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

12 EVIDENTIARY MOTIONS

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14 14. No less than **12 court days** before the final pretrial conference, counsel must
15 meet and confer to resolve any objections to proffered or anticipated testimony, or to
16 deposition excerpts, or exhibits.

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

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

25 17. All motions in limine, including those referred to in paragraph 16, must be
26 filed, served and lodged separately with chambers no less than **10 court days** before the
27 final pretrial conference. Failure to file a timely objection may waive a party's right to
28 challenge the admissibility of evidence at trial.

1 generate a joint proposal with respect to what amount of time will be necessary to present
2 this case, and must be prepared to justify their proposal(s) at the final pretrial conference.
3

4 **SETTLEMENT**

5 27. The Court strongly encourages the parties to continue discussing settlement of
6 the case, exploring in good faith all reasonable settlement options. If the parties are
7 interested, the undersigned will refer the case to an administrator who will seek to
8 identify a mediator or a settlement judge who would be available to facilitate
9 negotiations.
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11 **IT IS SO ORDERED.**

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13 DATED: May 22, 2009

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16 Wayne D. Brazil
17 United States Magistrate Judge
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