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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 DONALD GOLDEN,  
8 Plaintiff,

9 v.

10 CALIFORNIA EMERGENCY  
11 PHYSICIANS MEDICAL GROUP, et al.,  
12 Defendants.

Case No. [10-cv-00437-JSW](#)

**ORDER REQUIRING BRIEFING ON  
JURY ISSUE AND VACATING  
EVIDENTIARY HEARING PENDING  
RULING**

Re: Docket No. 117

13 On April 8, 2015, the United States Court of Appeals for the Ninth Circuit reversed this  
14 Court's Order granting a motion to enforce a settlement agreement between Plaintiff and  
15 Defendants. *Golden v. California Emergency Physician's Medical Group*, 782 F.3d 1083 (9th  
16 Cir. 2015). In its opinion, the Ninth Circuit stated that "[o]n remand, the district court should  
17 determine in the first instance whether the no-employment provision," in the settlement agreement  
18 "constitutes a restraint of a substantial character" to Plaintiff's medical practice. *Id.* at 1093.

19 After the Ninth Circuit issued the mandate, the Court set a status conference, and the  
20 parties submitted a status report, in which they requested that the Court conduct an evidentiary  
21 hearing on the issue of whether the no-employment provision constituted a restraint of a  
22 substantial character on Plaintiff's medical practice. The Court granted the parties request,  
23 scheduled an evidentiary hearing for February 8, 2015, and ordered the parties to submit a status  
24 report regarding the number of witnesses and estimated length of testimony. (*See* Docket Nos.  
25 105-112.)

26 The Court has received the parties' status report. (Docket No. 117.) In that report, they  
27 advise the Court that there is a dispute about whether a jury is "allowed" for the evidentiary  
28 hearing. The Court shall permit simultaneous briefing on this issue. The Court also requests that

1 the parties brief the following question:

2 If the Court concludes that a jury is not required or allowed, can the “restraint of a  
3 substantial character” issue be resolved without a live evidentiary hearing, such as on a motion for  
4 summary adjudication, with the submission of declarations, deposition testimony, or other  
5 evidence?

6 The parties shall submit opening briefs, not to exceed ten (10) pages, setting forth their  
7 respective positions by no later than February 3, 2016.

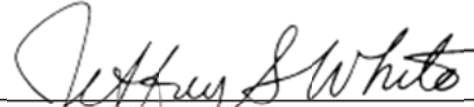
8 The parties shall file responses to the opening briefs on February 10, 2016.

9 There shall be no replies.

10 The Court shall reset the hearing, if necessary, once it has issued its ruling on the parties’  
11 briefs.

12 **IT IS SO ORDERED.**

13 Dated: January 27, 2016

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16 JEFFREY S. WHITE  
17 United States District Judge  
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