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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRET L LUSSKIN JR,

No. C 11-02585 SBA

Plaintiff,

**ORDER FOR PRETRIAL
PREPARATION**

v.

GOOGLE INC,

Defendant.

Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure ("FRCP"), IT IS HEREBY ORDERED AS FOLLOWS:

A. DEADLINE FOR JOINDER OF PARTIES/AMENDING THE PLEADINGS

The deadline for the joinder of other parties and to amend the pleadings is 2/14/12

B. DISCOVERY CUT-OFF

All discovery, except for expert discovery, shall be completed and all depositions taken on or before 6/22/12. The parties are responsible for scheduling discovery so that motions to resolve discovery disputes can be heard before the above discovery cut-off.

C. EXPERT DESIGNATION AND DISCOVERY

Plaintiff shall designate any experts by 6/15/12; defendant by 6/15/12; rebuttal disclosure by 6/29/12. Any expert not so named may be disallowed as a witness. No expert will be permitted to testify to any opinion, or basis or support for an opinion, that has not been disclosed in response to an appropriate question or interrogatory from the opposing party. Expert discovery shall be completed by 8/17/12.

D. MOTION CUT-OFF

All motions including dispositive motions shall be *heard* on or before 10/30/12, at 1:00 p.m. The parties must meet and confer *prior* to filing any motion. The movant shall certify to the Court in its moving papers that it has complied with this requirement. Should the parties fail to meet and confer, the Court may decline to entertain the motion.

1 **THIS COURT DOES NOT RESERVE MOTION HEARING DATES.** The
2 parties are advised to check Judge Armstrong's calendar at www.cand.uscourts.gov, under
3 Scheduling Information to determine the next available hearing date, particularly in the case of a
4 dispositive motion. The parties are advised *not* to wait until 35 days prior to the law and motion cut-
5 off date to file and serve their motion. As the Court's law and motion calendar tends to fill quickly,
6 there is *no* guarantee that a hearing date within the law and motion cut-off date will be available.
7 You **MUST** submit a hard copy of all motion papers filed in E-FILED cases in order to be placed on
8 calendar.

9 All noticed motions (other than motions for summary judgment) and any opposition
10 thereto, shall not exceed **fifteen (15) pages** in length, exclusive of the table of contents, table of
11 authorities, exhibits and declarations, if required. Reply briefs may not exceed **ten (10) pages** in
12 length. Motions for summary judgment are subject to the page limits set forth in Civil Local Rule 7.

13 All parties are required to meet and confer before filing any motion or any non-
14 stipulated request with this court, and to certify that they have complied with this requirement.

15 The failure of the opposing party to file a memorandum of points and authorities in
16 opposition to any motion shall constitute a consent to the granting of the motion.

17 Parties are limited to filing one motion for summary judgment. Any party wishing to
18 exceed this limit must request leave of Court. The parties are not required to file statements of
19 undisputed facts in connection with a motion for summary judgment. However, if the parties desire
20 to file a statement of undisputed facts, only one joint statement of undisputed facts signed by all
21 parties shall be filed. All separate statements will be stricken. If the parties are unable to agree that a
22 fact is undisputed, they should assume that fact is in dispute.

23 Note that pursuant to Civil L.R. 7-1(b), the Court may, in its discretion, adjudicate
24 motions *without* oral argument.

25 **E. MANDATORY SETTLEMENT CONFERENCES**

26 All parties are ordered to participate in a mandatory settlement conference during the
27 following time period: ***DURING THE MONTH OF NOVEMBER 2012 BEFORE A***
28 ***MAGISTRATE JUDGE.***

29 **F. PRETRIAL CONFERENCE**

30 All Counsel who will try the case shall appear for a pretrial conference in Courtroom
31 1 on ***1/22/13***, at 1:00 p.m. All Counsel shall be fully prepared to discuss all aspects of the trial.
32 Failure to file the requisite pretrial documents in advance of the pretrial conference may result in
33 vacation of the pretrial conference and/or the imposition of sanctions. ***ALL PARTIES WITH***
34 ***SETTLEMENT AUTHORITY ARE REQUIRED TO ATTEND THE PRETRIAL***
35 ***CONFERENCE.***

36 **G. PRETRIAL PREPARATION DUE 12/26/12**

1 1. Not less than *thirty-five (35) calendar days* prior to the pretrial conference,
2 Counsel shall meet and confer in good faith in advance of complying with the following pretrial
3 requirements in order to clarify and narrow the issues for trial, arrive at stipulations of facts, simplify
4 and shorten the presentation of proof at trial, and explore possible settlement. In addition, Counsel
5 shall meet and confer regarding anticipated motions in limine, objections to evidence, jury
6 instructions, and any other matter which may require resolution by the Court.

7 2. The following matters shall be accomplished no later than *twenty-eight (28)*
8 *calendar days* prior to the pretrial conference:

9 a. **Joint Pretrial Statement**

10 Counsel are required to file a pretrial conference statement containing
11 the following information:

12 (1) **The Action**

13 **(A) Substance of the Action.** A brief description of the substance of
14 claims and defenses which remain to be decided

15 **(B) Relief Prayed.** A detailed statement of all the relief claimed,
16 particularly itemizing all elements of damages claimed as well as witnesses, documents or other
17 evidentiary material to be presented concerning the amount of those damages.

18 (2) **The Factual Basis of the Action**

19 **(A) Undisputed Facts.** A plain and concise statement of all relevant
20 facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the
21 trial record without the necessity of supporting testimony or exhibits.

22 **(B) Disputed Factual Issues.** A plain and concise statement of all
23 disputed factual issues which remain to be decided.

24 **(C) Agreed Statement.** A statement assessing whether all or part of
25 the action may be presented upon an agreed statement of facts.

26 **(D) Stipulations.** A statement of stipulations requested or proposed
27 for pretrial or trial purposes.
28

(3) **DISPUTED LEGAL ISSUES**

1 (A) **Points of Law.** Without extended legal argument, a concise
2 statement of each disputed point of law concerning liability or relief, citing supporting statutes and
3 decisions. Unless otherwise ordered, parties should cite to briefs served and lodged setting forth
4 briefly the nature of each party's contentions concerning each disputed point of law, including
5 procedural and evidentiary issues.

6 (B) **Proposed Conclusions of law.** If the case is to be tried without
7 jury, unless otherwise ordered, parties should briefly indicate objections to proposed conclusions of
8 law lodged with this Court.

9 **b. Trial Briefs**

10 Each party shall serve and file a trial brief which shall briefly state
11 their contentions, the relevant facts to be proven at trial, and the law on the issues material to the
12 decision.

13 **c. Findings of Fact**

14 In non-jury cases, each party shall serve and lodge with the Court
15 proposed findings of fact and conclusions of law on all material issues. Findings shall be brief,
16 clear, written in plain English and free of pejorative language, conclusions and argument.

17 **d. Witnesses**

18 Each party shall serve and file with the Court a list of all persons who
19 may be called as witnesses, other than solely for impeachment or rebuttal, together with a summary
20 of the substance of each witness' proposed testimony.

21 **e. Designation of Discovery Excerpts**

22 Each party expecting to use discovery excerpts as part of its case in
23 chief shall serve and file with the Court a statement identifying (1) by witness and page and line, all
24 deposition testimony and (2) by lodged excerpt, all interrogatory answers and request for admissions
25 to be used as part of its direct case. Each interrogatory answer intended to be offered as an exhibit
26 shall be copied separately and marked as an exhibit. The original of any deposition to be used at
27 trial must be produced at the time of trial, as well as a copy for the Court. Counsel shall indicate any
28 objections to the use of these materials and advise the Court that counsel has conferred respecting
such objections.

f. Jury Instructions

1 The parties shall file a joint set of proposed jury instructions as to
2 those instructions on which the parties have reached agreement. As to any disputed instructions,
3 each party shall separately submit its "proposed" instruction(s) supported by a memorandum setting
4 forth the authority for its use. Responses or objections to any "proposed" jury instruction shall be
5 filed no later than the date of the pretrial conference. All instructions shall be written in plain
6 English which is comprehensible to jurors, concise and free of argument, and shall be organized in a
7 logical fashion so as to aid jury comprehension, and are also to be provided on a CD in word format.
8 The Court's practice is to utilize, whenever possible, instruction's found in the Ninth Circuit Manual
9 of Model Jury Instructions.

6 **g. Jury Voir Dire and Verdict Forms**

7 Each party shall submit proposed questions for jury voir dire and a
8 proposed form of verdict.

10 **h. Exhibits**

11 Each party shall provide every other party one set of all exhibits,
12 charts, schedules, summaries and diagrams and other similar documentary materials to be used at the
13 trial together with a complete list of all such exhibits. The Court requires one original version of
14 exhibits (as described above) for the Clerk and two copies (one for the Bench and one for the
15 witness stand). All such versions of the exhibits, including the originals, should be indexed into a
16 binder for easy and quick reference by all parties. The first page of each binder should have a copy
17 of the exhibit list appropriately completed with each exhibit description and its designated number.
18 Plaintiffs shall refer to their exhibits numerically and Defendants shall label theirs alphabetically.
19 Exhibit labels and exhibit lists are available at the Courts website.(www.cand.uscourts.gov)
20 Exhibits should be brought to Court on the first day of trial.

21
22 3. The following matters shall be accomplished no later than *twenty-one (21)*
23 *calendar days* prior to the pretrial conference: **Motions in Limine and Objections to Evidence**
24 **due: 1/2/13**. Each party anticipating making motion(s) in limine and/or objection(s) to any
25 testimony or exhibits expected to be offered shall file and serve a statement briefly identifying each
26 item objected to and the grounds for the objection.

27 4. Responses to motions in limine or objections to evidence shall be filed and
28 served no less than *fourteen (14) calendar days* prior to the pretrial conference due: **1/9/13**.

29 5. Replies to motions in limine or objections to evidence shall be filed and
30 served no less than *seven (7) calendar days* prior to the pretrial conference due: **1/16/13**

31 All motions in limine shall be set forth in a single memorandum, not to exceed ten (10) pages in
32 length. Responses to the motions in limine shall be set forth in a single memorandum, not to exceed
33 ten (10) pages in length. Reply briefs shall not exceed six(6) pages. Any request to exceed the page
34 limit must be submitted prior to the deadline for these briefs and must be supported by a showing of
35 good cause, along with a certification that the applicant has met and conferred with the opposing
36 party.

H. TRIAL DATE

1 Trial before the *JURY* will begin on *2/14/13*, at 8:30 a.m., for an estimated *3-5* trial
2 days, or as soon thereafter as the Court may designate. The parties are advised that they must be
3 prepared to go to trial on a trailing basis. The trial will take place in Courtroom 1 of the United
4 States Courthouse, 1301 Clay Street, 4th Floor, Oakland, California, 94612. The Court's trial hours
5 are from 8:30 a.m. to 2:00 p.m., with two fifteen-minute breaks, on Monday, Wednesday, Thursday
6 and Friday. *On the first day of trial all parties are required to have someone in Court with full
7 Settlement Authority.*

I. TRANSCRIPTS

8 If transcripts will be requested during or immediately after the trial, arrangements
9 must be made with the Court Reporter Coordinator (Telephone No. 510-637-3534) at least one week
10 prior to the commencement of trial.

J. STATUS AND DISCOVERY CONFERENCES

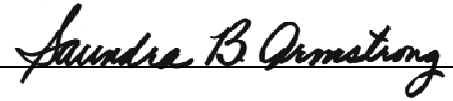
11 Any party desiring to confer with the Court may, upon notice to all other parties,
12 arrange a conference through the courtroom deputy (Telephone No. 510-637-3541). Conferences
13 may be conducted telephonically, upon request (preferably in writing).

K. SANCTIONS

14 Failure to comply with this order may result in the imposition of sanctions pursuant
15 to FRCP 16(f).
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IT IS SO ORDERED.

Dated: 10/19/11



SAUNDRA BROWN ARMSTRONG

United States District Judge

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