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United States District Court
For the Northern District of California

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

No. C 12-06066 SBA

MIKE MAPLES JR
Plaintiff,

**ORDER FOR PRETRIAL
PREPARATION**

v.

SOLARWINDS 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 IS CLOSED.**

The deadline for the joinder of other parties and to amend the pleadings is .

B. DISCOVERY CUT-OFF IS CLOSED.

All discovery, except for expert discovery, shall be completed and all
depositions taken on or before . 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 IS CLOSED.

Plaintiff shall designate any experts by ; defendant by ; rebuttal disclosure by .
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 .

D. MOTION CUT-OFF IS CLOSED.

All dispositive motions shall be *heard* on or before , at 1:00 p.m. *The parties*

1 **must meet and confer prior to filing any motion.** The movant shall certify to the Court in its
2 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.

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

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

11 **Meet and Confer Requirement:** All parties are required to meet and confer
in good faith before filing any motion or any non-stipulated request with this court, and to
12 certify that they have complied with this requirement.

13 **Failure to Oppose:** The failure of the opposing party to file a memorandum of
points and authorities in opposition to any motion shall constitute a consent to the granting of
14 the motion.

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

19 **Hearing on Motions:** Note that pursuant to Civil L.R. 7-1(b), the Court may,
in its discretion, adjudicate motions **without** oral argument.

20 **E. MANDATORY SETTLEMENT CONFERENCES**

21 All parties are ordered to participate in a mandatory settlement conference
22 during the following time period:

23 **F. PRETRIAL CONFERENCE**

24 All Counsel who will try the case shall appear for a pretrial conference on
1/12/2015 at 1:00 p.m.. All Counsel shall be fully prepared to discuss all aspects of the trial.
25 Failure to file the requisite pretrial documents in advance of the pretrial conference may
result in vacation of the pretrial conference and/or the imposition of sanctions. **ALL**
26 **PARTIES WITH SETTLEMENT AUTHORITY ARE REQUIRED TO ATTEND THE**
PRETRIAL CONFERENCE.

27
28 **G. PRETRIAL PREPARATION DUE: 11/24/2014**

1 Prior to the date pretrial preparation is due, Counsel shall meet and confer in
2 good faith in advance of complying with the following pretrial requirements in order to
3 clarify and narrow the issues for trial, arrive at stipulations of facts, simplify and shorten the
4 presentation of proof at trial, and explore possible settlement. In addition, Counsel shall
5 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. The following
7 items 1 through 8 below shall be filed and served by the above-referenced date.

8 **1. Joint Pretrial Statement**

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

11 **(a) The Action**

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

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

17 **(b) The Factual Basis of the Action**

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

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

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

25 **(iv) Stipulations.** A statement of stipulations requested or
26 proposed for pretrial or trial purposes.

27 **(c) Disputed Legal Issues**

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

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

2. Trial Briefs

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

3. **Findings of Fact**

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

4. **Witnesses**

4 Each party shall serve and file with the Court a list of all persons who
5 may be called as witnesses. The list shall include a summary of the substance of each
witness' proposed testimony.

5. **Designation of Discovery Excerpts**

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

6. **Jury Instructions**

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

7. **Jury Voir Dire and Verdict Forms**

18 Each party shall submit proposed questions for jury voir dire and a
19 proposed form of verdict.
20

8. **Exhibits**

21 Each party shall provide every other party one set of all exhibits, charts,
22 schedules, summaries and diagrams and other similar documentary materials to be used at the
23 trial together with a complete list of all such exhibits. The Court requires one original
version of exhibits (as described above) for the Clerk and two copies (one for the Bench and
24 one for the witness stand). All such versions of the exhibits, including the originals, should
be indexed into a binder for easy and quick reference by all parties. The first page of each
25 binder should have a copy of the exhibit list (see attached) appropriately completed with each
exhibit description and its designated number. Plaintiffs shall refer to their exhibits
26 numerically and Defendants shall label theirs alphabetically. Exhibit labels are also attached
for your convenience. Exhibits should be brought to Court on the first day of trial.
27

9. **Motions in Limine and Objections to Evidence**

1 Each party anticipating making motion(s) in limine and/or objection(s)
2 to any testimony or exhibits expected to be offered shall file and serve a statement briefly
3 identifying each item objected to and the grounds for the objection. The parties must meet
4 and confer prior to filing any motion in limine and objection to evidence. The movant shall
5 certify to the Court in its moving papers that it has complied with this requirement.

6 **NOTE:** All motions in limine submitted by each party shall be set forth
7 *in a single memorandum*, not to exceed **ten (10) pages** in length. Responses to the motions
8 in limine shall be set forth in a single memorandum, not to exceed **ten (10) pages** in length.
9 Reply briefs shall not exceed **six (6) pages**. No motions in limine will be considered unless
10 the parties certify that they met and conferred prior to the filing of such motion. Any request
11 to exceed the page limit must be submitted prior to the deadline for these briefs and must be
12 supported by a showing of good cause, along with a certification that the applicant has met
13 and conferred with the opposing party.

14 (a) **Motions/Objections due:** 12/9/2014

15 (b) **Opposition due:** 12/16/2014

16 (c) **Reply due:** 12/23/2014

17 **H. TRIAL DATE**

18 Trial before the Jury will begin on **1/21/2015**, at 8:30 a.m., for an estimated 3-4
19 trial days, or as soon thereafter as the Court may designate. The parties are advised that they
20 must be prepared to go to trial on a trailing basis. The trial will take place at 1300 Clay
21 Street, 2nd Floor, Courtroom 210, Oakland, California, 94612 (located inside the U.S.
22 Bankruptcy Courthouse). The Court's trial hours are from 8:30 a.m. to 2:00 p.m., with two
23 fifteen-minute breaks, on Monday, Wednesday, Thursday and Friday. ***On the first day of
24 trial all parties are required to have someone in Court with full Settlement Authority.***

25 **I. TRANSCRIPTS**

26 If transcripts will be requested during or immediately after the trial,
27 arrangements must be made with the Court Reporter Coordinator (Telephone No. 510-637-
28 3534) at least one week prior to the commencement of trial commences.

J. STATUS AND DISCOVERY CONFERENCES

Any party desiring to confer with the Court may, upon notice to all other
parties, arrange a conference through the courtroom deputy (Telephone No. 510-637-3542).
Conferences may be conducted telephonically, upon request (preferably in writing).

K. SANCTIONS

Failure to comply with this order may result in the imposition of sanctions
pursuant to FRCP 16(f).

IT IS SO ORDERED.

Dated: 8/13/2014

Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

United States District Court
For the Northern District of California

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