

United States District Court  
For the Northern District of California

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

No. C 13-04791 SBA

MELIAN LABS INC.  
Plaintiff,

**ORDER FOR PRETRIAL  
PREPARATION**

v.

TRIOLOGY LLC  
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 **5/1/2014**.

**B. DISCOVERY CUT-OFF**

All discovery, except for expert discovery, shall be completed and all  
depositions taken on or before **9/15/2014**. 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 **9/15/2014**; defendant by **9/15/2014**;  
rebuttal disclosure by **10/6/2014**. 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 **10/27/2014**.

**D. MOTION CUT-OFF**

All dispositive motions shall be *heard* on or before **12/9/2014**, 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.

**THE COURT DOES NOT RESERVE MOTION HEARING DATES.** The  
parties are advised to check Judge Armstrong's calendar at [www.cand.uscourts.gov/sba](http://www.cand.uscourts.gov/sba),  
under Scheduling Information to determine the next available hearing date, particularly in the

1 case of a dispositive motion. The parties are advised *not* to wait until 35 days prior to the  
2 law and motion cut-off date to file and serve their motion. As the Court's law and motion  
3 calendar tends to fill quickly, there is *no* guarantee that a hearing date within the law and  
4 motion cut-off date will be available. You **MUST** submit a hard copy of all motion papers  
5 filed in E-FILED cases in order to be placed on calendar.

6 **Page Limits:** All noticed motions (other than motions for summary judgment)  
7 and any opposition thereto, shall not exceed **fifteen (15) pages** in length, exclusive of the  
8 table of contents, table of authorities, exhibits and declarations, if required. Reply briefs may  
9 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  
12 before filing any motion or any non-stipulated request with this court, and to certify that they  
13 have complied with this requirement.

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

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

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

26 **E. MANDATORY SETTLEMENT CONFERENCES**

27 All parties are ordered to participate in a mandatory settlement conference  
28 during the following time period: **12/15/2014 - 1/2/2015**.

**F. PRETRIAL CONFERENCE**

All Counsel who will try the case shall appear for a pretrial conference in  
Courtroom 1 on **2/17/2015** at 1:00 p.m.. All Counsel shall be fully prepared to discuss all  
aspects of the trial. 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 PARTIES WITH SETTLEMENT AUTHORITY ARE REQUIRED TO  
ATTEND THE PRETRIAL CONFERENCE.**

**G. PRETRIAL PREPARATION DUE: 1/6/2015**

Prior to the date pretrial preparation is due, Counsel shall meet and confer in  
good faith in advance of complying with the following pretrial requirements in order to  
clarify and narrow the issues for trial, arrive at stipulations of facts, simplify and shorten the  
presentation of proof at trial, and explore possible settlement. In addition, Counsel shall  
meet and confer regarding anticipated motions in limine, objections to evidence, jury  
instructions, and any other matter which may require resolution by the Court. The following

items 1 through 8 below shall be filed and served by the above-referenced date.

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**1. Joint Pretrial Statement**

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

**(a) The Action**

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

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

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

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

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

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

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

**(c) Disputed Legal Issues**

**(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**

In non-jury cases, each party shall serve and lodge with the Court 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**

1 Each party shall serve and file with the Court a list of all persons who  
2 may be called as witnesses. The list shall include a summary of the substance of each  
3 witness' proposed testimony. See Civil L.R. 16-15(4)(A).

4 **5. Designation of Discovery Excerpts**

5 Each party expecting to use discovery excerpts as part of its case in  
6 chief shall serve and lodge with the Court a statement identifying (1) by witness and page  
7 and line, all deposition testimony and (2) by lodged excerpt, all interrogatory answers and  
8 request for admissions to be used as part of its direct case. Each interrogatory answer  
9 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  
11 copy for the Court. Counsel shall indicate any objections to the use of these materials and  
12 advise the Court that counsel has conferred respecting such objections.

13 **6. Jury Instructions**

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

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

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

27 **8. Exhibits**

28 Each party shall provide every other party one set of all exhibits, charts,  
schedules, summaries and diagrams and other similar documentary materials to be used at the  
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  
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  
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  
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.

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

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

**NOTE:** All motions in limine submitted by each party shall be set forth  
*in a single memorandum*, not to exceed **ten (10) pages** in length. Responses to the motions

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

(a) **Motions/Objections due: 1/13/2015**

(b) **Opposition due: 1/20/2015**

(c) **Reply due: 1/27/2015**

7 **H. TRIAL DATE**

8 Trial before the **jury** will begin on **2/23/2015**, at 8:30 a.m., for an estimated **4-6**  
9 trial days, or as soon thereafter as the Court may designate. The parties are advised that they  
10 must be prepared to go to trial on a trailing basis. The trial will take place in Courtroom 1 of  
11 the United States Courthouse, 1301 Clay Street, 4th Floor, Oakland, California, 94612. The  
12 Court's trial hours are from 8:30 a.m. to 2:00 p.m., with two fifteen-minute breaks, on  
13 Monday, Wednesday, Thursday and Friday. ***On the first day of trial all parties are required***  
14 ***to have someone in Court with full Settlement Authority.***

12 **I. TRANSCRIPTS**

13 If transcripts will be requested during or immediately after the trial,  
14 arrangements must be made with the Court Reporter Coordinator (Telephone No. 510-637-  
15 3534) at least one week prior to the commencement of trial commences.

16 **J. STATUS AND DISCOVERY CONFERENCES**

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

18 **K. SANCTIONS**

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

21 **IT IS SO ORDERED.**

22 Dated: 4/2/2014

23   
24 SAUNDRA BROWN ARMSTRONG  
25 United States District Judge  
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