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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WALL MOUNTAIN COMPANY, INC.,)
)
 Plaintiff,)
)
 v.)
)
 GARY EDWARDS,)
)
 Defendant.)
 _____)

Case No. C 08-2579 PVT
**INTERIM ORDER AND TENTATIVE
RULING RE DEFENDANT’S MOTION TO
APPEAR AT TRIAL BY TELEPHONE**

On March 16, 2010, Defendant filed a motion to appear by telephone at trial (and any other meeting that requires his presence). Plaintiff opposed the motion. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this interim order. Because Defendant failed to properly notice this motion pursuant to Civil Local Rule 7-2, there is currently no deadline for the filing of reply papers, and Defendant has not yet filed any reply. Based on the motion and the file herein,

IT IS HEREBY ORDERED that Defendant shall file his reply papers no later than May 18, 2010.

IT IS FURTHER ORDERED that Defendant’s motion is TENTATIVELY DENIED with regard to the trial of this matter. Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, the court may permit testimony in open court by contemporaneous transmission from a different location

1 only for “good cause in compelling circumstances.” As the Advisory Committee Notes explain:

2 “The importance of presenting live testimony in court cannot be forgotten. The very
3 ceremony of trial and the presence of the factfinder may exert a powerful force for
4 truth-telling. The opportunity to judge the demeanor of a witness face-to-face is
5 accorded great value in our tradition. Transmission cannot be justified merely by
6 showing that it is inconvenient for the witness to attend the trial.”

7 At this point Defendant has made no factual showing that compelling circumstances exist
8 that warrant an order allowing him to appear at trial by contemporaneous transmission. However,
9 Defendant may file reply papers if he believes he can make such a showing. Any such showing must
10 be based on competent evidence – including declarations under penalty of perjury and properly
11 authenticated documentary evidence – not just unsupported arguments.

12 IT IS FURTHER ORDERED that Defendant may appear by telephone at the May 25, 2010
13 trial setting conference. Defendant shall contact chambers (408-535-5378) no later than May 21,
14 2010 to make the necessary arrangements.

15 Dated: 5/10/10

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17 PATRICIA V. TRUMBULL
18 United States Magistrate Judge
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