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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HANGINOUT, INC., a Delaware corporation,	)	Civil No. 13cv2811 AJB (NLS)
	)	
Plaintiff,	)	<b>SCHEDULING ORDER</b>
v.	)	<b>REGULATING DISCOVERY</b>
	)	<b>AND OTHER PRE-TRIAL</b>
GOOGLE, INC., a Delaware corporation,	)	<b>PROCEEDINGS</b>
	)	
Defendants.	)	

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Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on August 8, 2014. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY**

**ORDERED:**

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed by **September 8, 2014**.
  2. The parties shall file a joint motion for a protective order and for an ESI protocol by **September 8, 2014**.
  3. All fact discovery shall be completed by all parties by **March 20, 2015**.
- "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period

1 of time in advance of the cut-off date, **so that it may be completed** by the cut-off date,  
2 taking into account the times for service, notice and response as set forth in the Federal  
3 Rules of Civil Procedure. **Counsel shall promptly and in good faith meet and confer**  
4 **with regard to all discovery disputes in compliance with Local Rule 26.1(a).** The  
5 Court expects counsel to make every effort to resolve all disputes without court  
6 intervention through the meet and confer process. If the parties reach an impasse on any  
7 discovery issue, counsel shall, within forty-five (45) days of the date upon which the  
8 event giving rise to the dispute occurred, file a joint statement entitled, "Joint Motion for  
9 Determination of Discovery Dispute" with the Court (see attached "Chambers' Rules" on  
10 Discovery Disputes). **A failure to comply in this regard will result in a waiver of a**  
11 **party's discovery issue. Absent an order of the court, no stipulation continuing or**  
12 **altering this requirement will be recognized by the court.**

13 4. The parties shall designate their respective experts in writing by **April 3,**  
14 **2015.** The parties must identify any person who may be used at trial to present evidence  
15 pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to  
16 retained experts. The date for exchange of rebuttal experts shall be by **April 17, 2015.**  
17 The written designations shall include the name, address and telephone number of the  
18 expert and a reasonable summary of the testimony the expert is expected to provide. The  
19 list shall also include the normal rates the expert charges for deposition and trial  
20 testimony.

21 5. By **May 18, 2015,** each party shall comply with the disclosure provisions in  
22 Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure  
23 requirement applies to all persons retained or specially employed to provide expert  
24 testimony, or whose duties as an employee of the party regularly involve the giving of  
25 expert testimony. **Except as provided in the paragraph below, any party that fails to**  
26 **make these disclosures shall not, absent substantial justification, be permitted to use**  
27 **evidence or testimony not disclosed at any hearing or at the time of trial. In**  
28 **addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

1           6. Any party shall supplement its disclosure regarding contradictory or rebuttal  
2 evidence under Rule 26(a)(2)(D) by **June 1, 2015**.

3           7. All expert discovery shall be completed by all parties by **July 17, 2015**. The  
4 parties shall comply with the same procedures set forth in the paragraph governing fact  
5 discovery.

6           8. Failure to comply with this section or any other discovery order of the court  
7 may result in the sanctions provided for in Federal Rule of Civil Procedure 37, including  
8 a prohibition on the introduction of experts or other designated matters in evidence.

9           9. All other pretrial motions including those addressing Daubert issues must be  
10 filed by **August 17, 2015**. Counsel for the moving party must obtain a motion hearing  
11 date from the law clerk of the judge who will hear the motion. The period of time  
12 between the date you request a motion date and the hearing date may vary from one  
13 district judge to another. Please plan accordingly. Failure to make a timely request for a  
14 motion date may result in the motion not being heard. Motions in limine are to be filed as  
15 directed in the Local Rules, or as otherwise set by the district judge.

16           10. A Mandatory Settlement Conference shall be conducted on **October 14,**  
17 **2015 at 9:30 a.m.** in the chambers of Magistrate Judge Nita L. Stormes. Counsel or any  
18 party representing himself or herself shall submit confidential settlement briefs directly to  
19 chambers by **October 7, 2015**. **All parties are ordered to read and to fully comply**  
20 **with the attached Chamber Rules.**

21           11. The requirement to file a Memoranda of Contentions of Fact and Law and  
22 take any other action required by Local Rule 16.1(f)(2) is **waived**.

23           12. Counsel shall comply with the pre-trial disclosure requirements of Federal  
24 Rule of Civil Procedure 26(a)(3) by **December 1, 2015**. Failure to comply with these  
25 disclosure requirements could result in evidence preclusion or other sanctions under  
26 Federal Rule of Civil Procedure 37.

27           13. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by  
28 **December 8, 2015**. The parties shall meet and confer and prepare a proposed pretrial

1 order containing the following:

- 2 1. A joint neutral statement to be read to the jury, not in excess of one  
3 page, of the nature of the case and the claims and defenses.
- 4 2. A list of the causes of action to be tried, referenced to the Complaint  
5 [and Counterclaim if applicable]. For each cause of action, the order  
6 shall succinctly list the elements of the claim, damages and any  
7 defenses. A cause of action in the Complaint [and/or Counterclaim]  
8 which is not listed shall be dismissed with prejudice.
- 9 3(a). A list of each witness counsel actually expect to call at trial with a  
10 brief statement, not exceeding four sentences, of the substance of the  
11 witnesses' testimony.
- 12 3(b). A list of each expert witness counsel actually expect to call at trial  
13 with a brief statement, not exceeding four sentences, of the substance  
14 of the witnesses' testimony.
- 15 3(c). A list of additional witnesses, including experts, counsel do not expect  
16 to call at this time but reserve the right to call at trial along with a  
17 brief statement, not exceeding four sentences, of the substance of the  
18 witnesses' testimony.
- 19 4(a). A list of all exhibits that counsel actually expect to offer at trial with a  
20 one-sentence description of the exhibit.
- 21 4(b). A list of all other exhibits that counsel do not expect to offer at this  
22 time but reserve the right to offer if necessary at trial with a one-  
23 sentence description of the exhibit.
- 24 5. A statement of all facts to which the parties stipulate. This statement  
25 shall be on a separate page and will be read to and provided to the  
26 jury.
- 27 6. A list of all deposition transcripts by page and line, or videotape  
28 depositions by section, that will be offered at trial.

20 The Court encourages the parties to consult with the assigned magistrate judge to  
21 work out any problems in preparation of the proposed pretrial order. The court will  
22 entertain any questions concerning the conduct of the trial at the pretrial conference.

23 14. Counsel for plaintiff will be responsible for preparing the pretrial order and  
24 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **December**  
25 **15, 2015**, plaintiff's counsel must provide opposing counsel with the proposed pretrial  
26 order for review and approval. Opposing counsel must communicate promptly with  
27 plaintiff's attorney concerning any objections to form or content of the pretrial order, and  
28 both parties shall attempt promptly to resolve their differences, if any, concerning the

1 order.

2 15. The Proposed Final Pretrial Conference Order, including objections to any  
3 other parties' Federal Rule 26(a)(3) Pretrial Disclosures shall be prepared, served and  
4 lodged with the assigned district judge by **December 22, 2015**, and shall be in the form  
5 prescribed in and comply with Local Rule 16.1(f)(6).

6 16. The final Pretrial Conference is scheduled on the calendar of **Judge**  
7 **Battaglia** on **January 8, 2016** at **1:30 p.m.**

8 17. The court directs the parties to review the chambers' rules for the assigned  
9 district judge and magistrate judge.

10 18. A post trial settlement conference before a magistrate judge may be held  
11 within 30 days of verdict in the case.

12 19. The dates and times set forth herein will not be modified except for good  
13 cause shown.

14 20. Briefs or memoranda in support of or in opposition to any pending motion  
15 shall not exceed twenty-five (25) pages in length without leave of a district court judge.  
16 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.  
17 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents  
18 and a table of authorities cited.

19 21. Plaintiff's counsel shall serve a copy of this order on all parties that enter this  
20 case hereafter.

21 **IT IS SO ORDERED.**

22 DATED: August 8, 2014

23   
24 Hon. Nita L. Stormes  
25 U.S. Magistrate Judge  
26 United States District Court  
27  
28

1                    **CHAMBERS' RULES FOR MAGISTRATE JUDGE NITA L. STORMES**

2                    **A.     Discovery Disputes**

3     If the parties have not resolved their dispute through the meet and confer process, counsel  
4 shall, within **forty-five (45) days of the date upon which the event giving rise to the**  
5 **dispute occurred (see (2) below)**, file a joint statement entitled "Joint Motion for  
Determination of Discovery Dispute" with the Court.

- 6                    1.     The joint statement is to include: (1) a declaration of compliance with the meet  
7                    and confer requirement; (2) points and authorities (not to exceed 10 pages per  
8                    side); and (3) a format in accordance with the "Sample Format" described  
9                    below.
- 10                    2.     For oral discovery, the event giving rise to the discovery dispute is the receipt  
11                    of the first copy of the transcript of the affected portion of the deposition. For  
12                    written discovery, the event giving rise to the discovery dispute is the service  
13                    of the initial response, not the date on which counsel reach an impasse in meet  
and confer efforts.
- 14                    3.     Any exhibits accompanying the joint statement shall also be filed.
- 15                    4.     Counsel shall not attach copies of any meet and confer correspondence to the  
16                    joint statement.

17     The Court will either issue an order following the filing of the joint statement or will  
18 schedule a discovery conference or hearing.

19                    **Sample Format: Joint Motion for Determination  
20                    Of Discovery Dispute**

21 **Request No. 1:** Any and all documents referencing, describing or approving the  
22 Metropolitan Correctional Center as a treatment facility for inmate mental health  
23 treatment by the Nassau County local mental health director or other government official  
or agency.

24 **Response to Request No. 1:** Objection. This request is overly broad, irrelevant,  
25 burdensome, vague and ambiguous and not limited in scope as to time.

26 **Plaintiff's Reason to Compel Production:** This request is directly relevant to the denial  
27 of Equal Protection for male inmates. Two women's jails have specifically qualified  
28 Psychiatric Units with certain license to give high quality care to specific inmates with  
mental deficiencies. Each women's psychiatric Unit has specialized professional  
psychiatric treatment staff (i.e., 24 hour psychiatric nurses full time, psychiatric care,  
psychological care, etc.). Men do not have comparable services. This request will  
document the discrepancy.

**Defendant's Basis for Objections:** This request is not relevant to the issues in the case.  
Plaintiff does not have a cause of action relating to the disparate psychiatric treatment of  
male and female inmates. Rather, the issue in this case is limited to the specific care that  
Plaintiff received. Should the Court find that the request is relevant, defendant request  
that it be limited to a specific time frame.

29                    **B.     Settlement Conference Procedures**

30                    1.     **Attendance:** All parties, adjusters for insured defendants, and other  
31 representatives of a party **having full and complete authority to enter into a binding**  
32 **settlement**, and the principal attorneys responsible for the litigation, must be present and

1 legally and factually prepared to discuss settlement of the case. Full authority to settle  
2 means that the individuals at the settlement conference be authorized to fully explore  
3 settlement options and to agree at that time to any settlement terms acceptable to the  
4 parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir.  
5 1989). The person needs to have "unfettered discretion and authority" to change the  
6 settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-486 (D.  
7 Ariz. 2003). One of the purposes of requiring a person with unlimited settlement  
8 authority to attend the conference is that the person's view of the case may be altered  
9 during the face-to-face conference. *Pitman*, 216 F.R.D. at 486. Limited or sum certain  
10 authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-597 (8th Cir.  
11 2001). Failure of any of the aforementioned to appear **in person** will result in the  
12 imposition of sanctions. Where settlement authority rests with a governing body, counsel  
13 shall propose special arrangements in advance for securing timely authority to settle.

14 Requests to continue settlement conferences are rarely granted. The Court,  
15 however, will consider written joint motion or ex parte requests to continue a conference  
16 when extraordinary circumstances exist that make a continuance appropriate. In and of  
17 itself, having to travel a long distance to appear in person is not "extraordinary" to justify  
18 continuing the conference or excusing the personal attendance of a party.

19 **2. Settlement Conference Briefs:** All parties are required to lodge a  
20 **confidential** settlement brief before the Settlement Conference. Please refer to the  
21 Court's order for the due date for the brief. Settlement briefs should not exceed ten (10)  
22 pages in length, double spaced, exclusive of exhibits, if any. Copies of all documents  
23 that might enhance the productivity of negotiations (e.g., contracts, key correspondence  
24 or memos, reports of experts, photos, medical bills, wage loss statements, selected pages  
25 from deposition transcripts or responses to other discovery) should be attached as  
26 exhibits to the settlement briefs with significant portions highlighted for easy reference.  
27 Parties may also attach as exhibits helpful judicial opinions and information about the  
28 settlement or judgment value of comparable cases. Each brief shall set forth the  
following required confidential information:

- a. A brief analysis of the key issues involved in the litigation;
- b. A description of the strongest and weakest legal and factual points in the party's case;
- c. A description of the strongest and weakest legal and factual points in the opponent's case;
- d. The status of any settlement negotiations, including the last settlement proposal made by each party; and
- e. The settlement proposal that the party is willing to make in order to conclude the matter and spare the further expense of litigation.

Parties should hand deliver, mail, or electronically mail the **original only** of settlement briefs directly to chambers. If the submission exceeds 20 pages, a paper copy **must** be delivered or mailed to chambers. FAX briefs will not be accepted. **Settlement briefs are confidential and shall not be served on opposing parties nor shall they be filed.**

Chambers of Magistrate Judge Nita L. Stormes  
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