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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Plaintiff(s),
v.
Defendant(s).

) CASE NO.
)
) **INITIAL STANDING ORDER FOR CASES**
) **ASSIGNED TO JUDGE S. JAMES OTERO**
)
)
)

**READ THIS ORDER CAREFULLY.
IT CONTROLS THIS CASE AND DIFFERS
IN SOME RESPECTS FROM THE LOCAL RULES.**

- Plaintiff(s) must immediately serve this Order on all Defendant(s) along with the Summons and Complaint.
- If this case was assigned to this Court after being removed from state court, the Defendant(s) who removed the case must serve this Order on all other parties.

This case has been assigned to the calendar of Judge S. James Otero. To secure the just, speedy and inexpensive determination of this action, counsel are ordered to familiarize themselves with the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") and the Local Rules ("L.R.") of the Central District of California.

1 In an effort to provide further guidance to the parties, the Court notes the following:

- 2 **1. Court Hours:** Civil motions are heard on Monday at 10:00 a.m., unless the Court orders
3 otherwise. (If Monday is a holiday, the next motion date is Tuesday following the holiday.)
4 It is not necessary to clear a motion date. Do not call the clerk to reserve a hearing date;
5 comply with L.R.
- 6 **2. Location:** Judge Otero's courtroom is: Courtroom 1, United States District Court, 312
7 North Spring Street, 2nd Floor, Los Angeles, California 90012.
- 8 **3. E-Filing of Civil Cases:** E-filing is **mandatory** for all new and pending civil cases. The
9 Court adheres to the e-filing practices of the Central District of California (see the court's
10 website at www.cacd.uscourts.gov) **with two important exceptions:**
 - 11 a. The deadline to e-file a document is 4:00 p.m.; any document e-filed after 4:00 p.m.
12 will be deemed filed on the next court day.
 - 13 b. For every e-filed motion and ex parte application, the moving party must e-mail the
14 Court at **Judge Otero's generic e-mail address**
15 **(SJO_Chambers@cacd.uscourts.gov)** a Word or WordPerfect version of the
16 proposed order, pursuant to the L.R.
- 17 **4. Mandatory Chambers Copies:** Mandatory chambers copies are required only for e-filed
18 documents. One mandatory chambers copy must be delivered to the chambers copy box
19 located at the door of Courtroom 1, by 12 noon the day after the document was e-filed.
20 This mandatory chambers copy must be blue-backed and two-hole punched as if it were
21 a manual filing, and the caption page must indicate the date and time the document was
22 e-filed (place date and time of filing below title of filing on the caption page). All original
23 filings not subject to the e-filing requirements are to be filed at the filing window (Clerk's
24 Office, Room G-19, Spring Street Courthouse), NOT in chambers and NOT in the
25 courtroom.
- 26 **5. Telephone Inquiries:** Telephone inquiries regarding the status of a motion, stipulation, or
27 proposed order are not returned. Do not call the clerk to check the docket. Counsel may
28 sign up for PACER access to monitor the clerk's database.

- 1 **6. Communications with Chambers:** Counsel are not to initiate telephone calls to
2 Judge Otero's chambers, law clerks or assistant. Counsel may access the Court's website
3 (www.cacd.uscourts.gov) for L.R., filing procedures, **judges' procedures** and schedules,
4 calendars, forms, and PACER access. Additional questions can be resolved by accessing
5 the Western Division 24-hour automated calling system ((213) 894-1565) or the case
6 docket. Only in the event that counsel cannot find the desired information through all
7 available resources, counsel may contact the Courtroom Deputy Clerk, Victor Cruz, by
8 telephone at (213) 894-1796 or by e-mail at victor_cruz@cacd.uscourts.gov.
- 9 **7. Service of Pleadings:** Plaintiff must promptly serve the Complaint in accordance with Fed.
10 R. Civ. P. 4 and file proof of service pursuant to L.R. 5-3.1. Any defendant not timely
11 served will be dismissed from the action. Any "DOE" or fictitiously named defendant who
12 is not identified and served within 120 days after the case is filed will be dismissed pursuant
13 to Fed. R. Civ. P. 4(m).
- 14 **8. Assignment to a Magistrate Judge:** Under 28 U.S.C. § 636, the parties may consent to
15 have a magistrate judge preside over all proceedings, including trial. Magistrate judges
16 who accept those designations are identified on the Central District's website, which also
17 contains the consent form.
- 18 **9. ADR Pilot Program:** If counsel have received a "Notice to Parties of ADR Program" (form
19 ADR-08, ADR-10, or ADR-11 with attached "ADR Program Questionnaire" form ADR-09),
20 please refer to General Order 02-07 for further information. The ADR section also contains
21 Attorney Settlement Officer Information
- 22 **10. Temporary Restraining Orders and Injunctions:** Parties seeking emergency or
23 provisional relief must comply with Fed. R. Civ. P. 65 and L.R. 65.
- 24 **11. Calendar Conflicts:** If there is a calendar conflict, counsel are to inform the Courtroom
25 Deputy Clerk as soon as possible prior to the date of the conflict and are to follow the L.R.
26 and Federal Rules of Procedure.

1 **12. Transcripts:** To order a transcript, e-mail the Court Recording Department at
2 courtrecording_cacd@cacd.uscourts.gov. The Court uses a court recorder,
3 Margarita Lopez. Margarita Lopez may be reached at (213) 894-2717.

4 **13. Interpreters:** Obtaining the services of a certified interpreter on a civil case is the
5 responsibility of counsel. For further information, call (213) 894-4599.

6 **14. Motions to Reconsider:** L.R. 7-18 is strictly enforced.

7 **15. Actions Invoking Subject Matter Jurisdiction Based on Diversity:** The burden of
8 persuasion for establishing diversity jurisdiction rests on the party asserting it and must be
9 supported by competent proof.

10 To determine a corporation's "principal place of business" for the purposes
11 of diversity jurisdiction, the Court will apply the "nerve center" test, which was
12 adopted by the U.S. Supreme Court in *Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010).
13 The "nerve center" test looks to the single location where the "corporation's high
14 level officers direct, control, and coordinate the corporation's activities." *Hertz Corp.*
15 *v. Friend*, 130 S.Ct. 1181 (2010). The "nerve center" will typically be the
16 corporation's headquarters, provided that the headquarters is the actual center of
17 direction, control, and coordination, and not simply an office where the corporation
18 holds its board meetings. *Id.* For the purposes of simplicity and clarity in
19 jurisdictional matters, the Court has abandoned previous Circuit tests that required
20 complex balancing factors and whose outcomes were difficult to predict. *Id.*

21 If a party seeks to remove an action to this Court on the basis of diversity in
22 a case where it is not clear from the Complaint that more than \$75,000 is in
23 controversy, the removing party must prove by a preponderance of the evidence
24 that the amount in controversy meets the jurisdictional threshold. *Matheson v.*
25 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). The Court will
26 consider facts presented in the removal petition as well as any
27 summary-judgment-type evidence relevant to the amount in controversy at time of
28

1 removal. *Id.* Conclusory allegations as to the amount in controversy are insufficient.
2 *Id.*

3 Parties must file an Amended Complaint or Notice of Removal within **fifteen**
4 **days from the date the action is assigned to Judge Otero** if there is a doubt as
5 to whether they have met the test outlined in *Hertz*, whether they have otherwise
6 established the citizenship of the parties, or whether they have established the
7 amount in controversy. Failure to comply may result in dismissal or remand.

8 **16. Timing of Motions:** Parties must strictly comply with L.R. 6-1, 7-9 and 7-10.

9 **17. Scheduling Conference:** Scheduling conferences are held as soon as practicable and not
10 later than 180 days from the filing of the Complaint. Trial counsel must be present.

11 Counsel must timely comply with Fed. R. Civ. P. 26(f) and file a Joint Rule 26(f)
12 Report within ten days after they meet and confer. The Report must, in addition to
13 addressing the matters specified in Rule 26(f), set forth the parties' views regarding:

- 14 a. A cut-off date for the completion of discovery and the hearing of motions, a final
15 pretrial conference date, and a trial date;
- 16 b. Whether discovery should be conducted in phases or otherwise ordered or limited;
- 17 c. An estimate of the length of trial;
- 18 d. Efforts made to settle or resolve the case to date, and the parties' plans for
19 maximizing settlement prospects;
- 20 e. Whether the case is complex or requires a reference to the procedures set forth in
21 the Manual on Complex Litigation;
- 22 f. The likelihood of the appearance of additional parties;
- 23 g. Dispositive or partially dispositive motions the parties are likely to file;
- 24 h. Any unusual legal issues presented by the case; and
- 25 i. Proposals regarding severance, bifurcation or other ordering of proof.

26 **The Court does not hold telephonic conferences.**

27 **18. Patent Cases - Scheduling Conference and Adoption of Local Rules:**

28

- 1 a. Applicability of the Northern District of California Patent Local Rules: The parties are
2 encouraged to use the Northern District of California Patent Local Rules ("P.L.R.")
3 only in complex cases such as those involving computer technology,
4 pharmaceuticals or cases involving Ph.D.-level skill. Parties must state in the Joint
5 Rule 26(f) Report whether the parties have agreed to abide by the P.L.R. If the
6 parties do not agree to use the P.L.R. or disagree only to the time line included
7 therein, they must state their positions for disagreement in the Joint Rule 26(f)
8 Report. In any case, the ultimate decision regarding all scheduling matters,
9 including whether to apply the P.L.R., lies with the Court. The Court will take into
10 consideration several factors, such as: number of patents at issue; number of
11 claims asserted; number of likely disputed claims and the ease with which the
12 parties can identify the claim language that will resolve their dispute; and complexity
13 of the technology.
- 14 b. Claim Construction Hearings: The Court may hold claim construction hearings and
15 hear argument from counsel. However, the Court generally does not hear expert
16 testimony at claim construction hearings.
- 17 c. Joint Claim Construction Chart: The joint claim construction chart must be in a
18 three-column format.
- 19 d. Time Line for Patent Cases Not Using Patent Local Rules: For cases in which the
20 Court has elected not to use the P.L.R., the parties must include proposed deadlines
21 in the Rule 26(f) Report, including expert report dates, discovery cut-off dates and
22 a date for the claim construction hearing.
- 23 e. Time Line for Patent Cases Using Patent Local Rules: For cases in which the Court
24 has elected to use the P.L.R., parties must include proposed deadlines in the Rule
25 26(f) Report. Parties may find the following list of suggested deadlines and dates
26 helpful in writing their Rule 26(f) Report:
- 27 (1) One month after the Complaint is filed, the "Disclosure of Asserted Claims
28 and Infringement Contentions" under P.L.R. 3-1 is to be served on all parties.

- 1 (2) Three months after the Complaint is filed is the deadline to amend the
2 pleadings to add and serve new parties, to bring third-party claims or to bring
3 cross-claims.
- 4 (3) Four months after the Complaint is filed, the "Preliminary Invalidity
5 Contentions" under P.L.R. 3-3 is due.
- 6 (4) Six months after the Complaint is filed, the "Joint Claim Construction Chart
7 and Prehearing Statement" under P.L.R. 4-3 is due.
- 8 (5) Seven months after the Complaint is filed, claim construction discovery, both
9 fact and expert, is to be completed.
- 10 (6) Discovery with regard to damages begins the day after the fact and expert
11 discovery for the claim construction is due.
- 12 (7) Eight months after the Complaint is filed, the plaintiff's claim construction
13 opening brief is due. Defendant's claim construction opposition is due two
14 weeks after the opening brief is due and the plaintiff's claim construction reply
15 is due two weeks after the opposition is due.
- 16 (8) Nine months after the Complaint is filed, a claim construction hearing is held.
- 17 (9) No sooner than one day after the Court's ruling on claim construction but no
18 later than ten months after the filing of the Complaint, the "Final Infringement
19 Contentions" are due, along with any motion for summary judgment
20 regarding infringement.
- 21 (10) No sooner than after the "Final Infringement Contentions" are filed but no
22 later than eleven months after the filing of the Complaint, the "Final Invalidity
23 Contentions" are due, along with any motion for summary judgment
24 regarding invalidity or unenforceability or non-infringement.
- 25 (11) Eleven months after the filing of the Complaint is the motion cut-off date for
26 all motions other than motions for summary judgment on infringement.
- 27 (12) Eleven months after the Complaint is filed all discovery must be completed.
- 28 (13) One week before the trial, the pretrial conference will be held.

1 (14) Fourteen months after the filing of the Complaint, the trial will commence.

2 **19. Discovery:** Discovery motions and applications for discovery protective orders must be
3 scheduled before the magistrate judge assigned to the case.

4 a. Non-Expert Discovery: All expert / non-expert discovery must be **completed** by the
5 discovery cut-off set by the Court. Any motion challenging the adequacy of
6 discovery responses must be calendared sufficiently in advance of the cut-off date
7 to permit any compelled responses to be obtained before that date.

8 b. Non-Expert Depositions: All depositions must commence sufficiently in advance of
9 the discovery cut-off date to permit their completion and to permit the deposing party
10 enough time to bring any discovery motions concerning the deposition prior to the
11 cut-off date. Given the requirements of notice and "meet and confer," this means
12 that in most cases a planned motion to compel must be discussed with opposing
13 counsel approximately six weeks before the cut-off.

14 c. Written Discovery: All interrogatories, requests for production of documents, and
15 requests for admissions must be served sufficiently in advance of the discovery cut-
16 off to enable the discovering party to challenge (via motion) deficient responses.

17 d. Discovery Motions: Parties are expected to resolve discovery disputes among
18 themselves in a courteous, reasonable, and professional manner. Absent
19 resolution, the magistrate judge assigned to the case will rule on discovery motions.
20 The Court requires compliance with L.R. 37-1 through 37-4 in the preparation and
21 filing of discovery motions. Any review of a magistrate judge's discovery order must
22 proceed by way of noticed motion under L.R. 7-3. The decision of the magistrate
23 judge is final. The Court will not reverse any such order, including one imposing
24 sanctions, unless the moving party demonstrates that the magistrate judge's order
25 "is clearly erroneous or contrary to law." A motion for review and reconsideration
26 must be filed and served within ten days of a written ruling or within ten days of an
27 oral ruling that the magistrate judge states will not be followed by a written ruling.
28

- 1 e. Expert Discovery: The parties must meet and confer and agree upon expert
2 disclosure dates as required by Fed. R. Civ. P. 26(2). All disclosures must be made
3 in writing. The parties should commence expert discovery shortly after the initial
4 designation of experts, because the final pretrial conference and trial dates will not
5 be continued merely because expert discovery is still underway.

6 **20. Motions and Motion Cut-Off Date:**

- 7 a. Meet and Confer Requirement: For all cases not exempt under L.R. 16-12, and
8 except in connection with discovery motions, applications for temporary restraining
9 orders or preliminary injunctions, counsel contemplating filing of any motion, shall
10 first contact opposing counsel to "discuss *thoroughly*, preferably in person, the
11 *substance* of the contemplated motion *and any potential resolution*." L.R. 7-3. The
12 Court construes this requirement strictly. Half-hearted attempts at compliance with
13 this rule will not satisfy counsel's obligation. The parties must discuss the
14 substantive grounds for the motion and attempt to reach an accord that would
15 eliminate the need for the motion. The Court strongly emphasizes that under L.R. 7-
16 3, discussions of the substance of contemplated motions are to take place, if at all
17 possible, in person. Only in exceptional cases will a telephonic conference be
18 allowed. All motions must include a declaration by counsel briefly describing the
19 parties' discussion and attempt to eliminate the need for the motion and the date of
20 such discussion. Filings not in compliance with L.R. 7-3 will be denied.

- 21 b. Unless required to be filed electronically as referenced in Paragraph 7 of this Order,
22 all motions, oppositions and replies must be filed at the filing window (Clerk's Office,
23 Room G-19, Spring Street Courthouse). If mailing a civil filing, direct documents to:
24 Filing Window, Civil Section, Clerk's Office, Room G-19, 312 North Spring Street,
25 Los Angeles, California 90012.

- 26 c. All law and motion matters, except for motions in limine, must be set for hearing (not
27 filing) by the motion hearing cut-off date. Issues left undetermined after passage of
28 the cut-off date should be listed as issues for trial in the final pretrial conference

1 order. As an exception, motions in limine dealing with evidentiary matters will be
2 heard (at the Court's discretion) at the start of trial; however, the Court will not hear
3 or resolve summary judgment motions disguised as motions in limine.

- 4 d. **Local Rule 7 governs the form of motions.** See generally L.R. 7. If a party does
5 not oppose a motion, that party must file a statement of non-opposition. L.R. 7-16.
6 Failure to meet the time limits set forth in L.R. 7 may be deemed consent to the
7 granting of the motion. L.R. 7-12. The Court will not decide late-filed motions, and
8 a party or counsel who files such late papers may be subject to sanctions under L.R.
9 7-13. Reply papers are limited to argument and authorities responsive to the
10 opposition papers. The Court will not address new matter that was improperly
11 introduced.

12 **21. Motions - Form and Length:** All pleadings must comply with L.R. 11, except that no
13 memorandum or points and authorities or opposition may exceed twenty pages, excluding
14 indices and exhibits, unless permitted by the Court. No reply may exceed five pages.

- 15 a. Summary Judgment Motions: Parties need not wait until the motion cut-off to bring
16 motions for summary judgment or partial summary judgment. The moving party is
17 expected to provide more than the minimum twenty-eight day notice. Because
18 these motions are fact-dependent, parties should prepare papers in a fashion that
19 will assist the Court in absorbing the mass of facts (e.g., tables of contents,
20 headings, indices). The parties are to comply precisely with L.R. 56-1 through 56-3.
- 21 b. Without prior permission of the Court, no party may file more than one motion
22 pursuant to Fed. R. Civ. P. 56 regardless of whether such motion is denominated
23 as a motion for summary judgment or summary adjudication.
- 24 c. Statement of Undisputed Facts and Statement of Genuine Issues: The separate
25 statement of undisputed facts must be prepared in a two-column format. The left-
26 hand column sets forth the allegedly undisputed fact. The right-hand column sets
27 forth the evidence that supports the factual statement. The opposing party's
28 statement of genuine issues must be in two columns and track the movant's

1 separate statement exactly as prepared. The opposing party may submit additional
2 material facts that bear on or relate to the issues raised by the movant, which must
3 follow the format described above for the moving party's separate statement.

4 d. Supporting Evidence: Supporting evidence should be submitted either by way of
5 stipulation or as exhibits to declarations sufficient to authenticate the proffered
6 evidence, and should not be attached to the memorandum of points and authorities.
7 Documentary evidence as to which there is no stipulation regarding foundation must
8 be accompanied by the testimony of a witness who can establish authenticity.

9 e. Objections to Evidence: If a party disputes a fact based in whole or in part on an
10 evidentiary objection, the ground of the objection, as indicated above, should be
11 stated in a separate statement but not argued in that document.

12 f. Oral Argument: If the Court deems a matter appropriate for decision without oral
13 argument, the Court will notify the parties in advance.

14 g. Tentative Rulings: The Court does not issue tentative rulings.

15 h. Amici Status: The Court has broad discretion to appoint amicus curiae. Interested
16 parties must request leave of the Court before filing an amicus brief, by showing:

- 17 (1) That they have a "special interest" in the case;
- 18 (2) That this interest is not represented competently or at all;
- 19 (3) That they present information that is both timely and useful; and
- 20 (4) That they are not partial to a particular outcome of the case.

21 **22. Requests for Extensions of Time to File Documents or Dates:** The deadlines and
22 requirements set by the Court are firm. No stipulations extending scheduling requirements

23 or modifying applicable rules are effective unless and until approved by the Court.

24 Applications and stipulations must set forth:

- 25 a. The existing due date or hearing date;
- 26 b. Specific, concrete reasons supporting good cause for granting the extension. A
27 statement that an extension "will promote settlement" is insufficient. The requesting
28 party or parties must indicate the status of ongoing negotiations (i.e., Have written

1 proposals been exchanged? Is counsel reviewing a draft settlement agreement?
2 Has a mediator been selected?); and

3 c. Whether there have been prior requests for extensions, and whether these were
4 granted or denied by the Court.

5 The pretrial conference and trial dates will not be continued solely because the parties are
6 in the process of settling or have "settled." If the parties wish to avoid the pretrial
7 conference or trial, a valid stipulated dismissal under Fed. R. Civ. P. 41 must be filed at
8 least one court day in advance.

9 **23. Ex Parte Applications:** Ex parte applications are discouraged. *Mission Power Eng'g Co.*
10 *v. Cont'l Casualty Co.*, 883 F. Supp. 488 (C.D. Cal. 1995). Strictly comply with L.R. 7-19.
11 Ex parte applications are not noticed for any date or time certain. If a hearing is necessary,
12 the Courtroom Deputy Clerk will contact counsel.

13 **24. Settlement:** L.R. 16-15 requires the parties to participate in one of the settlement
14 procedures set forth in the Rule. The settlement conference must be concluded not later
15 than thirty days before the pretrial conference. The Court may hold and preside over the
16 settlement conference in certain cases. The Court on its own motion may set a settlement
17 conference at any time following the scheduling conference. If the settlement conference
18 is set before this Court, the parties must comply with L.R. 16-15.5.

19 **25. Procedures for Settlement Conferences Held Before Judge Otero:**

20 a. Settlement Conference Briefs: The parties must submit confidential settlement
21 conference briefs to chambers in accordance with L.R. 16-15 **five days** before the
22 conference, and must exchange non-confidential letters with all other parties of
23 record. Each confidential settlement conference brief must contain:

- 24 (1) A summary of the important issues and the party's position on each issue;
25 (2) A summary regarding damages in a non-conclusory form; and
26 (3) A summary on the course of any prior settlement negotiations.

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1 The brief must be concise, and large numbers of exhibits may not be appended.
2 Proposals for settlement and counsel's evaluation of the case not yet communicated
3 to opposing counsel must be included in the confidential settlement letter.

4 b. Persons Present: All persons whose consent is necessary to conclude settlement
5 must be present at the settlement conference. Counsel are responsible for ensuring
6 that all persons and parties are present.

7 c. The Conference: The Court will confer with the attorneys and representatives jointly
8 and separately. Each party must be prepared to negotiate for as long as prospects
9 of settlement are not foreclosed. The Court may confer with the parties in the
10 presence of their attorneys. If settlement is reached, it will be placed on the record
11 at the conclusion of the conference.

12
13 **26. Trial Preparation:**

14 a. Pretrial Conference and L.R. 16 Filings

15 The final pretrial conference ("PTC") will be held at 9:00 a.m. on the date set by the Court,
16 unless expressly waived by the Court at the scheduling conference. The lead trial attorney
17 on behalf of each party must attend the PTC and all meetings in preparation thereof. A
18 continuance of the PTC at the parties' request or by stipulation is unlikely. Failure to
19 complete discovery is not a ground for continuance.

20 At the PTC, parties should be prepared to discuss means of streamlining the trial,
21 including: bifurcation; presentation of foundational and non-critical testimony by deposition
22 excerpts, narrative summaries and stipulations as to the content of testimony; and
23 qualification of experts by admitted resumes. The Court will also discuss settlement.

24 If counsel fail to file the required pretrial documents or fail to appear at the PTC and
25 such failure is not otherwise satisfactorily explained to the Court: (a) the case will be
26 dismissed for failure to prosecute, if such failure occurs on the part of the plaintiff;
27 (b) default judgment will be entered, if such failure occurs on the part of the defendant; or
28 (c) the Court may take such action as it deems appropriate. Failure of counsel to strictly

1 follow the provisions of this Order may subject the non-complying party and its attorney to
2 sanctions and may constitute a waiver of jury trial.

3 b. Pretrial Documents Must Comply with the Local Rules

4 (1) Pretrial Conference Order ("PTCO"): The [Proposed] PTCO must be lodged
5 seven calendar days before the PTC. Parties are to consult Appendix A to
6 the L.R. in preparing the PTCO. In addition, parties must heed the following:

7 (a) Include a table of contents at the beginning of the PTCO.

8 (b) Place in "all caps" and in "bold" the separately numbered headings for
9 each category in the PTCO (e.g., "**1. THE PARTIES**").

10 (c) In specifying the surviving pleadings under section 1 of Appendix A,
11 state which claims or counterclaims have been dismissed or
12 abandoned (e.g., "Plaintiff's first cause of action for fraud has been
13 dismissed.") In multiple party cases where not all claims will be
14 prosecuted against all remaining parties on the opposing side, specify
15 to which party each claim is directed.

16 (d) In drafting the PTCO, the parties must attempt to agree on and set
17 forth as many uncontested facts as possible. These facts are usually
18 read to the jury at the start of trial. A carefully drafted stipulation of
19 facts will reduce the length of trial and increase jury understanding of
20 the case.

21 (e) In drafting the factual issues in dispute for the PTCO, the parties must
22 state issues in ultimate fact form, not in the form of evidentiary fact
23 issues. The issues of fact should track the elements of a claim or
24 defense on which the jury will be required to make findings.

25 (f) Issues of law should state legal issues on which the Court will be
26 required to rule during the trial, and should not list ultimate fact issues
27 to be submitted to the trier of fact.
28

1 (2) Memoranda of Contentions of Fact and Law: Not later than twenty-one days
2 in advance of the PTC, each party must serve and file a memorandum of
3 contentions of fact and law containing a summary of the parties' basic factual
4 contentions supported by legal authority in the form of a legal brief. L.R. 16-
5 4.

6 (3) Joint Witness List: Not later than twenty-one days in advance of the PTC,
7 the parties must submit a joint witness list in accordance with L.R. 16-5,
8 except that the parties need not submit separate witness lists. The joint
9 witness list must identify:

10 (a) All witnesses who will actually testify at trial. Failure to include the
11 name of a witness may preclude a party from calling that witness.

12 (b) Trial Witness Estimate: The witness list and summary must give
13 accurate time estimates for each witness to conduct direct, cross, re-
14 direct, and re-cross. Counsel must include a summary of the
15 testimony of each witness. If more than one witness is offered on the
16 same subject matter, each summary must enable the Court to
17 determine if the testimony is cumulative.

18 (c) Expert Witnesses: An expert witness's direct testimony must consist
19 of a description of the expert's background and contents of her Rule
20 26 Report.

21 (4) Joint Exhibit List: Not later than twenty-one days in advance of the PTC, the
22 parties must submit a joint exhibit list in accordance with L.R. 16-6.1 and
23 Fed. R. Civ. P. 26(a)(3)(A)(iii). The list must also include an appropriate
24 identification of each document or exhibit which the party expects to offer for
25 impeachment purposes and those which the party may offer if the need
26 arises. The list must be substantially in the form indicated by the following
27 example:

28 *Case Title:* _____ *Case No.:* _____

Exhibit No. Description Date Identified Date Admitted

Counsel must meet and confer and stipulate to authenticity and other foundational objections. Place exhibits in binders with each exhibit properly marked and tabbed.

- (5) Pretrial Exhibit Stipulation: The parties must prepare a pretrial exhibit stipulation containing each party's numbered list of all trial exhibits, with objections to each exhibit and the offering party's response. All exhibits to which there is no objection will be admitted. All parties must stipulate to the authenticity of exhibits whenever possible. Identify any exhibits whose authenticity has not been stipulated to and the specific reasons for the parties' failure to stipulate. The stipulation must be in the following form:

Plaintiff's Exhibits

Exhibit No. Description If Objection, State Grounds Response to Objection

Defendant's Exhibits

Exhibit No. Description If Objection, State Grounds Response to Objection

The pretrial exhibit stipulation must be filed at the same time counsel lodge the PTCO. Failure to so comply may constitute a waiver of all objections.

- (6) Motions in Limine Are Heard the First Day of Trial and Must Conform to the Local Rules and the Following Format:

- (a) The parties must file any motions in limine thirty-five days before the trial date. Any opposition must be filed seven days thereafter. Any reply must be filed seven days thereafter. In addition, five court days before the PTC, each party must deliver to chambers a three-ring binder of its motions in limine, together with the objections and replies.
- (b) If any of the issues addressed in said motions were raised in prior proceedings, counsel are to identify the proceedings and relevant pleadings.

- 1 (c) The binders must be clearly marked as to their content (e.g., Plaintiff's
2 Motions in Limine Nos. 1-9) and each motion must be separated by
3 marked dividers, identifying the particular motion. The spine of each
4 binder must include the case name and number as well as the content
5 of the binder.
- 6 (d) Binders should only contain the points of law, no declarations.
- 7 (e) Points and authorities, including motions in limine, may not exceed ten
8 pages. Opposition to points and authorities may not exceed ten
9 pages. Replies to points and authorities may not exceed five pages.
- 10 (f) In lodging deposition transcripts, counsel must stipulate to their
11 authenticity.

12 (7) Jury Instructions and Verdict Forms: At the PTC, counsel must submit the
13 text of each jury instruction in two sets.

- 14 (a) Set one consists of instructions that all parties agree should be
15 submitted to the jury, and includes general and substantive
16 instructions, a verdict form, and, if necessary, special interrogatories.
17 "Substantive jury instructions" means all instructions relating to the
18 elements of all claims and defenses in the case. Parties should also
19 submit standard and general instructions.
- 20 (b) Set two consists of instructions that are objected to. Proposed special
21 verdict forms are to be included. This second set must include a joint
22 statement regarding the disputed instructions, verdicts and
23 interrogatories. In the joint statement, place the text of the disputed
24 instruction (or verdict or interrogatory) with an identification of the
25 party proposing it. Following that text, place the opposing party's
26 statement of objections with legal authority in support thereof (one
27 page or less) and proposed alternative language if appropriate. The
28 entirety of the objection must be typed in capital letters.

1 (c) A table of contents must be included with all jury instructions
2 submitted to the Court. The table of contents must set forth: (i) the
3 number of the instruction; (ii) a brief title of the instruction; (iii) the
4 source of the instruction; and (iv) the page number of the instruction.

5 For example:

<i>Number</i>	<i>Title</i>	<i>Source</i>	<i>Page Number</i>
(1)	(Burden of Proof)	(cite)	(5)

8 (d) The Court prefers counsel to use instructions from the Manual of
9 Model Jury Instructions for the Ninth Circuit where applicable. Where
10 California law is to be applied, the Court requires counsel to use the
11 State of California Judicial Council Approved Civil Jury Instructions.

12 (e) Modifications of instructions from the foregoing sources (or any other
13 form instructions) must specifically state the modification made to the
14 original form instruction and the authority supporting the modification.

15 (8) Joint Statement of the Case and Voir Dire: The Court conducts voir dire. At
16 the PTC, the parties must submit separate proposed voir dire questions and
17 a one page joint statement of the case, which is read to the jury pool. The
18 parties need not submit requests for standard voir dire questions, but should
19 include only proposed questions specifically tailored to the parties and issues
20 of the case.

21 (9) Real-Time Reporting Requirement: At the PTC, each party must submit to
22 the Deputy Clerk a typed list of proper names, unusual or scientific terms, or
23 any other uncommon words that are likely to be used during the trial.

24 c. Bench Trial:

25 (1) Findings of Fact and Conclusions of Law: The parties must lodge their
26 proposed findings of fact and conclusions of law no later than seven days
27 before trial and deliver to chambers a digital copy of these findings in
28 WordPerfect format. L.R. 52-1.

1 (2) Narrative Statements: The judge requires that the direct testimony of a
2 witness be presented by written narrative statement subject to
3 cross-examination at trial, to be adopted by the witness orally in open court,
4 unless such requirement is waived. L.R. 43-1.

5 d. **Installation of equipment**- If counsel need to arrange for the installation of their
6 own additional equipment, such as a video monitor, overhead projector, etc., refer
7 to the Court's website (www.cacd.uscourts.gov) so that necessary arrangements
8 can be made. Electronic Evidence Presenter reservations/tutorials may be made
9 through the Courtroom Technology Help Desk at (213) 894-3061.

10 e. **Voluminous exhibits**: Arrangements for bringing voluminous exhibits into the
11 courtroom may be made through the Space and Facilities Help Desk, at (213) 894-
12 1400.

13 **25. Instructions Governing Procedure During Trial**

14 a. Civil trials are held Monday through Friday from 8:30 a.m. to 11:30 a.m. and from
15 1:00 p.m. to 4:00 p.m.

16 b. Opening statements, examination of witnesses, and closing arguments should be
17 made from the lectern only.

18 c. Counsel shall not refer to their clients or any witness by their first names during trial.

19 d. When objecting, counsel shall state only that counsel is objecting and the legal
20 ground of the objection, e.g., hearsay, irrelevant, etc. Counsel shall *not* argue an
21 objection before the jury.

22 e. Counsel shall *not* approach the Courtroom Deputy Clerk or the witness box without
23 the Court's permission.

24 f. Counsel shall return to the lectern when his or her purpose has been accomplished.

25 g. Counsel shall *not* enter the well of the Court without the Court's permission.

26 h. Counsel shall rise when addressing the Court. In jury cases, please rise when the
27 jury enters or leaves the courtroom.

28 i. Counsel shall address all remarks to the Court.

- 1 j. Counsel shall not directly address the Courtroom Deputy Clerk, the reporter, or
2 opposing counsel.
- 3 k. If counsel wish to speak with opposing counsel, counsel shall ask permission to talk
4 to counsel OFF THE RECORD.
- 5 l. All requests for the re-reading of questions or answers or to have an exhibit placed
6 in front of a witness shall be addressed to the Court.
- 7 m. Counsel shall not make an offer of stipulation unless counsel has conferred with
8 opposing counsel and reached an agreement.
- 9 n. While the court is in session, counsel shall not leave the counsel table to confer with
10 investigators, secretaries, or witnesses unless permission is granted in advance.
- 11 o. When a party has more than one lawyer, only one may conduct the examination of
12 any given witness and only that same lawyer may handle objections during the
13 testimony of that witness.
- 14 p. If a witness was on the stand at a recess or adjournment, counsel shall have the
15 witness back on the stand and ready to proceed when Court resumes.
- 16 q. Counsel shall not run out of witnesses. If counsel is out of witnesses and there is
17 more than a brief delay, the Court may deem that counsel has rested.
- 18 r. The Court attempts to cooperate with doctors and other professional witnesses and
19 will, except in extraordinary circumstances, accommodate them by permitting them
20 to be out of sequence. Counsel should anticipate any such possibility and discuss
21 it with opposing counsel. If there is an objection, counsel shall confer with the Court
22 in advance.
- 23 s. Counsel are advised to be on time as the Court starts promptly.
- 24 t. Counsel should not by facial expression, nodding, or other conduct exhibit any
25 opinions, adverse or favorable, concerning any testimony which is being given by
26 a witness. Counsel should similarly admonish their own clients and witnesses to
27 avoid such conduct.
- 28

- 1 u. SPEAK UP when making an objection, the acoustics in the courtroom make it
2 difficult for all to hear an objection when it is being made.

3 **26. Protective Orders and Motions to Seal Documents**

4 a. Protective Orders. The parties are permitted to enter into stipulated protective
5 orders that govern how the parties are required to handle confidential material
6 produced in discovery.

7 b. Sealing Determinations. It is the Court, not the parties, that determines whether a
8 document can be filed under seal. Protective orders cannot pre-authorize a party
9 to file documents under seal. The Court will only permit filings under seal if the party
10 seeking to seal the information demonstrates why the public's traditional right of
11 access to court documents and the public policies favoring disclosure are
12 outweighed by good cause (if the motion is not case-dispositive) or compelling
13 reasons (if the motion is case-dispositive) that support keeping the information
14 under seal. The fact that a party has designated a particular document
15 "Confidential" pursuant to a protective order is not sufficient to convince the Court
16 that good cause or compelling reasons exist to seal that document. If a protective
17 order attempts to authorize the filing of materials under seal without an independent
18 showing of good cause or compelling reasons, the protective order will be rejected
19 or that provision will be ignored.

20 c. Noticed Motions in Cases with Protective Orders. **In any case where the parties**
21 **have entered into a stipulated protective order, noticed motions must be**
22 **noticed at least 35 days before the hearing date.**

23 d. Filing One's Own Confidential Documents with the Court. Any party who wishes to
24 file its own confidential material with the Court and have that information sealed
25 must submit an application to seal concurrently with the filing of the document
26 containing the confidential information.

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28

1 e. Filing Another Party's Confidential Documents with the Court.

- 2 1. Meet-and-Confer Requirement. If a party wishes to file in Court a document
3 containing information another party has designated "Confidential" pursuant
4 to a protective order, the party filing the document (the "Filing Party") must
5 give the party that designated the material "Confidential" (the "Designating
6 Party") at least seven calendar days' notice, informing the Designating Party
7 which specific documents or information the Filing Party intends to file with
8 the Court and the date of the anticipated filing. No fewer than four calendar
9 days prior to the anticipated filing, the Designating Party must inform the
10 Filing Party which of the identified material it intends to move to seal. This
11 subsection applies to any noticed motion or opposition to a noticed motion.
- 12 2. Timing of Applications to Seal. If the Designating Party wishes to seal certain
13 information, it must file an application to seal on or before the date the Filing
14 Party files the document containing the confidential information. This
15 subsection applies to any noticed motion or opposition to a noticed motion.
- 16 3. Filings Other Than Noticed Motions or Oppositions to Noticed Motions. A
17 party filing any document other than a noticed motion or opposition to a
18 noticed motion need not inform the Designating Party which material it
19 intends to file with the Court. If a Filing Party files a document other than a
20 noticed motion or opposition to a noticed motion that includes information
21 another party has designated "Confidential," the Filing Party must redact all
22 of the other party's confidential information from the publicly-available version
23 and lodge conditionally under seal unredacted copies with the Court. If the
24 Designating Party seeks to have any of the information sealed, it must file an
25 application to seal within four calendar days. If no application to seal is
26 received, the Court will reject the filing and give the Filing Party two days to
27 re-file unredacted versions of the documents.
- 28

1 f. Pilot Project for the Electronic Submission and Filing of Under Seal Documents.
2 Judge Otero is participating in the Central District of California's Pilot Project for the
3 Electronic Submission and Filing of Under Seal Documents. The Pilot Project
4 applies to both civil and criminal cases. When seeking the Court's approval for an
5 under seal filing, the Filing Party shall electronically file an Ex Parte Application to
6 Seal and proposed Order through the Court's CM/ECF System pursuant to L.R. 5-4.
7 The Ex Parte Application and proposed Order shall not contain the information the
8 party seeks to file under seal. The party seeking permission to file under seal shall
9 submit to the Court's generic e-mail address (sjo_chambers@cacd.uscourts.gov)
10 PDF versions of the Ex Parte Application, proposed Order, Declaration in Support
11 of Ex Parte Application stating the reason for the under seal filing, and the
12 document(s) and/or exhibit(s) the party seeks to file under seal. The party shall also
13 submit a Word or WordPerfect version of the proposed Order to the generic
14 chambers e-mail address. Unless otherwise ordered by the Court, the submitting
15 party shall deliver a Mandatory Chambers Copy of the Ex Parte Application,
16 proposed Order, Declaration in Support of Ex Parte Application, and the
17 document(s) and/or exhibit(s) the party seeks to file under seal to the Court's
18 courtesy copy box outside chambers no later than 12:00 p.m. on the following
19 business day. The Pilot Project for the Electronic Submission and Filing of Under
20 Seal Documents does not apply to in camera submissions.

21 g. Applications to File Under Seal. For each individual document or piece of
22 information a party wishes to seal, the application to seal must explain why good
23 cause (in the case of a non-case-dispositive motion) or compelling reasons (in the
24 case of a case-dispositive motion) exist to seal that particular document or piece of
25 information. Conclusory statements—such as that the information contains
26 "confidential, sensitive financial information"—are insufficient to establish good
27 cause or compelling reasons. For each individual document, the party applying to
28 seal the document must explain what adverse consequences would occur if the

1 document were made public. If the Court denies the application to seal, the Court
2 will instruct the party that filed the document to file an unredacted copy of the
3 document within two days of the Court's order.
4

5 Failure to conform with this Order may be deemed a waiver of trial by jury and may result
6 in sanctions. The Local Rules and Federal Rules of Civil Procedure control any issue not
7 specifically addressed in this Order. For further information regarding the Court's preferences,
8 refer to www.cacd.uscourts.gov > Judges' Requirements > Judges' Procedures and Schedules
9 > Hon. S. James Otero.

10 The Court thanks counsel and the parties for their anticipated cooperation. Counsel are
11 advised to check the Court's procedures regularly, as they are subject to change.
12

13 DATED: AUGUST 28, 2013

14 _____
15 S. JAMES OTERO
16 UNITED STATES DISTRICT JUDGE
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