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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BELL NORTHERN RESEARCH, LLC,
Plaintiff,
v.
ZTE CORPORATION, et al.,
Defendants.

Case No.: 18cv1786-CAB(BLM)

**SCHEDULING ORDER
REGULATING DISCOVERY AND
OTHER PRETRIAL PROCEEDINGS**

On August 9, 2019, District Judge Cathy A. Bencivengo issued an Order governing claim construction, after which the parties contacted chambers in compliance with this Court’s October 23, 2018 Case Management Order. Accordingly, the Court sets the remaining pretrial dates and deadlines as follows:

1. Counsel¹ shall refer to Judge Bencivengo’s Chambers Rules for Civil Cases, which is accessible via the Court’s website at www.casd.uscourts.gov.

2. All fact discovery shall be completed by all parties on or before **September 27, 2019**. “Completed” means that all discovery under Rules 30-36 of the Federal Rules

¹ As used herein, references of “counsel” include any party representing himself or herself.

1 of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient
2 period of time in advance of the cut-off date, so that it may be completed by the cut-off
3 date, taking into account the times for service, notice, and response as set forth in the
4 Federal Rules of Civil Procedure.

5 Counsel shall promptly and in good faith meet and confer with regard to all
6 discovery disputes in compliance with Federal Rule of Civil Procedure 37(a)(1) and Civil
7 Local Rule 26.1(a). All discovery motions must be filed within 30 days of the service of
8 an objection, answer or response which becomes the subject of dispute or the passage of a
9 discovery due date without response or production, and only after counsel have met and
10 conferred and have reached impasse with regard to the particular issue. The Court's
11 procedures for resolving discovery disputes are set forth in Magistrate Judge Barbara L.
12 Major's Civil Chambers Rules, which are posted on the Court's website. **A failure to**
13 **comply in this regard will result in a waiver of a party's discovery issue. Absent an**
14 **order of the court, no stipulation continuing or altering this requirement will be**
15 **recognized by the court.**

16 3. Plaintiff(s) (or the party(ies) having the burden of proof on any claim) shall
17 serve on all parties a list of experts whom that party expects to call at trial on or before
18 **September 27, 2019**. Defendant(s) (or the party(ies) defending any claim, counterclaim,
19 crossclaim, or third-party claim) shall serve on all parties a list of experts whom that
20 party expects to call at trial on or before **September 27, 2019**. On or before **October 18,**
21 **2019**, any party may supplement its designation in response to any other party's
22 designation, so long as that party has not previously retained an expert to testify on that
23 subject. Expert designations shall include the name, address, and telephone number of
24 each expert, and a reasonable summary of the testimony the expert is expected to provide.
25 The list shall also include the normal rates the expert charges for deposition and trial
26 testimony.

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1 The parties must identify any person who may be used at trial to present evidence
2 pursuant to Rules 702, 703 or 705 of the Federal Rules of Evidence. This requirement is
3 not limited to retained experts.

4 **Please be advised that failure to comply with this section or any other**
5 **discovery order of the Court may result in the sanctions provided for in Fed. R. Civ.**
6 **P. 37, including a prohibition on the introduction of experts or other designated**
7 **matters in evidence.**

8 4. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served on
9 all parties on or before **October 25, 2019**. Any contradictory or rebuttal disclosures
10 within the meaning of Rule 26(a)(2)(D)(ii) shall be disclosed on or before **December 6,**
11 **2019**. Unless otherwise stipulated by the parties, the required expert disclosures shall
12 include an expert report as required by Rule 26(a)(2)(B). If a written report is not
13 required, the disclosure must provide the information required under Rule 26(a)(2)(c).

14 5. All expert discovery shall be completed by all parties on or before **January**
15 **10, 2020** and shall be completed in the same manner as described in paragraph one (1)
16 governing the completion of fact discovery.

17 6. All other dispositive motions, including those addressing Daubert issues,
18 shall be FILED on or before **January 24, 2020**. Please be advised that counsel for the
19 moving party must obtain a motion hearing date from the law clerk of the judge who will
20 hear the motion. Failure of counsel to timely request a motion date may result in the
21 motion not being heard. Motions in Limine are to be filed as directed in the Local Rules,
22 or as otherwise set by **District Judge Bencivengo**.

23 7. Briefs or memoranda in support of or in opposition to any pending motion
24 shall not exceed twenty-five (25) pages in length without permission of the judge or
25 magistrate judge who will hear the motion. No reply memorandum shall exceed ten (10)
26 pages without leave of the judge or magistrate judge who will hear the motion.

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1 8. A Mandatory Settlement Conference shall be conducted on **October 23,**
2 **2019** at **9:30 a.m.** in the chambers of **Magistrate Judge Barbara L. Major** located at
3 **333 West Broadway, Suite 1110, San Diego, CA 92101.** All discussions at the
4 Mandatory Settlement Conference will be informal, off the record, privileged, and
5 confidential. Counsel for any non-English speaking party is responsible for arranging for
6 the appearance of an interpreter at the conference.

7 a. **Personal Appearance of Parties Required:** All parties, adjusters for
8 insured defendants, and other representatives of a party having full and complete
9 authority to enter into a binding settlement, as well as the principal attorneys responsible
10 for the litigation, must be present **in person** and legally and factually prepared to discuss
11 settlement of the case. Counsel appearing without their clients (whether or not counsel
12 has been given settlement authority) will be cause for immediate imposition of sanctions
13 and may also result in the immediate termination of the conference.

14 Unless there is good cause, persons required to attend the conference pursuant to
15 this Order shall not be excused from personal attendance. Requests for excuse from
16 attendance for good cause shall be made in writing at least three (3) court days prior to
17 the conference. Failure to appear in person at the Mandatory Settlement Conference will
18 be grounds for sanctions.

19 b. **Full Settlement Authority Required:** In addition to counsel who will try
20 the case, a party or party representative with full settlement authority² must be present for
21 the conference. In the case of a corporate entity, an authorized representative of the
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24 ² "Full settlement authority" means that the individuals at the settlement conference must be authorized
25 to explore settlement options fully and to agree at that time to any settlement terms acceptable to the
26 parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person
27 needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman
28 v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with
unlimited settlement authority to attend the conference contemplates that the person's view of the case
may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is
not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 corporation who is not retained outside counsel must be present and must have
2 discretionary authority to commit the company to pay an amount up to the amount of
3 Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement
4 is to have representatives present who can settle the case during the course of the
5 conference without consulting a superior. Counsel for a government entity may be
6 excused from this requirement so long as the government attorney who attends the
7 Mandatory Settlement Conference (1) has primary responsibility for handling the case,
8 and (2) may negotiate settlement offers which the attorney is willing to recommend to the
9 government official having ultimate settlement authority.

10 c. **Confidential Settlement Statements Required:** No later than **October 11,**
11 **2019,** the parties shall submit directly to Magistrate Judge Major's chambers (via hand
12 delivery or email address) confidential settlement statements no more than ten (10) pages
13 in length. **These confidential statements shall not be filed or served on opposing**
14 **counsel.** Each party's confidential statement must set forth the party's statement of the
15 case, identify controlling legal issues, concisely set out issues of liability and damages,
16 and shall set forth the party's settlement position, including any previous settlement
17 negotiations, mediation sessions, or mediation efforts, the last offer or demand made by
18 that party, and a separate statement of the offer or demand the party is prepared to make
19 at the settlement conference. If a specific demand or offer for settlement cannot be made
20 at the time the brief is submitted, then the reasons therefore must be stated along with a
21 statement as to when the party will be in a position to state a demand or make an offer.

22 General statements that a party will "negotiate in good faith" is not a specific
23 demand or offer contemplated by this Order. It is assumed that all parties will negotiate
24 in good faith.

25 d. **Requests to Continue a Mandatory Settlement Conference:** Any request
26 to continue the Mandatory Settlement Conference or request for relief from any of the
27 provisions or requirements of this Order must be sought by a **joint motion,** or—if the
28 motion is opposed—a **written ex parte application** filed by the party seeking the

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