

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

BACKWEB TECHNOLOGIES

No. C-09-1224 CW

v.
MICROSOFT CORP.

MINUTE ORDER AND
CASE MANAGEMENT
ORDER

_____ /

Clerk: Frank Justiliano Reporter: David Disbrow
Plaintiff Attorney: Bruce Wecker, Spencer Hosie
Defendant Attorney: Eric Wesenberg, Stephen McGrath, Quinn Emanuel

A case management conference was held on: 9/15/09. The Case Management Statement and Proposed Order filed by the parties is hereby adopted by the Court as the Case Management Order for the case, except as may be noted below. The Court's standard Order for Pretrial Preparation also applies.

The case is hereby referred to the following ADR process:
Non-binding Arbitration: () Early Neutral Evaluation: ()
Court-connected mediation: () Private mediation: (X)
Magistrate Judge settlement conference: ()
ADR session to be held by: 04/09/10
(or as soon thereafter as is convenient to the mediator's schedule)
Deadline to add additional parties or claims: 09/15/09
Date of next case management conference: 01/20/11
Completion of Fact Discovery: 08/12/10
Disclosure of identities and reports of expert witnesses: 08/23/10
Completion of Expert Discovery: 10/22/10

All case-dispositive motions and claim construction and motion to limit or exclude Expert Testimony to be heard at 2:00 P.M. on or before: 01/20/11
Final Pretrial Conference at 2:00 P.M. on: 03/22/11
A 15 day Jury Trial will begin at 8:30 A.M. on: 04/04/11

Additional Matters: Deadline for plaintiff to file dispositive motions, claim Construction briefs and motion to limit or exclude expert testimony (all in one brief) is 11/1/10. Opposition/Cross motions due 12/2/10; Reply due 12/16/10; Reply to cross motion due 1/6/11. Copy of Court's Order for Pretrial Preparation given to attys in court.

IT IS SO ORDERED.

Dated: September 18, 2009



CLAUDIA WILKEN
United States District Judge

Copies to: Chambers; ADR;

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2 NOTICE

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4 **Case Management Conferences and Pretrial Conferences** are
5 conducted on **Tuesdays** at 2:00 p.m. **Criminal Law and Motion** calendar
6 is conducted on **Wednesdays** at 2:00 p.m. for defendants in custody and
7 2:30 p.m. for defendants not in custody. **Civil Law and Motion**
8 calendar is conducted on **Thursdays** at 2:00 p.m. Order of call is
determined by the Court. Counsel need not reserve a hearing date for
civil motions; however, counsel are advised to check the legal
newspapers or the Court's website at www.cand.uscourts.gov for
unavailable dates.

9 Motions for Summary Judgment: All issues shall be contained
10 within one motion of 25 pages or less, made on 35 days notice. (See
11 Civil L.R. 7-2). Separate statements of undisputed facts in support
12 of or in opposition to motions for summary judgment will not be
13 considered by the Court. (See Civil Local Rule 56-2(a)). The motion
14 and opposition should include a statement of facts supported by
15 citations to the declarations filed with respect to the motion.
16 Evidentiary and procedural objections shall be contained within the
17 motion, opposition or reply; separate motions to strike will not be
considered by the Court. Any cross-motion shall be contained within
the opposition to any motion for summary judgment, shall contain 25
pages or less, and shall be filed 21 days before the hearing. The
reply to a motion may contain up to 15 pages, shall include the
opposition to any cross-motion, and shall be filed 14 days before the
hearing. (See Civil Local Rule 7-3). The Court may, *sua sponte* or
pursuant to a motion under Civil L.R. 6-3, reschedule the hearing so
as to give a moving party time to file a reply to any cross-motion.

18 All discovery motions are referred to a Magistrate Judge to be
19 heard and considered at the convenience of his/her calendar. All such
20 matters shall be noticed by the moving party for hearing on the
assigned Magistrate Judge's regular law and motion calendar, or
pursuant to that Judge's procedures.

21 Pursuant to General Order 45, § VI.G, "In all cases subject to
22 ECF, in addition to filing papers electronically, the parties are
23 required to lodge for chambers **no later than noon on the business day**
24 **following the day that the papers are filed electronically**, one paper
25 copy of each document that is filed electronically."

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28 (rev. 10/10/07)

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(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputed.

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

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

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

(3) Disputed Legal Issues. Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief.

(4) Further Discovery or Motions. A statement of all remaining discovery or motions.

(5) Trial Alternatives and Options.

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(B) Consent to Trial Before a Magistrate Judge. A statement whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

(C) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

(6) Miscellaneous. Any other subjects relevant to the trial of the action, or material to its just, speedy and inexpensive determination.

(b) Exhibit List and Objections. The exhibit list shall list each proposed exhibit by its number (see Civil L.R. 30-2(b)), description, and sponsoring witness, followed by blanks to accommodate the date on which it is marked for identification and the date on which it is admitted into

1 evidence. **No party shall be permitted to offer any exhibit in**
2 **its case-in-chief that is not disclosed in its exhibit list**
3 **without leave of the Court for good cause shown.** Parties shall
4 also deliver a set of premarked exhibits to the Courtroom
5 Deputy. The exhibit markers shall each contain the name and
6 number of the case, the number of the exhibit, and blanks to
7 accommodate the date admitted and the Deputy Clerk's initials.
8 (Appropriate sample forms are available on the Court's website
9 at www.cand.uscourts.gov). Any objections to exhibits which
10 remain after the pretrial meeting shall be indicated in the
11 pretrial statement.

12 (c) Witness List. In addition to the requirements of
13 FR Civ P 26(a)(3)(A), a brief statement describing the substance
14 of the testimony to be given by each witness who may be called
15 at trial. **No party shall be permitted to call any witness in**
16 **its case-in-chief that is not disclosed in its pretrial**
17 **statement without leave of Court for good cause shown.**

18 (d) Use of Discovery Responses. In addition to the
19 requirements of FR Civ P 26(a)(3)(B), a designation of any
20 excerpts from interrogatory answers or from responses for
21 admissions intended to be offered at trial. Counsel shall
22 indicate any objections to use of these materials and that
23 counsel have conferred respecting such objections.

24 (e) Trial briefs. Briefs on all significant disputed
25 issues of law, including foreseeable procedural and evidentiary
26 issues, which remain after the pretrial meeting.

27 (f) Motions in Limine. Any motions in limine that
28 could not be settled at the pretrial meeting shall be filed with

1 the pretrial statement. All motions in limine shall be
2 contained within one document, limited to 25 pages pursuant to
3 Civil L.R. 7-2(b), with each motion listed as a subheading.
4 Opposition to the motions in limine shall be contained within
5 one document, limited to 25 pages, with corresponding
6 subheadings, and filed five (5) days thereafter.

7 (g) Joint Proposed Voir Dire. The attached voir dire
8 questionnaire will be given to the venire members, and copies of
9 the responses will be made available to counsel at the beginning
10 of voir dire. Counsel may submit a set of additional requested
11 voir dire, to be posed by the Court, to which they have agreed
12 at the pretrial meeting. Any voir dire questions on which
13 counsel cannot agree shall be submitted separately. Counsel may
14 be allowed brief follow-up voir dire after the Court's
15 questioning.

16 (h) Joint Proposed Jury Instructions. As applicable,
17 jury instructions §1.1A, §1.1C, §1.2 through §1.17, §1.19, §2.1
18 through §2.13, §3.1 through §3.3 from the Manual of Model Civil
19 Jury Instructions for the Ninth Circuit (2007 Edition) will be
20 given absent objection. Counsel shall jointly submit one set of
21 additional proposed jury instructions, to which they have agreed
22 at the pretrial meeting. The instructions shall be ordered in
23 a logical sequence, together with a table of contents. Any
24 instruction on which counsel cannot agree shall be marked as
25 "disputed," and shall be included within the jointly submitted
26 instructions and accompanying table of contents, in the place
27 where the party proposing the instruction believes it should be
28 given. Argument and authority for and against each disputed

1 instruction shall be included as part of the joint submission,
2 on separate sheets directly following the disputed instruction.

3 Whenever possible, counsel shall deliver to the
4 Courtroom Deputy a copy of their joint proposed jury
5 instructions on a computer disk in WordPerfect or ASCII format.
6 The disk label should include the name of the parties, the case
7 number and a description of the document.

8 (i) Proposed Verdict Forms, Joint or Separate.

9 (j) Proposed Findings of Fact and Conclusions of Law
10 (Court Trial only). Whenever possible, counsel shall deliver to
11 the Courtroom Deputy a copy of their proposed findings of fact
12 and conclusions of law on a computer disk in WordPerfect or
13 ASCII format. The disk label should include the name of the
14 parties, the case number and a description of the document.

15 JURY SELECTION

16 The Jury Commissioner will summon 20 to 25 prospective
17 jurors. The Courtroom Deputy will select their names at random
18 and seat them in the courtroom in the order in which their names
19 are called.

20 Voir dire will be asked of sufficient venire persons so
21 that eight (or more for a lengthy trial) will remain after all
22 peremptory challenges and an anticipated number of hardship
23 dismissals and cause challenges have been made.

24 The Court will then take cause challenges, and discuss
25 hardship claims from the individual jurors, outside the presence
26 of the venire. The Court will inform the attorneys which
27 hardship claims and cause challenges will be granted, but will
28 not announce those dismissals until the process is completed.

1 Each side may then list in writing up to three peremptory
2 challenges. The attorneys will review each other's lists and
3 then submit them to the Courtroom Deputy.

4 Then, from the list of jurors in numerical order, the Court
5 will strike the persons with meritorious hardships, those
6 excused for cause, and those challenged peremptorily, and call
7 the first eight people in numerical sequence remaining. Those
8 people will be the jury.

9 All jurors remaining at the close of the case will
10 deliberate. There are no alternates.

11 SANCTIONS

12 Failure to comply with this Order is cause for sanctions
13 under Federal Rule of Civil Procedure 16(f).

14 IT IS SO ORDERED.

15 *Claudia Wilken*
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Dated: _____

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

JUROR QUESTIONNAIRE

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Please fill out this form as completely as possible and print clearly. Since we want to make copies for the attorneys and the Court, do not write on the back of any page. If you need more room, continue at the bottom of the page. Thank you for your cooperation.

1. Your name: _____

2. Your age: _____

3. The city where you live: _____

How long have you lived there: _____

4. Your place of birth: _____

5. Do you rent or own your own home? _____

6. Your marital status: (circle one)

single married live with partner separated divorced widowed

7. What is your occupation, and how long have you worked in it? (If you are retired, please describe your main occupation when you were working).

8. Who is (or was) your employer?

9. How long have you worked for this employer? _____

10. Please list the occupations of any adults with whom you live.

11. If you have children, please list their ages and sex and, if they are employed, please give their occupations.

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12. Please describe your educational background:
Highest grade completed: _____
College and/or vocational schools you have attended:

Major areas of study: _____

13. Have you ever served on a jury before? _____ How many
times? _____
If yes: State/County Court _____ Federal Court _____
When? _____
Was it a civil or criminal case? _____
Did the jury(ies) reach a verdict? _____

14. Attached is a list of the parties in this case, the law firms
representing the parties, attorneys in this case, and persons
who are potential witnesses in this case. Do you know, or think
you know, any of the persons listed?
Yes: _____ No: _____
If so, make a check next to their name.

Plaintiff's Exhibit Markers

**United States District Court
Northern District of California**

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

**United States District Court
Northern District of California**

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

**United States District Court
Northern District of California**

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

**United States District Court
Northern District of California**

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

Defendant's Exhibit Markers

**United States District Court
Northern District of California**

▲ DEFENDANT ▲

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

**United States District Court
Northern District of California**

▲ DEFENDANT ▲

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

**United States District Court
Northern District of California**

▲ DEFENDANT ▲

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

**United States District Court
Northern District of California**

▲ DEFENDANT ▲

Case No. _____
Case Title _____
Exhibit No. _____
Date Entered _____

Richard W. Wicking, Clerk

By: _____, Deputy Clerk

el shall meet and confer pursuant to Civ. L.R. 30-3(b) and assign blocks of numbers to the
its (i.e. Plaintiff 1 - 199; Defendant 200 - 400).
it Markers should be placed on the lower right-hand corner of the exhibits. Exhibits should
ntained within a binder with each exhibit separated by a tabbed page denoting the exhibit
r.