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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. C13-0133 EMC

Plaintiff,

v.

**CASE MANAGEMENT
AND PRETRIAL ORDER FOR
COURT TRIAL**

BAZAARVOICE, INC.,

Defendant.

Pursuant to Federal Rule of Civil Procedure 16 and Civil Local Rule 16-10, THE FOLLOWING
DEADLINES ARE HEREBY ORDERED:

1. TRIAL DATE: 9/10/2013, at 8:30 a.m.
Courtroom 5, 17th Floor
Jury () or Court (x)
2. TRIAL LENGTH: Estimated twenty (20) court days
(typical court day for trial is 8:30 a.m. to 2:00 p.m.; **Thursdays are dark**)
3. FINAL PRETRIAL CONFERENCE: 8/27/2013, at 2:30 p.m.
**LEAD COUNSEL WHO WILL TRY THE
CASE MUST ATTEND.**
4. DISPOSITIVE MOTIONS: Last day to be *heard* 6/13/2013 at 1:30 p.m.
See Civil Local Rules for notice and filing requirements.
5. NON-EXPERT DISCOVERY CUT-OFF: 6/28/2013

///

- 1 6. EXPERT REPORTS AND IDENTIFICATION: Experts to be called in case-in-chief
 2 shall be identified by 5/31/2013.
 3 Rebuttal experts be identified by
 4 6/14/13.
 5 Opening reports by 6/21/2013
 6 Rebuttal reports by 7/12/2013
- 7 7. EXPERT DISCOVERY CUT-OFF: 8/6/2013
- 8 8. DISCOVERY LIMITATIONS: Prior to completion of ADR, each party is
 9 (F.R.C.P. applies unless limited to:
 otherwise indicated)
- 10 Note: Parties may proceed with depositions and written discovery consistent with the Federal Rules
 11 of Civil Procedure except where set forth below. All document requests must be served by 6/14/13.
 12 All other written discovery requests must be served by 6/28/13. Parties shall contact the discovery
magistrate judge for any discovery disputes.
- 13 Interrogatories __
- 14 Depositions 170 hours each side
 15 (with limit of 90 hours for
 16 non-party witnesses)
- 17 Document Requests __
- 18 Requests for Admission __
- 19 After ADR, each party is limited to:
 20 Interrogatories ____
 21 Depositions ____
 22 Document Requests ____
 23 Requests for Admission ____
- 24 9. ADR: To be completed ____
 25 Court-sponsored mediation __
 26 Court-sponsored ENE __
 27 Mag. Judge Settlement Conf. __
 28 Private mediation ____
 Private arbitration ____
 Other : _____
10. LAST DAY TO AMEND PLEADING: 4/15/2013
11. FURTHER STATUS CONFERENCE: 5/16/2013 at 10:30 a.m.

1 **PRETRIAL INSTRUCTIONS**

2 **A. MEET AND CONFER**

3 At least forty-two (42) days prior to the final pretrial conference, lead counsel who will try
4 the case shall meet and confer regarding the following:

- 5
- 6 • Preparation and content of the joint pretrial conference statement, *see* Part B, *infra*;
 - 7 • Preparation and exchange of pretrial materials, *see* Part C, *infra*; and
 - 8 • Settlement of the action.

9 **B. JOINT PRETRIAL CONFERENCE STATEMENT**

10 At least twenty-one (21) days prior to the final pretrial conference, the parties shall file a
11 joint pretrial conference statement. The statement shall contain the following information:

12 **1. The Action.**

- 13
- 14 a. Substance of the Action. A brief description of the substance of claims and
15 defenses which need to be decided.
 - 16 b. Relief Prayed. A statement of all relief sought, particularly itemizing all
17 elements of damages claimed.

18 **2. Factual Basis of the Action.**

- 19
- 20 a. Undisputed Facts. A list of all stipulated facts, *i.e.*, all facts parties to which
21 the parties will stipulate to for incorporation into the trial record without the
22 necessity of supporting testimony or exhibits.
 - 23 b. Disputed Factual Issues. A list of all factual issues that remain to be tried,
24 stating the issues with the same generality/specificity as any contested
25 elements in the relevant jury instructions and organized by counts.
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- 1 **3. Disputed Legal Issues.** *Without extended legal argument*, a concise statement of
2 each disputed point of law concerning liability or relief, citing supporting statutes and
3 decisions.
- 4 **4. Estimate of Trial Time.** An estimate of the number of hours needed for the
5 presentation of each party's case.
- 6 **5. Trial Alternatives and Options.**
- 7 a. Settlement Discussion. A statement summarizing the status of settlement
8 negotiations and indicating whether further negotiations are likely to be
9 productive.
- 10 b. Consent to Trial Before a Magistrate Judge. A statement whether reference of
11 all or part of the action to a master or magistrate judge is feasible, including
12 whether the parties consent to a court or jury trial before a magistrate judge,
13 with appeal directly to the Ninth Circuit.
- 14 c. Amendments or Dismissals. A statement of requested or proposed
15 amendments to pleadings or dismissals of parties, claims, or defenses.
- 16 d. Bifurcation or Separate Trial of Issues. A statement of whether bifurcation or
17 a separate trial of specific issues is feasible and desired.
- 18 **6. Witnesses.** *The following information should be provided as an appendix to the joint*
19 *pretrial conference statement.* For each party, a list of all witnesses likely to be
20 called at trial, including those appearing by deposition. For each witness, there
21 should be a short statement of the substance of his or her testimony and an estimate
22 regarding the length of testimony (including direct and cross-examination). If the
23 witness is an expert witness, the short statement should clearly state the expert's
24 theories and conclusions and the bases therefor; in addition, the expert's curriculum
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1 vitae and report (if any) should be attached. If there are objections to a live witness's
2 testimony, whether in whole or in part, that objection should be raised through a
3 motion in limine. For objections to deposition testimony, *see* Part B.8, *infra*.

4
5 7. **Exhibits.** *The following information should be provided as an appendix to the joint*
6 *pretrial conference statement. A joint exhibit list in tabular form, with (a) a column*
7 *that briefly describes the exhibit; (b) a column that describes for what purpose the*
8 *party will offer the exhibit and identifies its sponsoring witness; (c) a column that*
9 *states any objections to the exhibit; (d) a column that briefly responds to the*
10 *objections; and (e) a blank column for the Court's use. Before this list is filed with*
11 *the Court, the parties shall meet and confer, in person, to consider exhibit numbers, to*
12 *eliminate duplicate exhibits and confusion over exhibits, and to make a good faith*
13 *effort to stipulate to admissibility. If stipulation is not possible, the parties shall make*
14 *every effort to stipulate to authenticity and foundation absent a legitimate (not*
15 *tactical) objection. In addition to the above, a joint statement in which each party*
16 *identifies fifteen (15) of the opposing party's exhibits for which the identifying party*
17 *seeks rulings on objections in advance of trial. A party may identify, e.g., an exhibit*
18 *that it believes is critical to the case (if admitted or if not admitted) or an exhibit that*
19 *it believes is representative of other exhibits such that the identified exhibit will*
20 *provide a bellwether as to how the Court will rule on other exhibits.*

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24 8. **Use of Discovery Responses.** *The following information should be provided as an*
25 *appendix to the joint pretrial conference statement. Excerpts of interrogatory*
26 *responses, responses to requests for admission, and deposition testimony (with*
27 *specific line references identified) that each party intends to present at trial. If there*
28 *are objections to the use of written responses, the parties should include a joint*

1 memorandum that briefly states the objecting party's objection and the opposing
2 party's response. If there is an objection to the general subject matter of a deponent's
3 testimony, the objection should be made through a motion in limine. If specific
4 objections were made during the deposition that are still in need of a Court ruling, the
5 parties should include a joint memorandum that identifies the deposition testimony at
6 issue and that briefly states the objecting party's objection (including any counter-
7 designation) and the opposing party's response (including any counter-designation).
8
9 The Court expects the parties to meet and confer in good faith in the attempt to
10 resolve those specific objections regarding deposition testimony before any
11 memorandum regarding objections are filed.
12

13 **C. PRETRIAL MATERIALS**

14 Parties shall meet and confer and to submit a stipulation on the deadline to exchange trial
15 witness list well in advance of trial to permit focused discovery. At least twenty-one (21) days prior
16 to the final pretrial conference, the parties shall file the following pretrial materials.
17

18 **1. Motions in Limine.** The following procedure should be used with respect to motions
19 in limine. At least thirty-two (32) days before the pretrial conference, serve – but do not file – the
20 moving papers. At least twenty-five (25) days before the conference, serve – but do not file – the
21 oppositions. When the oppositions are received, the moving party should collate the motion and
22 opposition together, back to back, and then file the paired sets (each under separate cover) at least
23 twenty-one (21) days prior to the conference.
24

25 Each motion in limine should address a single topic and contain no more than seven pages of
26 briefing per side. Reply briefs are not permitted. Usually, each party or side should not need to file
27 more than five motions in limine. Each party shall number its motions in limine in order of
28 importance, the first being the most important.

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2. **Proposed Findings of Fact and Conclusions of Law.** In a bench trial, each party or side shall submit proposed findings of fact and conclusions of law. After trial, the parties may file revised proposed findings and conclusions.

3. **Exhibits.** The parties shall submit *two* sets of all exhibits. Exhibits are not to be filed but rather shall be submitted to chambers. *Exhibits must be premarked. In addition, one set of exhibits must be tagged.* Exhibits shall be three-hole punched and shall be submitted in binders. Sample tags may be obtained from the Courtroom Deputy and are attached as Exhibit A hereto.

4. **Trial Brief.** Each party shall submit a trial brief not to exceed 25 pages absent court order. A trial brief is most helpful to the Court when it: (1) summarizes the party's theory of the case, (2) identifies key evidence, and (3) provides summary briefing on any controlling issues of law.

Dated: February 19, 2013



EDWARD M. CHEN
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case Number: _____
PLTF / DEFT EXHIBIT NO. _____
Date Admitted: _____
By: _____

Betty Lee, Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case Number: _____
PLTF / DEFT EXHIBIT NO. _____
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