

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-004730

12/13/2005

HONORABLE JANET E. BARTON

CLERK OF THE COURT
E. Schneider
Deputy

FILED: 12/15/2005

ELLA MALEY

MICHAEL N POLI

v.

SPA AT RANCHO MANANA L L C, THE, et al. MARK D FULLERTON

MICHAEL J CHILDERS

MINUTE ENTRY

The Court has received and reviewed Plaintiff's Motion to Set and Certificate of Readiness.

IT IS ORDERED as follows:

Counsel are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz. R. Civ. P. Counsel shall prepare and file with the Court, no later than **5:00 p.m. on January 13, 2006**, a Joint Pretrial Memorandum, and a proposed Order, for discovery, motion and disclosure deadlines.

If the parties agree to the dates, they should prepare an Order in the form set forth below, containing the provisions which are applicable to their case. For example, paragraph 1 of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

The proposed Order shall include specific dates ("December 5, 2002" is a specific date. "90 days prior to trial" is a date in reference to a trial date and is not a specific date). Do not incorporate a firm trial date in the proposed Order.

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If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their Pretrial Memorandum and each shall prepare a separate proposed Order.

The Court will review the Joint Pretrial Memorandum and proposed Scheduling Order. If all is in order, the Court will set a status conference close to the discovery cutoff date. At the status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. There will be no telephonic appearances at the status conference without prior Court approval. Counsel who will be the trial lawyers in the case must appear in person with their trial calendar. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal within 60 days.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the Joint Pretrial Memorandum.

If a Joint Pretrial Conference Memorandum and proposed Scheduling Order are not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

PROPOSED ORDER LANGUAGE:

The Court has received and reviewed the parties' Joint Pretrial Memorandum and proposed Scheduling Order.

In accordance therewith,

IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by **5:00 p.m. on _____, 2006.** [or]
 - a. Plaintiffs shall disclose areas of expert testimony by **5:00 p.m. on _____, 2006.**
 - b. Defendants shall disclose areas of expert testimony by **5:00 p.m. on _____, 2006.**
2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 2006.** [or]

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- a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 2006.**
- b. Defendants shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on _____, 2006.**
3. Any and all discovery requests shall be served by **5:00 p.m. on _____, 2006.**
4. The parties shall disclose all non-expert witnesses by **5:00 p.m. on _____, 2006.**
[or]
 - a. Plaintiffs shall disclose areas of non-expert testimony by **5:00 p.m. on _____, 2006.**
 - b. Defendants shall disclose areas of non-expert testimony by **5:00 p.m. on _____, 2006.**
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by **5:00 p.m. on _____, 2006.**
6. All discovery shall be concluded by **5:00 p.m. on _____, 2006.**
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by **5:00 p.m. on _____, 2006.** This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. Settlement conference (choose one):
 - a. The parties shall participate in private mediation by **5:00 p.m. on _____, 2006;**

OR

- b. The parties shall participate in a mandatory Settlement Conference and this matter is referred to the court's Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. Counsel and any "proper" parties will contact the appointed judge pro tempore to arrange the time and location for the settlement conference. The judge *pro tempore* is requested to conduct a settlement conference not later than _____, 2006. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re:

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Alternative to ADR must be presented to the Court by **5:00 p.m. on _____, 2006.**

9. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
10. All pretrial motions, other than motions *in limine*, must be filed by **5:00 p.m. on _____, 2006.**
11. A status conference is set for _____, **2006 at _____*m.** for the purpose of assigning a trial date if the case has not settled. Counsel are to bring their trial calendars and the parties must appear in person and cannot appear telephonically for the status conference.
12. Should any discovery disputes arise, counsel, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P., then telephonically contact the Court to set up a telephonic conference to discuss any remaining issues.
13. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.
14. This case is removed from the Inactive Calendar and all requirements of Rule 38.1, Ariz.R.Civ.P., are waived unless and until otherwise ordered by the Court.