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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ASIS INTERNET SERVICES,  
v.  
OPTIN GLOBAL, INC. ET AL,  
\_\_\_\_\_ /

No. C 05-05124 CW

MINUTE ORDER AND  
CASE MANAGEMENT  
ORDER

Clerk: Sheilah Cahill Reporter: Raynee Mercado  
Plaintiff Attorney: Jason Singleton by phone  
Defendant Attorney: John Chu; Henry Burgoyne, James Snell and  
William Schuster by phone

A case management conference was held on: 12/15/06. 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: ( X ) Private mediation: ( )  
Magistrate Judge settlement conference: ( )  
ADR session to be held by: (03/15/07)  
(or as soon thereafter as is convenient to the mediator's schedule)  
Deadline to add additional parties or claims: (02/15/07)  
Date of next case management conference: (04/20/07)  
Completion of Fact Discovery: (08/10/07)  
Disclosure of identities and reports of expert witnesses: (09/10/07)  
Rebuttal: [10/10/07]  
Completion of Expert Discovery: (11/12/07)  
Early dispositive motions to be heard at 10:00 AM  
on or before: (04/20/07)  
Final Pretrial Conference at 1:30 P.M. on: (03/14/08)  
A 6 day Jury Trial will begin at 8:30 A.M. on: (03/24/08)

Additional Matters: Copy of Court's Order for Pretrial Preparation given to attys. Defendants to file early dispositive motions not needing discovery by 3/16/07 and notice for hearing on 4/20/07. 2nd round of dispositive motions to be noticed for hearing on 12/14/07 at 10:00 a.m. A further case management conference will be held on 4/20/07 at 10:00 a.m and also on 12/14/07 at 10:00 a.m. whether or not dispositive motions are filed. Plaintiff to provide initial disclosure NLT 12/18/06. Consent/declination forms to be faxed to counsel to be executed and returned by 12/22/06.

IT IS SO ORDERED.

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Dated: 12/21/06

  
CLAUDIA WILKEN  
United States District Judge

Copies to: Chambers; ADR

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NOTICE

Criminal Law and Motion calendar is conducted on Mondays at 2:00 p.m. (in custody) and 2:30 p.m. (not in custody). Civil Law and Motion calendar is conducted on Fridays at 10:00 a.m. Case Management Conferences and Pretrial Conferences are conducted on Fridays at 1:30 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.

Motions for Summary Judgment: All issues shall be contained within one motion and shall conform with Civil L.R. 7-2. Separate statements of undisputed facts in support of or in opposition to motions for summary judgment will not be considered by the Court. (See Civil Local Rule 56-2(a)). All briefing on motions for summary judgment must be included in the memoranda of points and authorities in support of, opposition to, or reply to the motion, and must comply with the page limits of Civil Local Rule 7-4. The memoranda should include a statement of facts supported by citations to the declarations filed with respect to the motion. Cross or counter-motions shall be contained within the opposition to any motion for summary judgment and shall conform with Civil L.R. 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 surreply to the cross or counter-motion.

All DISCOVERY MOTIONS are referred to a Magistrate Judge to be heard and considered at the convenience of his/her calendar. All such 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.

(rev. 5/11/05)

1 ORDER FOR PRETRIAL PREPARATION

2 PRETRIAL CONFERENCE

3 1. Not less than 30 days prior to the pretrial conference,  
4 counsel shall **exchange** (but not file or lodge) the papers described  
5 in Civil L.R. 16-10(b)(7),(8),(9), and (10), and their motions in  
6 limine.

7 2. At least 20 days before the final pretrial conference, lead  
8 counsel who will try the case shall meet and confer with respect to:

9 (a) Preparation and content of the joint pretrial  
10 conference statement;

11 (b) Resolution of any differences between the parties  
12 regarding the preparation and content of the joint pretrial  
13 conference statement and the preparation and exchange of  
14 pretrial materials to be served and lodged pursuant to this  
Order for Pretrial Preparation. To the extent such differences  
are not resolved, parties will present the issues in the  
pretrial conference statement so that the judge may rule on the  
matter during the pretrial conference; and

15 (c) Settlement of the action.

16 3. Not less than 10 days prior to the pretrial conference,  
17 counsel shall submit the following.

18 (a) Pretrial Conference Statement. The parties shall file  
19 a joint pretrial conference statement containing the following  
20 information:

21 (1) The Action.

22 (A) Substance of the Action. A brief description of the  
23 substance of claims and defenses which remain to be decided.

24 (B) Relief Prayed. A detailed statement of all the relief  
25 claimed, particularly itemizing all elements of damages claimed.

26 (2) The Factual Basis of the Action.

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

28 (B) Disputed Factual Issues. A plain and concise

1 statement of all disputed factual issues which remain to be  
2 decided.

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

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

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

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

13 (5) Trial Alternatives and Options.

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

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

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

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

27 (b) Exhibit List and Objections. The exhibit list shall  
28 list each proposed exhibit by its number, 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  
evidence. **No party shall be permitted to offer any exhibit in its  
case-in-chief that is not disclosed in its exhibit list without leave  
of the Court for good cause shown.** Parties shall also deliver a set

1 of premarked exhibits to the Courtroom Deputy. The exhibit markers  
2 shall each contain the name and number of the case, the number of the  
3 exhibit, and blanks to accommodate the date admitted and the Deputy  
4 Clerk's initials. (Appropriate sample forms are available on the  
5 Court's website at [www.cand.uscourts.gov](http://www.cand.uscourts.gov)). Any objections to exhibits  
6 which remain after the pretrial meeting shall be indicated in the  
7 pretrial statement.

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

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

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

23 (f) Motions in Limine. Any motions in limine that could  
24 not be settled at the pretrial meeting shall be filed with the  
25 pretrial statement. All motions in limine shall be contained within  
26 one document, limited to 25 pages pursuant to Civil L.R. 7-2(b), with  
27 each motion listed as a subheading. Opposition to the motions in  
28 limine shall be contained within one document, limited to 25 pages,

1 with corresponding subheadings, and filed five (5) days thereafter.

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

10 (h) Joint Proposed Jury Instructions. Jury instructions  
11 §1.1 through §1.12, §1.13 through §2.2, and §3.1 through §4.3 from the  
12 Manual of Model Civil Jury Instructions for the Ninth Circuit (2001  
13 Edition) will be given absent objection. Counsel shall jointly submit  
14 one set of additional proposed jury instructions, to which they have  
15 agreed at the pretrial meeting. The instructions shall be ordered in  
16 a logical sequence, together with a table of contents. Any  
17 instruction on which counsel cannot agree shall be marked as  
18 "disputed," and shall be included within the jointly submitted  
19 instructions and accompanying table of contents, in the place where  
20 the party proposing the instruction believes it should be given.  
21 Argument and authority for and against each disputed instruction shall  
22 be included as part of the joint submission, on separate sheets  
23 directly following the disputed instruction.

24 Whenever possible, counsel shall deliver to the Courtroom Deputy  
25 a copy of their joint proposed jury instructions on a computer disk  
26 in WordPerfect or ASCII format. The disk label should include the  
27 name of the parties, the case number and a description of the  
28 document.

1 (I) Proposed Verdict Forms, Joint or Separate.

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

8 JURY SELECTION

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

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

16 The Court will then take cause challenges, and discuss hardship  
17 claims from the individual jurors, outside the presence of the venire.  
18 The Court will inform the attorneys which hardship claims and cause  
19 challenges will be granted, but will not announce those dismissals  
20 until the process is completed. Each side may then list in writing  
21 up to three peremptory challenges. The attorneys will review each  
22 other's lists and then submit them to the Courtroom Deputy.

23 Then, from the list of jurors in numerical order, the Court will  
24 strike the persons with meritorious hardships, those excused for  
25 cause, and those challenged peremptorily, and call the first eight  
26 people in numerical sequence remaining. Those people will be the  
27 jury.

28 All jurors remaining at the close of the case will deliberate.

1 There are no alternates.

2 SANCTIONS

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

5 IT IS SO ORDERED.

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

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Dated: \_\_\_\_\_

s/CLAUDIA WILKEN  
CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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JUROR QUESTIONNAIRE

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: \_\_\_\_\_

4. Your place of birth: \_\_\_\_\_

5. Do you rent or own your own home? \_\_\_\_\_

6. Your marital status: (circle one)  
single married 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: \_\_\_\_\_

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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? \_\_\_\_\_

(rev. 9/4/02)