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*Attorneys for Defendants C.R. England, Inc., Opportunity Leasing, Inc., and Horizon Truck Sales and Leasing, LLC*

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH (CENTRAL DIVISION)**

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**CHARLES ROBERTS**, an individual, and  
**KENNETH MCKAY**, an individual, on  
behalf of themselves and others similarly  
situated,

Plaintiffs,

v.

**C.R. ENGLAND, INC.**, a Utah corporation;  
**OPPORTUNITY LEASING, INC.**, a Utah  
corporation; and **HORIZON TRUCK SALES  
AND LEASING, LLC**, a Utah limited  
liability company,

Defendants.

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**FOURTH AMENDED SCHEDULING  
ORDER**

Judge Robert J. Shelby

Civil No. 2:12-CV-00302 -RJS-BCW

Magistrate Judge Brooke C. Wells

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Pursuant to Fed. R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' May 14, 2012 Planning Report [Dkt. 83] filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

<b>1.</b>	<b>PRELIMINARY MATTERS</b>	<b>DATE</b>
	Nature of claims and any affirmative defenses:	N/A
	<i>See</i> paragraph 1(a) of Attorneys' Planning Report dated May 14, 2012	
a.	Was Rule 26(f)(1) Conference held?	<b>05/10/12</b>
b.	Has Attorney Planning Meeting Form been submitted?	<b>05/11/12</b>
c.	Was 26(a)(1) initial disclosure completed?	<b>09/22/11</b>
<b>2.</b>	<b>DISCOVERY LIMITATIONS</b>	<b>NUMBER</b>
a.	Maximum Number of Depositions by Plaintiff(s)	<b>20</b>
b.	Maximum Number of Depositions by Defendant(s)	<b>20</b>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<b>7</b>
d.	Maximum Interrogatories by any Party to any Party	<b>25</b>
e.	Maximum requests for admissions by any Party to any Party	<b>Per FRCP</b>
f.	Maximum requests for production by any Party to any Party	<b>Per FRCP</b>
g.	Discovery of electronically stored information should be handled pursuant to FRCP Rule 34.	

h. Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: Inadvertent disclosure will not constitute waiver of privilege and shall be subject to separate claw-back agreement stipulated to by the parties and thereafter entered by the Court.

<b>3.</b>	<b>AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>ii</sup></b>	<b>DATE</b>
a.	Last Day to File Motion to Amend Pleadings	<b>08/01/12</b>
b.	Last Day to File Motion to Add Parties	<b>08/01/12</b>
<b>4.</b>	<b>RULE 26(a)(2) REPORTS FROM EXPERTS<sup>iii</sup></b>	<b>DATE</b>
a.	Initial Expert Disclosures (except reports)	<b>15 Days After Close of Fact Discovery</b>
b.	Initial Expert Reports	<b>30 Days After Initial Expert Disclosures</b>
c.	Rebuttal Expert Disclosures	<b>60 Days After Service of Initial Expert Reports</b>
d.	Counter Expert Reports	<b>30 Days After Service of Rebuttal Expert Reports</b>
<b>5.</b>	<b>OTHER DEADLINES</b>	<b>DATE</b>
a.	Discovery to be Completed By:	
(i)	Deadline to Complete Fact Discovery	<b>90 Days After Issuance of Class Certification Decision</b>
(ii)	Deadline to Complete Expert Discovery	<b>30 Days After Deadline for Service of Rebuttal Expert Reports</b>
b.	Final Date for Supplementation of Disclosure and Discovery under Rule 26(e)	<b>45 days before Trial</b>

c.	Dispositive Motion Practice:	
	(i) Deadline for Filing Dispositive or Potentially Dispositive Motions	<b>30 Days After Completion of Expert Discovery</b>
	(ii) Deadline for Filing Opposition to Dispositive or Potentially Dispositive Motions	<b>Pursuant to DUCivR 56-1</b>
	(iii) Deadline for Filing Reply to Dispositive or Potentially Dispositive Motions	<b>Pursuant to DUCivR 56-1</b>
d.	Class Certification Motion	
	(i) Deadline to File and Serve Motions Regarding Class Certification	<b>11/1/13</b>
	(ii) Deadline to File and Serve Oppositions to Motion Regarding Class Certification	<b>01/15/14</b>
	(iii) Deadline to File and Serve Replies to Motions Regarding Class Certification	<b>02/19/14</b>
<b>6.</b>	<b>SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION</b>	<b>DATE</b>
a.	Referral to Court-Annexed Mediation:	<b>No</b>
b.	Referral to Court-Annexed Arbitration	<b>No</b>
c.	Evaluate Case for Settlement/ADR	<b>30 Days After Completion of Expert Discovery</b>
d.	Settlement Probability:	<b>Poor</b>
<b>7.</b>	<b>TRIAL AND PREPARATION FOR TRIAL</b>	<b>DATE</b>
a.	Hearing on Class Certification Motions:	<b>To be Determined</b>
b.	Hearing on Dispositive Motions:	<b>To be Determined</b>
	(i) Plaintiffs' Rule 26(a)(3) Pretrial Disclosures <sup>iv</sup>	<b>14 Days Before Final Pretrial Conference</b>

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|-------|---|---|
| (ii)  | Defendants' Rule 26(a)(3) Pretrial Disclosures          | <b>7 Days Before Final Pretrial Conference</b>  |
| (iii) | Objections to Rule 26(a)(3) Pretrial Disclosures        | <b>Per FRCP</b>                                 |
| c.    | Deadline for Settlement Conference                      | <b>To Be Determined</b>                         |
| d.    | Deadline for Special Attorneys' Conference <sup>v</sup> | <b>30 Days Before Final Pretrial Conference</b> |
| e.    | Deadline for Settlement Conference <sup>vi</sup>        | <b>To Be Determined</b>                         |
| f.    | Final Pretrial Conference                               | <b>To Be Determined</b>                         |
| g.    | Trial   | <b>To Be Determined</b>                         |

## **8. OTHER MATTERS**

Counsel should contact chambers staff of the judge presiding in the case regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

In addition, the parties have stipulated to the following:

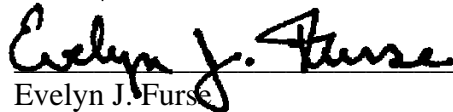
1. Depositions will not be scheduled unilaterally but rather by agreement. Upon agreement, the party seeking to conduct the deposition shall serve a Notice of Deposition consistent with the date, time, and location agreed upon.
2. Exhibits will be numbered sequentially through all depositions in the case. Every effort will be made to avoid the introduction of duplicative exhibits.
3. The parties will split the expense of imaging deposition exhibits.
4. All papers will be served by email on all counsel of record unless notice is provided by the ECF system. Conventional filings will also be served by email on all counsel of record. Counsel of record shall be as defined by the ECF list used by the Court. There is no obligation of a party to serve papers via the United States Postal Service.

5. The attorney-client privilege or other protection is not waived by disclosure connected with the litigation pending before the court in which event the disclosure is also not a waiver in any other Federal or State proceeding.
6. The parties shall work together to facilitate the discovery and production of electronically stored information (“ESI”), recognizing that the bulk of ESI production will be made by Defendants. The parties will produce ESI with Bates-numbered, single page .tiff images (the “Tiff Images”) unless otherwise agreed, such as for MS-Excel or similar spreadsheets which shall be produced by the parties in native format. Each Tiff Image shall be accompanied by a corresponding text file with text that is extracted from the electronic file or generated as OCR from the Tiff Image. These searchable text files will be broken up by document and named according to the first bates number.
  - i. Accompanying metadata to the Tiff Images shall be produced in a load file accompanying the production. It is presently contemplated that Defendants will produce Concordance load files to Plaintiffs and that Plaintiffs will produce Summation load files to Defendants. The names of the metadata fields used by each party may vary from the field names stated below. No party will have any obligation to manually generate information to populate these fields. The following corresponding metadata fields, to the extent applicable to a produced document, will be included in a searchable fielded data file:
    - Beginning Document number
    - Ending Document Number
    - Attachment Begin page number
    - Attachment end page number
    - Page Count
    - Document type
    - Sent Date/Time
    - Creation date
    - Author/Sender
    - Recipient
    - CC
    - BCC
    - Subject/Title
    - Custodian
    - File Name
    - Last Modified Date/Time
    - Received Date
    - Location

- ii. The parties have agreed to conduct further discussions on the number of custodians for production of ESI and intend to work on a mutually agreed-upon list of the search terms to be used.
- 7. The parties shall work together to submit a stipulated Protective Order governing the use of confidential information. A draft of the stipulation shall be filed with the Court by May 31, 2012.
- 8. Communications between experts and counsel, as well as draft expert reports, are not discoverable.

Signed: August 14, 2013

BY THE COURT:

  
Evelyn J. Furse  
U.S. Magistrate Judge

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<sup>i</sup> The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

<sup>ii</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

<sup>iii</sup> A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

<sup>iv</sup> Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

<sup>v</sup> The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

<sup>vi</sup> The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.