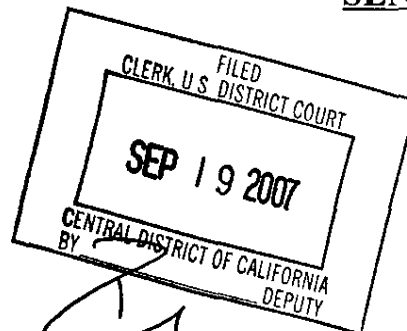
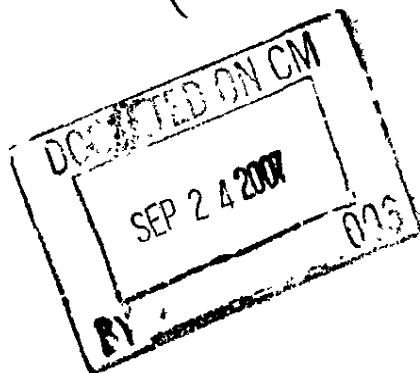


**SEND**



CLERK'S OFFICE

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

HARAJUKU LOVERS, LLC,  
Plaintiff(s),

vs.

FOREVER 21, INC., et al.,  
Defendant(s).

Case No. CV 07-3881 ODW(SSx)

**ORDER FOR CIVIL TRIAL:**

**Final Pretrial Conference:**  
**September 29, 2008 at 3:30 p.m.**

**Trial Date:**  
**October 28, 2008 at 9:00 a.m.**

**UNLESS OTHERWISE ORDERED BY THE COURT, THE FOLLOWING  
RULES SHALL APPLY:**

**SCHEDULING**

**1. In General**

All motions to join other parties or to amend the pleadings shall be filed and served by the cut-off date specified in the Scheduling Order.

**2. Motions for Summary Judgment or Partial Summary Judgment**

Motions for summary judgment or partial summary judgment shall be filed as soon as practical, however, in no event later than the motion cut-off date.

14



1 **off date to permit the responses to be obtained before that date, if the motion is**  
2 **granted.**

3 Consistent resort to the Court for guidance in discovery is unnecessary and  
4 will result in the appointment of a Special Master at the joint expense of the parties  
5 to resolve discovery disputes.

6 **4. Mandatory Settlement Conference**

7 Pursuant to Local Rule 16-15, the parties in every case must select a  
8 settlement procedure. The final meeting with the parties' settlement officer must  
9 take place no later than 45 days before the Final Pre-trial Conference.

10  
11 **FINAL PRE-TRIAL CONFERENCE ("PTC")**

12 This case has been placed on calendar for a PTC pursuant to Fed. R. Civ. P.  
13 16 and 26. Unless excused for good cause, each party appearing in this action shall  
14 be represented at the PTC, and all pre-trial meetings of counsel, by the attorney  
15 who is to have charge of the conduct of the trial on behalf of such party.

16 **STRICT COMPLIANCE WITH THE REQUIREMENT OF FED. R. CIV. P.**  
17 **16, 26 AND LOCAL RULES ARE REQUIRED BY THE COURT.** Therefore,  
18 carefully prepared Memoranda of Contentions of Fact and Law, a Joint Witness  
19 List, and Joint Exhibit List shall be submitted to the Court.

20 **Summary of Witness Testimony and Time Estimates.**

21 Counsel shall prepare a list of their witnesses, including a brief summary (two  
22 to three paragraphs) of each witness's expected testimony, **what makes the testimony**  
23 **unique** from any other witness testimony, an estimate of the length of time needed for  
24 direct examination, and whether the witness will testify by deposition or in person.  
25 Counsel shall exchange these lists with opposing counsel. **Counsel shall jointly file**  
26 **a single list of witness testimony summaries, including estimates for direct**  
27

1 **examination of their own witnesses and estimates for cross-examination of**  
2 **opposing witnesses.** The Joint Witness List shall contain a brief statement of the  
3 testimony for each witness, and the time estimate for such testimony. The joint witness  
4 testimony summaries shall be filed at the same time counsel lodge the PTC Order. If  
5 a party intends to offer deposition testimony into evidence at trial, the party shall  
6 designate the relevant portions of the deposition testimony to be read at trial and  
7 advise opposing counsel of same. Opposing counsel shall then designate any  
8 additional portions of such deposition testimony which counsel intends to offer in  
9 evidence. All objections to any such testimony shall be made in writing and filed at  
10 the same time counsel lodge the PTC Order so that the Court may consider whether  
11 ruling on the objections will facilitate trial or result in the disposition of evidentiary  
12 matters that may assist continuing settlement negotiations.  
13

14  
15 If expert witnesses are to be called at trial, each party shall list and identify their  
16 respective expert witnesses. Failure of a party to list and identify an expert witness  
17 may preclude a party from calling an expert witness at trial. If expert witnesses are to  
18 be called at trial, the parties shall exchange at the PTC short narrative statements of  
19 the qualifications of the expert and the testimony expected to be elicited at trial. If  
20 reports of experts to be called at trial have been prepared, they shall be exchanged at  
21 the PTC but shall not substitute for the narrative statements required.  
22

23 **Pre-Trial Conference - Exhibit Stipulation.**

24 The parties shall prepare a Pre-Trial Exhibit Stipulation that shall contain each  
25 party's numbered list of all trial exhibits, with objections, if any, to each exhibit  
26 including the basis of the objection and the offering party's response. All exhibits to  
27 which there is no objection shall be deemed admitted. The parties shall stipulate to  
28

1 the authenticity of exhibits whenever possible, and the Pre-Trial Exhibit Stipulation,  
 2 shall identify any exhibits for which authenticity has not been stipulated to and the  
 3 specific reasons for the party's failure to stipulate.

4 The Stipulation shall be substantially in the following form:

5  
 6 **Pre-Trial Exhibit Stipulation**

7 **Plaintiff(s)/Defendant(s)' Exhibits**

8 **Number      Description      If Objection, State Grounds      Response to Objection**

9  
 10 The Pre-Trial Exhibit Stipulation shall be filed at the same time counsel lodge  
 11 the PTC Order. Failure to comply with this paragraph could be deemed to constitute  
 12 a waiver of all objections. **Do not submit** blanket or boilerplate objections to the  
 13 opposing party's exhibits. These will be disregarded and overruled. NOTE: Counsel  
 14 are instructed not to bring excessive exhibits to trial, but only those exhibits that will  
 15 actually be used.

16 The Memoranda of Contentions of Fact and Law, Witness List, and Exhibit  
 17 List are due twenty-one (21) days before the Final Pre-Trial Conference, unless a  
 18 different time is set in the scheduling order.

19  
 20 **FINAL PRETRIAL CONFERENCE ORDER ("PTCO")**

21 The proposed PTCO shall be lodged seven calendar days before the PTC.  
 22 Adherence to this time requirement is necessary for in-chambers preparation of the  
 23 matter. The form of the proposed PTCO shall comply with Appendix A to the  
 24 Local Rules and the following:

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1 1. Place in "ALL CAPS" and in "bold" the separately numbered  
2 headings for each category in the PTCO (e.g., "1. **THE PARTIES**"  
3 or "7. **CLAIMS AND DEFENSES OF THE PARTIES**").

4 2. Include a table of contents at the beginning.

5 3. In specifying the surviving pleadings under section 1, state which  
6 claims or counterclaims have been dismissed or abandoned, e.g., "Plaintiff's second  
7 cause of action for breach of fiduciary duty has been dismissed." Also, in multiple  
8 party cases where not all claims or counterclaims will be prosecuted against all  
9 remaining parties on the opposing side, please specify to which party each claim or  
10 counterclaim is directed.

11 4. In specifying the parties' claims and defenses under section 7, each  
12 party shall closely follow the examples set forth in Appendix A of the Local Rules.

13 5. In drafting the PTCO, the court expects that the parties will attempt to  
14 agree on and set forth as many non-contested facts as possible. The court will usually  
15 read the uncontested facts to the jury at the start of trial. A carefully drafted and  
16 comprehensively stated stipulation of facts will reduce the length of trial and increase  
17 jury understanding of the case.

18 6. In drafting the factual issues in dispute for the PTCO, the parties  
19 should attempt to state issues in ultimate fact form, not in the form of evidentiary  
20 fact issues. The issues of fact should track the elements of a claim or defense on  
21 which the jury will be required to make findings.

22 7. Issues of law should state legal issues on which the court will be  
23 required to rule during the trial, and should not list ultimate fact issues to be  
24 submitted to the trier of fact.

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1 8. The Court may submit fact issues to the jury in the form of findings  
2 on a special verdict. The issues of fact should track the elements of a claim or  
3 defense on which the jury will be required to make findings.

4 9. If expert witnesses are to be called at trial, each party must list and  
5 identify its respective expert witnesses, both retained and non-retained. Failure of  
6 a party to list and identify an expert witness in the PTCO could result in a court  
7 order which precludes the party from calling that expert witness at trial.

8 **TRIAL PREPARATION**  
9 **MOTIONS, INSTRUCTIONS AND EXHIBITS**

10 **1. Motions in Limine**

11 Counsel shall meet and confer before noticing any in limine motions. If  
12 motions in limine are filed, they shall be noticed for the hearing date set forth in  
13 the Court's Scheduling and Case Management Order. Counsel are advised to  
14 review the section on Motions in Limine in the Court's Scheduling and Case  
15 Management Order.

16 All motions in limine will be ruled upon on or before the scheduled trial date.

17 **2. Jury Instructions/Special Verdict Forms<sup>1</sup>**

18 Thirty-five (35) days before trial, plaintiff shall serve plaintiff's proposed jury  
19 instructions and special verdict forms on defendant. Twenty-eight (28) days before  
20 trial, defendant shall serve on plaintiff defendant's objections to plaintiff's  
21 instructions together with any additional instructions defendant intends to offer.  
22 Twenty-one (21) days before trial, plaintiff shall serve on defendant plaintiff's  
23 objections to defendant's instructions. Twenty-one (21) days before trial, counsel  
24 are ordered to meet and confer to attempt to come to agreement on the proposed jury  
25

26 \_\_\_\_\_  
27 <sup>1</sup> This section only applies to jury trials.

1 instructions. The parties shall make every attempt to agree upon the jury instructions  
2 before submitting them to the Court. It is expected that counsel will agree on the  
3 substantial majority of jury instructions.

4 Sixteen (16) days before trial, counsel shall file with the Court a JOINT set of  
5 jury instructions on which there is agreement. Defendant's counsel has the burden  
6 of preparing the joint set of jury instructions. At the same time each party shall file  
7 its proposed jury instructions which are objected to by any other party, accompanied  
8 by points and authorities in support of those instructions.

9 When the parties disagree on an instruction, the party opposing the instruction  
10 must attach a short statement (one to two paragraphs) supporting the objection, and  
11 the party submitting the instruction must attach a short reply supporting the  
12 instruction. Each statement should be on a separate page and should follow directly  
13 after the disputed instruction.

14 The parties ultimately must submit one document, or if the parties disagree  
15 over any proposed jury instructions, three documents. The three documents shall  
16 consist of: (1) a set of Joint Proposed Jury Instructions; (2) Plaintiff's Disputed Jury  
17 Instructions; and (3) Defendant's Disputed Jury Instructions. Any disputed Jury  
18 Instructions shall include the reasons supporting and opposing each disputed  
19 instruction in the format set forth in the previous paragraph.

20 The Court directs counsel to use the instructions from the *Manual of Model*  
21 *Jury Instructions for the Ninth Circuit* where applicable. Where California law is  
22 to be applied and the above instructions are not applicable, the Court prefers counsel  
23 to use the California Jury Instructions in CACI. If none of these sources is  
24 applicable, counsel are directed to use the instructions in Devitt, Blackmar and  
25 Wolff, *Federal Jury Practice and Instructions*.

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1 Modifications of instructions from the foregoing sources (or any other form  
 2 instructions) must specifically state the modification made to the original form  
 3 instruction and the authority supporting the modification.

4 Each requested instruction shall be in the format specified by Local Rule 51-2  
 5 and shall be set forth in full; be on a separate page with the caption "COURT'S  
 6 INSTRUCTION NUMBER \_\_\_"; be numbered; cover only one subject or principle  
 7 of law; not repeat principles of law contained in any other requested instructions; and  
 8 cite the authority for a source of the requested instruction. In addition to the  
 9 foregoing, each party shall file with the Courtroom Deputy on the first day of trial  
 10 a "clean set" of the aforesaid requested duplicate jury instructions. The "clean set"  
 11 shall not cite the authority for a source of the requested instruction.

12 An index page shall accompany all jury instructions submitted to the Court.  
 13 The index page shall indicate the following:

- 14 • the number of the instruction;
- 15 • a brief title of the instruction;
- 16 • the source of the instruction and any relevant case citation; and
- 17 • the page number of the instruction.

18 **EXAMPLE:**

19 <u>NO.</u>	<u>TITLE</u>	<u>SOURCE</u>	<u>PAGE NO.</u>
20 5	Evidence for Limited Purpose	9 <sup>th</sup> Cir. 1.5	9

21  
 22 During the trial and before argument, the Court will meet with counsel and  
 23 settle the instructions. Strict adherence to time requirements is necessary for the  
 24 Court to examine the submissions in advance so that there will be no delay in  
 25 starting the jury trial. **Failure of counsel to strictly follow the provisions of this**  
 26  
 27

1 **section may subject the non-complying party and/or its attorney to sanctions**  
2 **and SHALL CONSTITUTE A WAIVER OF JURY TRIAL in all civil cases.**

3 **3. Trial Exhibits**

4 Counsel are to prepare their exhibits for presentation at the trial by placing  
5 them in binders which are indexed by exhibit number with tabs or dividers on the  
6 right side. Counsel shall submit to the Court an original and one copy of the binders.  
7 The exhibits shall be in a three-ring binder labeled on the spine portion of the binder  
8 as to the volume number and contain an index of each exhibit included in the  
9 volume. Exhibits must be numbered in accordance with Fed. R. Civ. P. 16, 26 and  
10 the Local Rules. **NOTE:** Counsel are instructed not to bring excessive exhibits to  
11 trial, but only those exhibits that will actually be used.

12 The exhibit list shall indicate which exhibits are objected to, the reason for  
13 the objection, and the reason it is admissible. Failure to object will result in a  
14 waiver of objection.

15 The Court requires that the following be submitted to the Courtroom  
16 Deputy Clerk on the first day of trial:

- 17 • The original exhibits with the Court's exhibit tags, which shall be  
18 stapled to the front of the exhibit on the upper right-hand corner with  
19 the case number, case name, and exhibit number placed on each tag.  
20 Exhibit tags can be obtained from the Clerk's Office, Room G-8, 312  
21 North Spring Street, Los Angeles, CA 90012.
- 22 • One bench book with a copy of each exhibit for use by the Court,  
23 tabbed with numbers as described above. (Court's exhibit tags not  
24 necessary.)
- 25 • Three (3) copies of the exhibit list.

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- 1 • Three (3) copies of the witness list, which shall include the names of
- 2 the witness in the order in which they may be called to testify.
- 3 • Counsel are ordered to submit a short joint statement of the case
- 4 seven (7) days before trial that the Court may read to the prospective
- 5 panel.
- 6 • All counsel are to meet not later than ten (10) days before trial and to
- 7 stipulate so far as is possible as to foundation, waiver of the best
- 8 evidence rule, and to those exhibits which may be received into
- 9 evidence at the start of trial. The exhibits to be so received will be
- 10 noted on the copies of the exhibit lists.
- 11 • Counsel may, but need not, submit brief proposed voir dire questions
- 12 for the jury seven (7) calendar days before the Pretrial Conference.
- 13 The Court will conduct its own voir dire after considering any
- 14 proposed voir dire submitted by counsel.
- 15 • Any items that have not been admitted into evidence and are left in
- 16 the courtroom overnight without prior approval will be discarded.

17 **4. Real-Time Reporting Requirement**

18 Each party must file with the Court, at the same time counsel lodge the  
19 FPTCO, a document for the Court Reporter that contains proper names, unusual  
20 or scientific terms, or any other foreign or uncommon words that are likely to be  
21 used by the parties during the FPTC and the Trial.

22  
23 **COURT TRIALS**

24 **1. Declarations of Witness Direct Testimony.**

25 Counsel in non-jury trials submit the direct testimony of their witnesses  
26 in writing in a declaration executed under penalty of perjury. These declarations  
27

1 shall be in admissible form with appropriate foundation established for the  
2 declarant's statements. Paragraphs in each declaration shall be numbered  
3 consecutively to facilitate the identification of paragraphs for evidentiary objections.

4 Counsel are to exchange and file these declarations with the Court at least  
5 eleven calendar days before trial, unless otherwise ordered by the Court. Seven  
6 calendar days before trial, counsel may file evidentiary objections to those  
7 declarations. Counsel shall prepare a separate document for each declaration for  
8 which they have an evidentiary objection in which they shall quote the specific  
9 language from the declaration to which they object, followed by the objection and  
10 any relevant argument. Counsel shall file any reply or response to the objections  
11 by noon on the fourth calendar day before trial. Courtesy copies of the  
12 declarations and evidentiary objections shall be deposited in the drop box located  
13 in the entrance way to Chambers on the date due. **Do not submit** blanket or  
14 boilerplate objections to the opposing party's witness declarations. These will be  
15 disregarded and overruled.

16 At trial, the Court will rule on the evidentiary objections and, depending  
17 upon the ruling, the declarations will be received in evidence, either in whole or  
18 in part, or rejected. Counsel will then conduct the cross-examination and re-  
19 direct examination at trial.

20 Failure to comply with the literal terms of this Order will result in sanctions  
21 or the Court may refuse to allow that witness to testify.

## 22 2. Trial Briefs

23 Counsel for each party shall file and serve a trial brief, not to exceed  
24 15 pages in length, at least seven (7) days before trial is scheduled to commence.  
25 *See* Local Rule 16-9.

26 ///

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3. Findings of Fact and Conclusions of Law

Counsel for each party shall lodge and serve initial proposed findings of fact and conclusions of law with the trial brief. Counsel shall then:

- (1) Underline in red the portions which it disputes;
- (2) Underline in blue the portions which it admits; and
- (3) Underline in yellow the portions which it does not dispute, but deems irrelevant.


Counsel may agree with a part of a finding or conclusion, disagree with a part of it, and/or consider a part of it irrelevant.

Two marked copies of opposing counsel's proposed findings of fact and conclusions of law shall be lodged with Court on the due date set in the Scheduling and Case Management Order.

**Caveat: If counsel fail to file the required Pre-Trial documents or fail to appear at the Pre-Trial Conference and such failure is not otherwise satisfactorily explained to the Court: (a) the cause shall stand dismissed for failure to prosecute if such failure occurs on the part of the plaintiff; (b) default judgment shall be entered if such failure occurs on the part of the defendant; or (c) the Court may take such action as it deems appropriate.**

IT IS SO ORDERED.

Dated: September 19, 2007

  
 \_\_\_\_\_  
 OTIS D. WRIGHT II  
 United States District Judge