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[All counsel for both parties listed on last page]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JUNE EMILY SOMMA,
Plaintiff,

v.

GREAT ORMOND STREET
HOSPITAL,
Defendant.

)
) Case No. C 02-5889 JSW
)
) **SUPPLEMENTAL JOINT CASE**
) **MANAGEMENT STATEMENT**
)
)
)
) Date: July 30, 2004
) Time: 1:30 p.m.
) Dept: Courtroom 2, 17th Floor
) Judge: Hon. Jeffrey S. White
)
)
)

1 The parties to the above-entitled action jointly submit this Supplemental Case
2 Management Conference Statement in preparation for the Case Management Conference
3 scheduled for July 30, 2004.

4 On April 16, 2004, the parties filed a Joint Case Management Conference
5 Statement and Proposed Order, a copy of which is attached to this Statement as Exhibit A
6 (“April Joint Statement”). On April 23, 2004, and at the request of counsel for both
7 parties, the Court continued the Case Management Conference so that the parties may
8 pursue settlement discussions.

9 Since the parties last appeared before this Court in April, the parties and counsel
10 have worked to resolve this dispute. At this time, however, those efforts appear to have
11 come to an impasse and the parties request as follows:

12 **1. Plaintiff’s Statement.**

13 Plaintiff requests that the April Joint Statement (Exhibit A) be adopted by this
14 Court with the following modifications to paragraphs 5, 6, and 11:

15 a. Scope of Discovery to Date (¶ 5)

16 Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be made by both
17 parties on or before 14 days after Defendant files an answer in this matter.

18 b. Discovery Plan (¶ 6)

19 (a) Dispositive motion cutoff (filing): June 10, 2005;

20 (b) Discovery cutoff: July 15, 2005;

21 (c) Hearing date cutoff for dispositive motions: August 5, 2005;

22 (d) Pretrial conference: September 12, 2005; and

23 (e) Commencement of trial: October 10, 2005.

24 (f) Interrogatories and depositions shall be limited as provided by the
25 Federal Rules of Civil Procedure.

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1 c. Proposed Deadlines and Court Dates (§ 11)

2 Plaintiff proposes a discovery schedule, including the deadlines identified in
3 paragraphs 5 and 6 (as modified herein). Plaintiff expects that the trial will last five days
4 and be set for October 2005.

5 Plaintiff disagrees with Defendant's statements below. Since the time of the April
6 23 hearing, Plaintiff has tried in good faith to settle this matter with Defendant.
7 Defendant and Plaintiff have not been able to agree on the terms of a settlement. While
8 Defendant contends that the declaratory relief sought by Plaintiff is not appropriately
9 before the Court and has filed a motion to dismiss to that effect, Plaintiff disagrees with
10 the motion and will oppose the motion in a timely fashion. Over the year and a half since
11 this case was filed, Plaintiff has continued to be harmed by Defendant's conduct, and
12 such harm should not be extended by the further delay of her case being heard by this
13 Court. Accordingly, the best interest of judicial economy and the parties is served by
14 proceeding with the necessary discovery and briefing so that the Court may rule on
15 Defendant's motion to dismiss.¹ While proceeding with discovery and briefing on
16 Defendant's motion to dismiss without further delay is appropriate, Plaintiff welcomes a
17 discussion of the best timing, methods and venue for settlement discussions at the Case
18 Management Conference. Plaintiff is not, however, amenable to Defendant's one-sided
19 position which would unnecessarily stall the case.

20 **2. Defendant's Statement.**

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22 The Great Ormond Street Hospital believes that this Court deserves to know why
23 the parties are back before it, after the parties assured the Court at the April 23, 2004
24 hearing that they had reached settlement in principle.² The Court deserves to know, not
25 just as a matter of courtesy, but also because it bears on the subject of scheduling.

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¹ Plaintiff has proposed a schedule for discovery, briefing and hearing on its motion to dismiss. Defendant
has not responded to Plaintiff's proposal.

28 ² The introduction states that the Case Management Conference was continued "so that the parties may
pursue settlement discussions." This sentence, drafted by plaintiff's counsel, is an example of

1 This is an action for declaratory relief. Its premise is that June Emily Somma
2 faces a reasonable apprehension of being sued by the Hospital. Every party and lawyer
3 involved in this matter knows that no such prospect exists. Instead, the parties failed to
4 achieve settlement because plaintiff and her counsel, the Center for Internet & Society,
5 wish to make this case a cause. They wish to test certain theories they hold concerning
6 the proper term of copyright protection.

7 Their theories are certainly interesting, and would furnish meaningful content for
8 a law school classroom discussion. But under the circumstances, they are the not the
9 proper subject matter of a federal litigation. They are a drain on the time and resources
10 of the Court, to say nothing of those of the Hospital.

11 Accordingly, the Hospital urges the Court to refrain from scheduling any
12 discovery or other litigation events at this time. Instead, the Hospital urges the Court to
13 assign this case to a settlement conference, pursuant to ADR Rule 7-2. Further, the
14 Hospital requests that the Court order the parties to attend the conference in person. This
15 will require the Hospital to send an authorized representative from London, a burden it is
16 willing to bear to ensure the personal attendance of June Emily Somma. Finally, the
17 Hospital requests that the Court order the personal attendance of the chief trial counsel
18 for the Hospital, and of the chief trial counsel and Professor Lawrence Lessig for
19 plaintiff.

20 The Hospital urges this course of action not to deprive plaintiff of her day in
21 court. Rather, the Hospital hopes that a settlement conference, conducted by a Magistrate
22 Judge or by the assigned District Judge, will impress upon plaintiff and her counsel that
23 the federal courts are not the proper arena for venting academic policy issues. Those are
24 better left for the classroom, or the halls of Congress. The Hospital believes that this
25 course will ultimately result in settlement. Contrary to her claims above, plaintiff has
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28 understatement. At the April 23 conference, counsel informed the Court they had reached settlement in
29 principle, and required additional time merely to reduce their settlement to writing.

1 suffered no harm from the defendant's actions in the time since filing, and the Hospital's
2 proposed course of action poses no risk to plaintiff.

3 If the Court proceeds with scheduling, the Hospital agrees with the dates
4 proposed in Plaintiff's Statement, above, with one exception. Paragraph 5 should be
5 modified to read:

6 Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be made by both parties on or
7 before 28 days after Defendant files an answer in this matter.

8
9 Respectfully submitted,

10 Dated: July __, 2004

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12 ELIZABETH RADER (SBN 184963)
13 JENNIFER STISA GRANICK (SBN 168423)
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19 Attorneys for Plaintiff
20 JUNE EMILY SOMMA

21 By/s/ _____

22 Colette E. Vogele

23 Dated: July __, 2004

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26 (*pro hac vice pending*)
27 NANCY F. WECHSLER (New York
28 SBN NW 6772)
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47 By /s/ _____

48 Lawrence J. Siskind