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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

THOMAS L. DAVIS,

Plaintiff,

v.

UNITED POSTAL SERVICES

Defendants.

CASE NO. 1:10-cv-1457-MJS

ORDER SETTING MANDATORY  
SCHEDULING CONFERENCE

DATE: 9/8/2011  
TIME: 9:30 AM

Courtroom 6 (7<sup>th</sup> Floor)

MICHAEL J. SENG  
U.S. MAGISTRATE JUDGE

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Rule 16 of the Federal Rules of Civil Procedure requires the Court to enter a Scheduling Order within 120 days of service of the Complaint upon the defendant. Pursuant thereto, you are ORDERED to appear for a formal Scheduling Conference before United States Magistrate Judge Michael J. Seng, in Courtroom 6 at the United States Courthouse, 2500 Tulare Street, Fresno CA 93721, at the time and date specified above.

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1 **I. Service to be Complete**

2 The Court is unable to conduct a Scheduling Conference until Defendant<sup>1</sup> has been  
3 served with the summons and complaint. Accordingly, Plaintiff shall diligently pursue  
4 service of the summons and complaint and dismiss those Defendants against whom  
5 Plaintiff will not pursue claims. Counsel are referred to Federal Rule of Civil Procedure  
6 4 regarding the requirement of timely service of the complaint. Failure to timely serve the  
7 summons and complaint may result in the imposition of sanctions, including the dismissal  
8 of unserved Defendants. When service is effectuated, Plaintiff shall promptly file proofs  
9 of service.  
10

11 **II. Service of this Order**

12 If this Order is served on counsel for Plaintiff before Defendant has appeared,  
13 counsel for the Plaintiff shall serve a copy of this Order on the Defendant, or, if identified,  
14 on Defendant's counsel, promptly upon receipt of this Order. Plaintiff's counsel also shall  
15 file an appropriate proof of such service with the Court in compliance with Rule 135 (a) of  
16 the Local Rules of Practice for the Eastern District of California.  
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18 **III. Attendance at Conference**

19 Attendance at the Scheduling Conference is **mandatory** for counsel and each party  
20 not represented by counsel. Though usually quite brief, some Conferences last forty-five  
21 minutes to an hour.  
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23 Only counsel who are thoroughly familiar with the facts and the law of the case and  
24 who have full authority to bind the client shall appear. Trial counsel should participate in  
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26 <sup>1</sup> This Order will refer to the parties in the singular regardless of the number of parties named in  
27 the Complaint. This Order applies equally to all parties.

1 this Scheduling Conference whenever possible.

2 Personal appearances are encouraged, but unless the Court orders otherwise,  
3 counsel may appear telephonically by making reservations through Court Call at 866-582-  
4 6878. Counsel are directed to send confirmation of Court Call reservations to  
5 [MJSorders@caed.uscourts.gov](mailto:MJSorders@caed.uscourts.gov) and [lyu@caed.uscourts.gov](mailto:lyu@caed.uscourts.gov). Additionally, counsel are to  
6 indicate on the face page of their Joint Scheduling that the conference will be telephonic.  
7

8 **IV. Pre-Conference Meet and Confer**

9 At least twenty (20) days prior to the Mandatory Scheduling Conference, the  
10 expected trial counsel for all parties shall conduct a conference at a time and place  
11 arranged by counsel for the Plaintiff. The parties are encouraged to hold a conference with  
12 all counsel **personally** present but, because of the size of the District and concern for  
13 client costs, a telephonic conference call among all counsel is permissible.  
14

15 **V. Settlement to be Discussed**

16 Among other things, counsel will be expected to discuss the possibility of settlement  
17 with the Court at the Scheduling Conference. Accordingly, counsel are to thoroughly  
18 discuss settlement with each other before preparing the Joint Scheduling Report  
19 (discussed below) and engaging in extensive discovery. However, even if settlement  
20 negotiations are underway, the parties are to comply with the requirements of this Order  
21 unless otherwise excused by the Court.  
22

23 If the case is settled, counsel must **promptly** inform the Court. Once such notice  
24 is given, the filing of a Joint Scheduling Report and attendance at a Scheduling Conference  
25 will be excused.  
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1 **VI. Joint Scheduling Report Content**

2 A Joint Scheduling Report, thoughtfully prepared and executed by all counsel, shall  
3 be electronically filed in CM/ECF one (1) full week prior to the Scheduling Conference and  
4 be e-mailed, in WordPerfect (preferred) or Word format, to [mjsorders@caed.uscourts.gov](mailto:mjsorders@caed.uscourts.gov).

5 The Joint Scheduling Report shall indicate the date, time, and courtroom of the Scheduling  
6 Conference opposite the caption on the first page of the Report.  
7

8 The Joint Scheduling Report shall address each of the following items in  
9 correspondingly numbered paragraphs:

- 10 1. **Contentions.** A summary of the factual and legal contentions as reflected  
11 in the pleadings of each party and a statement of the relief sought by each  
12 party.  
13
- 14 2. **Amendments.** A proposed deadline for amendments to the pleadings. Any  
15 amendment which reasonably could be anticipated as of the date the  
16 Conference *shall* be filed contemporaneously with the Scheduling  
17 Conference report. If issues regarding amendment are not resolved at the  
18 Scheduling Conference, a motion to amend deadline may be set in  
19 accordance with Court rules.  
20
- 21 3. **Facts.** A summary detailing the uncontested and contested facts.
- 22 4. **Legal Issues.** A summary of the legal issues as to which there are no  
23 disputes, e.g., jurisdiction, venue, applicable federal or state law, etc., and  
24 a summary of the disputed legal issues.
- 25 5. **Pending matters status.** The status of all matters (motions, hearings, etc.)  
26 presently set before the Court in this case.  
27

1           6.     **Discovery plan.** A complete and detailed discovery plan addressing the  
2 following:

3           (a)     A firm date for the exchange of initial Rule 26(a)(1) disclosures or a  
4 statement that disclosures have been exchanged;

5           (b)     A firm deadline for conducting non-expert discovery;

6           (c)     Firm date(s) for disclosure of expert witnesses as required by Rule  
7 26(a)(2);

8           (d)     A firm cut-off date for expert witness discovery; and,

9           (e)     **If applicable<sup>2</sup>:**

10           (i)     Any proposed changes in the limits on discovery imposed by  
11 Rule 26(b); 30(a)(2)(A), (B) or (C); 30(d); or 33(a)

12           (ii)    A statement as to whether the parties anticipate the need for  
13 a protective order relating to the discovery of personal,  
14 medical, financial, commercial or other confidential information;

15           (iii)   Identification of any unique issues or proposals relating to the  
16 timing/sequencing/phasing/scheduling of discovery;

17           (iv)   A statement of whether the parties anticipate discovery outside  
18 the United States and, if so, a description of the proposed  
19 discovery;

20           (v)   A statement as to whether any party anticipates video and/or  
21 sound recording of depositions;  
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26           <sup>2</sup> Items (e)(i) thru (e)(vi) need not be addressed if the items listed therein do not apply and are not  
27 requested in this case.

1 (vi) A statement as to whether a Mid-Discovery Status Report and  
2 Conference might be productive and, if so, a proposed date for  
3 same;

4 7. **Electronic media discovery.** The parties shall state whether they anticipate  
5 discovery of electronic, digital and/or magnetic data. The parties are directed  
6 to review and ensure compliance with the specific instructions regarding  
7 electronic discovery set out as Appendix A, at the end of this Order. The  
8 Joint Scheduling Report shall summarize the parties' conference relating to  
9 discovery of electronic data.  
10

11 8. **Other dates and deadlines.** The parties shall set out deadlines agreed to  
12 by all counsel for:

13 (a) Filing non-dispositive motions (e.g., to remand, amend, compel  
14 discovery, etc.) and filing and hearing dispositive pre-trial motions  
15 (e.g., to dismiss, to strike, for summary adjudication or judgment,  
16 etc.). Motions other than motion in *limine* or other trial motions will not  
17 be entertained after the agreed-upon deadline. The proposed  
18 deadline for hearing dispositive motions shall be at least seven weeks  
19 prior to the proposed Pre-Trial conference date<sup>3</sup>.  
20

21 (b) Pre-Trial Conference date, which shall be at least six (6) weeks prior  
22 to the proposed trial date.  
23

24 (c) Trial date.  
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26 <sup>3</sup> This interval and the interval between the Pre-Trial Conference and trial may be shortened and  
27 the trial date may be advanced if the parties consent to Magistrate Judge jurisdiction.

1 All proposed dates should be considered firm dates. Dates should be set to  
2 allow the Court the time to decide submitted matters before the Pre-Trial  
3 Conference.

4 9. **Settlement.** A statement reflecting the parties estimation of the likelihood  
5 of settlement (keeping in mind, and advising ones' clients, that approximately  
6 98% of cases filed in this court settle). Counsel shall state whether they want  
7 a settlement conference and, if so, when relative to discovery cut-offs,  
8 designations of experts, and other pre-trial deadlines, and before whom they  
9 would like the settlement conference to be held.

10  
11 10. **Jury v. Court Trial.** A statement as to whether the case is a jury or non-jury  
12 case. If the parties disagree as to whether a jury trial has been properly  
13 demanded or is available on all claims, the statement shall include a  
14 summary of each party's position.

15  
16 11. **Trial time estimate.** An estimate of the number of trial days required. If  
17 counsel do not agree, each shall give a best estimate. In estimating the  
18 number of trial days, counsel should keep in mind that the Court normally  
19 devotes the entire day to trial.

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21 12. **Magistrate Judge Jurisdiction.** District Judges' dockets are extremely  
22 crowded. Magistrate Judge's dockets generally allow more flexibility and the  
23 ability to commit to agreed trial dates, as well as to provide prompt decisions  
24 following Court trials. All non-dispositive motions are routinely heard by the  
25 Magistrate Judge in any event, and many dispositive motions are addressed  
26 first by the Magistrate Judge who makes Findings and Recommendations to  
27

1 the District Judge. Accordingly, the parties should carefully consider and  
2 address whether to consent to the jurisdiction of a U.S. Magistrate Judge for  
3 all purposes, including trial, pursuant to 28 U.S.C. section 636 (c). The issue  
4 of consent will be discussed further at the Scheduling Conference.

5 13. **Bifurcation, etc.** A statement as to whether either party requests bifurcation  
6 or phasing of trial or has any other suggestion for shortening or expediting  
7 discovery, pre-trial motions, or trial.

8 14. **Related Matters.** A statement as to whether this matter is related to any  
9 matter pending in this or any other court, including bankruptcy court.

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11 **VII. Sanctions for non-compliance.**

12 **IF COUNSEL OR A PARTY APPEARING PRO SE FAILS TO APPEAR AT THE**  
13 **MANDATORY SCHEDULING CONFERENCE OR FAILS TO COMPLY WITH THE**  
14 **DIRECTIONS IN THIS ORDER, AN EX PARTE HEARING MAY BE HELD AND**  
15 **JUDGEMENT OF DISMISSAL, DEFAULT, OR OTHER APPROPRIATE JUDGEMENT**  
16 **MAY BE ENTERED, AND/OR SANCTIONS, INCLUDING CONTEMPT OF COURT, MAY**  
17 **BE IMPOSED AND/OR ORDERED.**  
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21 **/s/ Michael J. Seng**

22 United States Magistrate Judge  
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## **APPENDIX A: ELECTRONIC MEDIA DISCOVERY REQUIREMENTS**

Prior to a Rule 26 (f) conference, counsel should carefully investigate their client's information management system to ensure they are knowledgeable as to its operations, how information is stored, and how it can be retrieved. Counsel shall make reasonable efforts to review the client's computer files to ascertain the contents of existing as well as archival and legacy data (outdated formats or media) and disclose in the Rule 26(a)(1) initial disclosure the computer based evidence which may be used to support claim or defenses.

**(A) Duty to Notify.** A party seeking discovery of computer-based information shall notify the opposing party as soon as practicable, but no later than the Rule 26(f) conference, of that fact and identify as clearly as possible the categories of information which may be sought.

**(B) Duty to Meet and Confer.** The parties shall meet and confer regarding the following matters during the Rule 26 (f) conference:

(i) Computer-based information (in general).

Counsel shall attempt to agree on steps the parties will take to segregate and preserve computer-based information in order to avoid accusations of spoliation;

(ii) Email information. Counsel shall attempt to agree as to the scope of the email discovery and attempt to agree upon an email search protocol. This should include an agreement regarding inadvertent production of privileged email messages.

(iii) Deleted information. Counsel shall confer and attempt to agree

1 whether or not restoration of deleted information may be necessary,  
2 the extent to which restoration of deleted information is needed, and  
3 who will bear the costs of restoration; and

4 (iv) Back-up data. Counsel shall attempt to agree whether or not back-up  
5 data may be necessary, the extent to which backup data is needed  
6 and who will bear the cost of obtaining backup data.  
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