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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,)	Case No.: 1:16-CV-00344 LJO JLT
)	
Plaintiff,)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
)	
v.)	Pleading Amendment Deadline: 8/15/2016
)	
BIC REAL ESTATE DEVELOPMENT CORPORATION, et al.,)	Discovery Deadlines:
)	Non-Expert: 11/4/2016
Defendants.)	Expert: 12/30/2016
)	Mid-Discovery Status Conference:
)	9/12/2016 at 9:00 a.m.
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		Non-Dispositive Motion Deadlines:
		Filing: 1/11/2017
		Hearing: 2/8/2017
		Dispositive Motion Deadlines:
		Filing: 1/11/2017
		Hearing: 2/22/2017
		Settlement Conference:
		7/18/2016 at 1:30 p.m.
		510 19th Street, Bakersfield, CA
		Pre-Trial Conference:
		4/25/2017 at 8:30 a.m.
		Courtroom 4
		Trial: 6/20/2017 at 8:30 a.m.
		Courtroom 4
		Jury trial: 11 days

1 **I. Date of Scheduling Conference**

2 May 11, 2016.

3 **II. Appearances of Counsel**

4 John Bulgozdy appeared on behalf of Plaintiff.

5 Scott Vick appeared on behalf of Defendants.

6 David Zaro appeared on behalf of the Receiver.

7 **III. Magistrate Judge Consent:**

8 **Notice of Congested Docket and Court Policy of Trailing**

9 Due to the District Judges' heavy caseload, the newly adopted policy of the Fresno Division of
10 the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set
11 before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older
12 civil case set on the same date until a courtroom becomes available. The trial date will not be reset to a
13 continued date.

14 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
15 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
16 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
17 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
18 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
19 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

20 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
21 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
22 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance
23 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
24 District of California.

25 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
26 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
27 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
28 whether they will consent to the jurisdiction of the Magistrate Judge.

1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or
3 motion to amend, no later than **August 15, 2016**.

4 **V. Discovery Plan and Cut-Off Date**

5 The parties agree that each side may take up to 20 depositions, excluding experts. Thus, the
6 Court **ORDERS** this modification to the usual limits.

7 The parties agree they do not need a protective order, at least at this time, and agree that all
8 documents listing social security numbers or bank account numbers will be redacted, at least in part, to
9 protect the confidentiality of this information. Counsel are **DIRECTED** to this Court's Local Rule
10 140(a) which sets forth the proper manner for redacting this type of information.

11 The parties have exchanged the initial disclosures required by Fed. R. Civ. P. 26(a)(1).

12 The parties are ordered to complete all discovery pertaining to non-experts on or before
13 **November 4, 2016** and all discovery pertaining to experts on or before **December 30, 2016**.

14 The parties are directed to disclose all expert witnesses, in writing, on or before **November 11,**
15 **2016**, and to disclose all rebuttal experts on or before **December 2, 2016**. The written designation of
16 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
17 **and (C) and shall include all information required thereunder**. Failure to designate experts in
18 compliance with this order may result in the Court excluding the testimony or other evidence offered
19 through such experts that are not disclosed pursuant to this order.

20 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
21 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
22 included in the designation. Failure to comply will result in the imposition of sanctions, which may
23 include striking the expert designation and preclusion of expert testimony.

24 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
25 disclosures and responses to discovery requests will be strictly enforced.

26 A mid-discovery status conference is scheduled for **September 12, 2016** at 9:00 a.m. before the
27 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
28 California. Counsel SHALL file a joint mid-discovery status conference report one week before the

1 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
2 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
3 completed as well as any impediments to completing the discovery within the deadlines set forth in this
4 order. Counsel may appear via CourtCall.

5 **VI. Pre-Trial Motion Schedule**

6 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
7 than **January 11, 2017**, and heard on or before **February 8, 2017**. Non-dispositive motions are heard
8 before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States
9 Courthouse in Bakersfield, California.

10 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
11 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
12 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
13 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
14 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
15 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
16 obligation of the moving party to arrange and originate the conference call to the court. To schedule
17 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
18 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
19 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
20 **from the Court's calendar.**

21 All dispositive pre-trial motions shall be filed no later than **January 11, 2017**, and heard no
22 later than **February 22, 2017**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill,
23 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**
24 **Civ. P. 56 and Local Rules 230 and 260.**

25 **VII. Motions for Summary Judgment or Summary Adjudication**

26 **At least 21 days before** filing a motion for summary judgment or motion for summary
27 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
28 to be raised in the motion.

1 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
2 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
3 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
4 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
5 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

6 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
7 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
8 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
9 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
10 statement of undisputed facts.

11 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
12 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
13 **comply may result in the motion being stricken.**

14 **VIII. Pre-Trial Conference Date**

15 **April 25, 2017** at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

16 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
17 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
18 directly to Judge O'Neill's chambers, by email at LJOorders@caed.uscourts.gov.

19 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
20 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
21 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
22 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
23 Court to explain the nature of the case to the jury during voir dire.

24 **IX. Trial Date**

25 **June 20, 2017** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United
26 States District Court Judge.

27 A. This is a jury trial.

28 B. Counsels' Estimate of Trial Time: 11 days.

1 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
2 California, Rule 285.

3 **X. Settlement Conference**

4 A Settlement Conference is scheduled for July 18, 2016 at 1:30 p.m., located at 510 19th Street,
5 Bakersfield, California. The settlement conference will be conducted by Magistrate Judge Thurston. **If**
6 **any party prefers that the settlement conference be conducted by a different judicial officer, that**
7 **party is directed to notify the Court no later than 60 days in advance of the scheduled settlement**
8 **conference** to allow sufficient time for another judicial officer to be assigned to handle the conference.

9 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
10 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
11 to negotiate and settle the case **on any terms**¹ at the conference. Consideration of settlement is a
12 serious matter that requires preparation prior to the settlement conference. Set forth below are the
13 procedures the Court will employ, absent good cause, in conducting the conference.

14 **At least 21 days** before the settlement conference, Plaintiff **SHALL** submit to Defendant via
15 fax or e-mail, a meaningful² settlement demand which includes a brief explanation why such a
16 settlement is appropriate. Thereafter, **no later than 14 days** before the settlement conference,
17 Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or with a meaningful
18 counteroffer, which includes a brief explanation of why such a settlement is appropriate.

19 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
20 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
21 not be filed on the court docket.

22 _____
23 ¹ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
24 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like
25 shall be represented by a person or persons who occupy high executive positions in the party organization and
26 who will be directly involved in the process of approval of any settlement offers or agreements. To the extent
27 possible the representative shall have the authority, if he or she deems it appropriate, to settle the action on
28 terms consistent with the opposing party's most recent demand.

² "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to
the offering party. "Meaningful" does not include an offer which the offering party knows will not be
acceptable to the other party. If, however, the offering party is only willing to offer a settlement which it knows
the other party will not accept, this should trigger a recognition the case is not in a settlement posture and the
parties should confer about continuing or vacating the settlement conference via stipulation.

1 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

2 **At least five court days before** the settlement conference, the parties shall submit, directly to
3 Judge Thurston's chambers by e-mail to JLTorders@caed.uscourts.gov, a confidential settlement
4 conference statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
5 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
6 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
7 settlement conference indicated prominently thereon.

8 The confidential settlement conference statement shall include the following:

- 9 A. A brief statement of the facts of the case.
- 10 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
11 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on
12 the claims and defenses; and a description of the major issues in dispute.
- 13 C. A summary of the proceedings to date.
- 14 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 15 E. The relief sought.
- 16 F. The party's position on settlement, including present demands and offers and a history of
17 past settlement discussions, offers and demands.

18 **XI. Request for Bifurcation, Appointment of Special Master, or other**
19 **Techniques to Shorten Trial**

20 Not applicable at this time.

21 **XII. Related Matters Pending**

22 There are no pending related matters.

23 **XIII. Compliance with Federal Procedure**

24 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
25 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
26 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
27 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal
28 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

1 **XIV. Effect of this Order**

2 The foregoing order represents the best estimate of the court and counsel as to the agenda most
3 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
4 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
5 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
6 subsequent status conference.

7 **The dates set in this order are considered to be firm and will not be modified absent a**
8 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
9 **extending the deadlines contained herein will not be considered unless they are accompanied by**
10 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
11 **for granting the relief requested.**

12 Failure to comply with this order may result in the imposition of sanctions.

13
14 IT IS SO ORDERED.

15 Dated: May 12, 2016

/s/ Jennifer L. Thurston
16 UNITED STATES MAGISTRATE JUDGE