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

No. 1:16-CV-01656-LJO-SKO

DANIEL KIM, ET AL. ,
Plaintiffs,
v.

**ORDER SETTING MANDATORY
SCHEDULING CONFERENCE**
DATE: January 9, 2020
TIME: 9:45 A.M.

UNITED STATES OF AMERICA ,
Defendant.
_____ /

CTRM: #7 (6th Floor)
SHEILA K. OBERTO
U.S. MAGISTRATE JUDGE

In light of the Opinion of the United States Court of Appeals for The Ninth Circuit (Doc. 46), the Court hereby SETS a formal Scheduling Conference on January 9, 2020, at 9:45 a.m. before United States Magistrate Judge Sheila K. Oberto, in Courtroom 7 at the United States Courthouse, 2500 Tulare Street , Fresno, CA 93721. The parties shall file their Joint Scheduling Report as set forth below, by no later than January 2, 2020.

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1 Attendance at the Scheduling Conference is **mandatory** upon each
2 party not represented by counsel or by retained counsel. Only counsel
3 who are thoroughly familiar with the facts and the law of the instant
4 case, and who have full authority to bind his or her client, shall
5 appear. Trial counsel should participate in this Scheduling Conference
6 whenever possible. It may be necessary for counsel to spend as much
7 as 45 minutes in this Conference.

8 A Joint Scheduling Report, carefully prepared and executed by all
9 counsel/pro se parties, shall be electronically filed in CM/ECF, one (1)
10 full week prior to the Scheduling Conference, and shall be e-mailed,
11 in Word format, to skoorders@caed.uscourts.gov.

12 For reference purposes, the Court requires that counsels' Joint
13 Scheduling Report indicate the date, time, and courtroom of the
14 the Scheduling Conference. This information is to be placed opposite
15 the caption on the first page of the Report.

16 Among other things, counsel will be expected to discuss the
17 possibility of settlement. Counsel are to thoroughly discuss settlement
18 with each other before undertaking the preparation of the Joint
19 Scheduling Report and engaging in extensive discovery. However, even if
20 settlement negotiations are progressing, counsel are expected to comply
21 with the requirements of this Order unless otherwise excused by the Court.
22 If the case is settled, please **promptly** inform the Court, and counsels'
23 presence, as well as the Joint Scheduling Report, will not be required.

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1 Counsel may request that their attendance be by telephonic
2 conference. If two or more parties wish to appear telephonically,
3 counsel shall decide which will be responsible for making prior
4 arrangements for the conference call and shall initiate the call at the
5 above-designated time. After all parties are on the line, the call
6 should then be placed to Judge Oberto's chambers at (559) 499-5790.

7 Additionally, counsel are directed to indicate on the face page
8 of their Joint Scheduling Report that the conference will be
9 telephonic.

10 At least twenty (20) days prior to the Mandatory Scheduling
11 Conference, trial counsel for all parties shall conduct and conclude a
12 conference at a time and place arranged by counsel for the plaintiff(s).
13 This conference preferably should be a personal conference between all
14 counsel but, due to the distances involved in this District, a telephonic
15 conference call involving all counsel/pro se parties is permissible.
16 The Joint Scheduling Report shall respond to the following items by
17 corresponding numbered paragraphs:

18 Form and Contents of the Joint Scheduling Report

19 1. Summary of the factual and legal contentions set forth in the
20 pleadings of each party, including the relief sought by any party
21 presently before the Court.

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1 2. Any proposed amendment to the pleadings presently on file shall
2 be filed by its proponent contemporaneously with the Scheduling
3 Conference Report. If the matter cannot be resolved at the Scheduling
4 Conference, the matter will be set as a Motion to Amend in accordance
5 with the Rules of Practice of the Eastern District of California.

6 3. A proposed deadline for amendments to pleadings.

7 4. A summary detailing the uncontested and contested facts.

8 5. A summary of the legal issues as to which there is no dispute,
9 e.g., jurisdiction, venue, applicable federal or state law, etc., as
10 well as a summary of the disputed legal issues.

11 6. The status of all matters which are presently set before the
12 Court, e.g., hearing all motions, etc.

13 7. A complete and detailed discovery plan addressing the following:

14 (a) A date for the exchange of initial disclosures required by
15 Fed. R. Civ. P. 26(a)(1), or a statement that disclosures have
16 already been exchanged;

17 (b) A firm cut-off date for non-expert discovery. When setting
18 this date, the parties are advised that motions to compel any
19 non-expert discovery must be filed and heard sufficiently in
20 advance of the deadline so that the Court may grant effective
21 relief within the allotted discovery time;

22 (c) A firm date(s) for disclosure of expert witnesses as
23 required by Fed. R. Civ. P. 26(a)(2);

1 (d) A firm cut-off date for expert witness discovery. When
2 setting this date, the parties are advised that motions to
3 compel any expert discovery must be filed and heard sufficiently
4 in advance of the deadline so that the Court may grant effective
5 relief within the allotted discovery time;

6 (e) Any proposed changes in the limits on discovery imposed by
7 Fed.R.Civ.P. 26(b); 30(a)(2)(A), (B) or (C); 30(d); or 33(a);

8 (f) Whether the parties anticipate the need for a protective
9 order relating to the discovery of information relating to a
10 trade secret or other confidential research, development, or
11 commercial information;

12 (g) Any issues or proposals relating to the timing, sequencing,
13 phasing or scheduling of discovery;

14 (h) Whether the parties anticipate the need to take discovery
15 outside the United States and, if so, a description of the
16 proposed discovery; and

17 (i) Whether any party anticipates video and/or sound recording
18 of depositions.

19 8. Discovery relating to Electronic, Digital and/or Magnetic data.

20 Prior to a Fed. R. Civ. P. 26(f) conference, counsel should carefully
21 investigate their client's information management system so that they
22 are knowledgeable as to its operation, including how information is
23 stored and how it can be retrieved. Likewise, counsel shall reasonably
24 review the client's computer files to ascertain the contents thereof;
25 including archival and legacy data (outdated formats or media), and
26 disclose in initial discovery (self-executing routine discovery) the
27 computer based evidence which may be used to support claims or defenses.

1 (A) Duty to Notify. A party seeking discovery of computer-based
2 information shall notify the opposing party immediately, but no later
3 than the date set for the Fed. R. Civ. P. 26(f) conference, and identify
4 as clearly as possible the categories of information which may be sought
5 currently. This does not foreclose an application to amend for items
6 which later may be sought.

7 (B) Duty to Meet and Confer. The parties shall meet and confer
8 regarding the following matters during the Fed. R. Civ. P. 26(f)
9 conference:

10 (i) Computer-based information (in general). Counsel shall
11 attempt to agree on steps the parties will take to accusations of
12 spoliation;

13 (ii) E-mail information. Counsel shall attempt to agree as
14 to the scope of e-mail discovery and attempt to agree upon an e-mail
15 search protocol. This should include an agreement regarding inadvertent
16 production of privileged e-mail messages.

17 (iii) Deleted information. Counsel shall confer and attempt
18 to agree whether or not restoration of deleted information may be
19 necessary, the extent to which restoration of deleted information is
20 needed, and who will bear the costs of restoration; and,

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

24 The Joint Scheduling Report Shall summarize the parties conference
25 relating to discovery of electronic data.

26 9. Dates agreed to by all counsel for:

27 (a) Filing non-dispositive¹ and dispositive² pre-trial motions
28 with the understanding that motions (except motions in *limine*

1 or other trial motions) will not be entertained after the
2 agreed upon date. (No later than 10 weeks prior to the proposed
3 Pre-Trial Conference date.)

4 (b) Pre-Trial Conference date. (No later than 45 days prior to
5 the proposed trial date.)

6 (c) Trial date.

7 All of these dates should be considered firm dates. Dates
8 should be set to allow the court to decide any matters under submission
9 before the Pre-Trial Conference is set.

10 10. At the conference referred to above, counsel are encouraged to
11 discuss settlement, and the Court will expect a statement in the Joint
12 Scheduling Report as to the possibility of settlement.

13 11. A statement as to whether the case is a jury or non-jury case.
14 If the parties disagree as to whether a jury trial has been timely
15 demanded or whether one is available on some or all of the claims, the
16 statement shall include a summary of each party's position.

17 12. An estimate of the number of trial days required. When counsel
18 cannot agree, each party shall give his or her best estimate. In
19 estimating the number of trial days counsel should keep in mind that
20 this court is normally able to devote the entire day to trial.

21 13. Because the District Judges' dockets are extremely crowded
22 dockets the parties should consider the issue of whether they
23 are willing to consent to the jurisdiction of a U.S. Magistrate Judge
24 pursuant to 28 U.S.C. section 636(c). All non-dispositive motions are
25 routinely heard by the Magistrate Judge whether or not the parties
26 consent.

27 ¹Motions to compel discovery, amend, remand, etc.

²Motions for summary adjudication or to dismiss, strike, etc.

1 14. Whether either party requests bifurcation or phasing of trial,
2 or any other suggestion for shortening or expediting discovery, pre-trial
3 motions or trial.

4 15. Whether this matter is related to any matter pending in this
5 court or any other court, including any bankruptcy court.

6 16. Joint Scheduling Reports are to be e-mailed, in Word format,
7 to skoorders@caed.uscourts.gov.

8 SHOULD COUNSEL OR A PARTY APPEARING *PRO SE* FAIL TO APPEAR AT THE
9 MANDATORY SCHEDULING CONFERENCE, OR FAIL TO COMPLY WITH THE DIRECTIONS
10 AS SET FORTH ABOVE, AN EX PARTE HEARING MAY BE HELD AND JUDGMENT OF
11 DISMISSAL, DEFAULT, OR OTHER APPROPRIATE JUDGMENT MAY BE ENTERED.
12 INCLUDING SANCTIONS AND CONTEMPT OF COURT.

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UNITED STATES MAGISTRATE JUDGE

/s/ SHEILA K. OBERTO