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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLEAR RECON CORP¹,
Plaintiff,
v.
ALL CLAIMANTS TO SURPLUS
FUNDS AFTER A TRUSTEE'S SALE OF
THE REAL PROPERTY LOCATED AT
9903 CHEYENNE DRIVE, BAKERSFIELD,
CA 93312,
Defendants.

) Case No.: 1:16-cv-01837 DAD JLT
)
) SCHEDULING ORDER (Fed. R. Civ. P. 16)²
)
) Pleading Amendment Deadline: 6/2/2017
)
) Discovery Deadlines:
) Initial Disclosures: 3/9/2017
) Non-Expert: 9/1/2017
) Expert: 10/30/2017
) Mid-Discovery Status Conference:
) 6/23/2017 at 8:45 a.m.

) Non-Dispositive & Dispositive Motion Deadline:
) Filing: 1/12/2018

) Settlement Conference:
) 7/14/17 9:00 a.m.
) 510 19th Street, Bakersfield, CA

) Pre-Trial Conference:
) 4/16/2018 at 3:30 p.m.
) Courtroom 5

) Trial: 6/12/2018 at 8:30 a.m.
) Courtroom 5
) Court trial: 2 days

¹ The court notes that Clear Recon Corp, having been discharged from this action will have no further involvement in this case. (Doc. 11 at 2; Doc. 12)
² The Court finds the matter amenable to order without hearing. Thus, the hearing set on March 10, 2017 is **VACATED**.

1 **I. 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 **June 2, 2017**. Any motion to amend the pleading SHALL be set before
4 the Honorable Dale A. Drozd, United States District Court Judge.

5 **II. Discovery Plan and Cut-Off Date**

6 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
7 on or before **March 9, 2017**.

8 The parties agree they will conduct discovery related to the nature of Ms. Rodriguez's claim
9 before conducting any other discovery.

10 The parties are ordered to complete all discovery pertaining to non-experts on or before
11 **September 1, 2017** and all discovery pertaining to experts on or before **October 30, 2017**.

12 The parties are directed to disclose all expert witnesses, in writing, on or before **September 1,**
13 **2017**, and to disclose all rebuttal experts on or before **September 22, 2017**. The written designation of
14 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
15 **and (C) and shall include all information required thereunder**. Failure to designate experts in
16 compliance with this order may result in the Court excluding the testimony or other evidence offered
17 through such experts that are not disclosed pursuant to this order.

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

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

24 A mid-discovery status conference is scheduled for **June 23, 2017** at 8:45 a.m. before the
25 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
26 California. Counsel **SHALL** file a joint mid-discovery status conference report one week before the
27 conference. Counsel also **SHALL** lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
28 The joint statement **SHALL** outline the discovery counsel have completed and that which needs to be

1 completed as well as any impediments to completing the discovery within the deadlines set forth in this
2 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
3 1652736 provided they file a request to appear telephonically at least five court days in advance of the
4 hearing.

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

6 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
7 than **January 12, 2018** and heard on or before **February 9, 2018**. Discovery motions are heard before
8 the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
9 Bakersfield, California. For these hearings, counsel may appear via teleconference by dialing (888)
10 557-8511 and entering Access Code 1652736 provided they file a request to appear telephonically at
11 least five court days in advance of the hearing. All other non-dispositive hearings SHALL be set before
12 Judge Drozd.

13 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
14 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
15 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
16 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
17 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
18 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
19 obligation of the moving party to arrange and originate the conference call to the court. To schedule
20 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
21 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
22 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
23 **from the Court's calendar.**

24 All dispositive pre-trial motions shall be filed no later than **January 12, 2018**, and heard no
25 later than **February 20, 2018**, in Courtroom 5 at 8:30 a.m. before the Honorable Dale A. Drozd, United
26 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
27 **and Local Rules 230 and 260.**

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1 **IV. Motions for Summary Judgment or Summary Adjudication**

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

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

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

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

18 **V. Pre-Trial Conference Date**

19 **April 16, 2018** at 3:30 p.m. in Courtroom 5 before Judge Drozd.³

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

23 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
24 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
25 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
26 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
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³ In light of the fact that this will be a court trial, Judge Drozd may choose to forego a pretrial conference in
advance of the bench trial.

1 Court to explain the nature of the case to the jury during voir dire.

2 **VI. Trial Date**

3 **June 12, 2018** at 8:30 a.m. in Courtroom 5 before the Honorable Dale A. Drozd, United States
4 District Court Judge.

5 A. This is a court trial.

6 B. Counsels' Estimate of Trial Time: 2 days.

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

9 **VII. Settlement Conference**

10 A Settlement Conference is scheduled for **July 14, 2018**⁴ at 9:00 a.m. at 510 19th Street,
11 Bakersfield, California. Notwithstanding the provisions of Local Rule 270(b), the settlement
12 conference will be conducted by Magistrate Judge Thurston. The Court deems the deviation from the
13 Local Rule to be appropriate and in the interests of the parties and justice and sound case management
14 based upon the venue. If any party prefers that the settlement conference is conducted by a judicial
15 officer not already assigned to this case, that party is directed to notify the Court at least 60 days in
16 advance of the scheduled settlement conference to allow sufficient time for another judicial officer to
17 be assigned to handle the conference.

18 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
19 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
20 to negotiate and settle the case **on any terms**⁵ at the conference. Consideration of settlement is a
21 serious matter that requires preparation prior to the settlement conference. Set forth below are the
22 procedures the Court will employ, absent good cause, in conducting the conference.

23 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
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26 ⁴ If counsel determine the case is not in a settlement posture on this date or this date conflicts with their
27 calendars, they may stipulate to a different date provided they pre-clear the proposed date with the Court.

28 ⁵ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements
are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
person or persons who occupy high executive positions in the party organization and who will be directly involved in the
process of approval of any settlement offers or agreements. To the extent possible the representative shall have the
authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent
demand.

1 fax or e-mail, a written itemization of damages and a meaningful⁶ settlement demand which includes a
2 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
3 settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or
4 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
5 appropriate.

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

9 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

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

16 The Confidential Settlement Conference Statement shall include the following:

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

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27 ⁶ "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
28 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 **VIII. Request for Bifurcation, Appointment of Special Master, or other**
2 **Techniques to Shorten Trial**

3 Not applicable at this time.

4 **IX. Related Matters Pending**

5 There are no pending related matters.

6 **X. Compliance with Federal Procedure**

7 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
8 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
9 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
10 handle its increasing case load and sanctions will be imposed for failure to follow the Rules as provided
11 in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of
12 California.

13 **XI. Effect of this Order**

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

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

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

25
26 IT IS SO ORDERED.

27 Dated: March 3, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE