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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN MESSER,
Plaintiff,
v.
LEHIGH SOUTHWEST CEMENT
COMPANY, et al.,
Defendants.

) 1: 17-CV-01154 - DAD - JLT
)
) SCHEDULING ORDER (Fed. R. Civ. P. 16)
)
) Pleading Amendment Deadline: 3/2/2018
)
) Discovery Deadlines:
) Initial Disclosures: 12/13/2017
) Non-Expert: 5/11/2018
) Expert: 7/13/2018
) Mid-Discovery Status Conference:
) 3/22/2018 at 8:30 a.m.

) Non-Dispositive Motion Deadlines:
) Filing: 7/27/2018
) Hearing: 8/24/2018

) Dispositive Motion Deadlines:
) Filing: 9/4/2018
) Hearing: 10/16/2018

) Settlement Conference:
) 11/5/2018 at 10:00 a.m.
) 510 19th Street, Bakersfield, CA

) Pre-Trial Conference:
) 12/17/2018 at 1:30 p.m.
) Courtroom 5

) Trial: 1/12/2019 at 8:30 a.m.
) Courtroom 5
) Jury trial: 5 days

1 **I. Magistrate Judge Consent: Notice of Congested Docket and Court Policy of Trailing**

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

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

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

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

22 **IV. Pleading Amendment Deadline**

23 Any requested pleading amendments are ordered to be filed, either through a stipulation or
24 motion to amend, no later than **March 2, 2018**. Any motion to amend the pleadings shall be heard by
25 the Honorable Dale A. Drozd, United States District Court Judge.

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

27 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
28 on or before **December 13, 2017**.

1 The parties are ordered to complete all discovery pertaining to non-experts on or before **May**
2 **11, 2018** and all discovery pertaining to experts on or before **July 13, 2018**.

3 The parties are directed to disclose all expert witnesses¹, in writing, on or before **May 25, 2018**,
4 and to disclose all rebuttal experts on or before **July 22, 2018**. The written designation of retained and
5 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
6 **shall include all information required thereunder**. Failure to designate experts in compliance with
7 this order may result in the Court excluding the testimony or other evidence offered through such
8 experts that are not disclosed pursuant to this order.

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

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

15 A mid-discovery status conference is scheduled for **March 22, 2018** at 8:30 a.m. before the
16 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
17 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
18 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
19 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
20 completed as well as any impediments to completing the discovery within the deadlines set forth in this
21 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
22 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the
23 intent to appear telephonically no later than five court days before the noticed hearing date.

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

25 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
26 than **July 27, 2018**, and heard on or before **August 24, 2018**. Discovery motions are heard before the

27
28 ¹ In the event an expert will offer opinions related to an independent medical or mental health
evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's
report fully details the expert's opinions in this regard.

1 Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
2 Bakersfield, California. For these hearings, counsel may appear via teleconference by dialing (888)
3 557-8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy
4 Clerk receives a written notice of the intent to appear telephonically no later than five court days before
5 the noticed hearing date. All other non-dispositive hearings SHALL be set before Judge Drozd.

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

17 All dispositive pre-trial motions shall be filed no later than **September 4, 2018**, and heard no
18 later than **October 16, 2018**, in Courtroom 5 at 9:30 a.m. before the Honorable Dale A. Drozd, United
19 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
20 **and Local Rules 230 and 260.**

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

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

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

1 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

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

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

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

11 **December 17, 2018** at 1:30 p.m. in Courtroom 5 before Judge Drozd.

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

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

20 **IX. Trial Date**

21 **January 12, 2019** at 8:30 a.m. in Courtroom 5 before the Honorable Dale A. Drozd, United
22 States District Court Judge.

23 A. This is a jury trial.

24 B. Counsels' Estimate of Trial Time: 5 days.

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

27 **X. Settlement Conference**

28 A Settlement Conference is scheduled **November 5, 2018** at 10:00 a.m, located at 510 19th

1 Street, Bakersfield, California.² Notwithstanding the requirements of Local Rule 270(b), the settlement
2 conference will be conducted by Magistrate Judge Thurston. The Court deems the deviation from the
3 Local Rule to be appropriate and in the interests of the parties and justice and sound case management
4 based upon the location of the parties. **If any party prefers that the settlement conference be**
5 **conducted by a judicial officer who is not assigned to this case, that party is directed to notify the**
6 **Court no later than 60 days in advance of the scheduled settlement conference** to allow sufficient
7 time for another judicial officer to be assigned to handle the conference.

8 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
9 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
10 to negotiate and settle the case **on any terms**³ at the conference. Consideration of settlement is a
11 serious matter that requires preparation prior to the settlement conference. Set forth below are the
12 procedures the Court will employ, absent good cause, in conducting the conference.

13 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to
14 Defendant via fax or e-mail, a written itemization of damages and a meaningful⁴ settlement demand
15 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than
16 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an
17 acceptance of the offer or with a meaningful counteroffer, which includes a brief explanation of why
18 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.

23 ² If the parties believe the action is not in a settlement posture at this time or the case schedule demands
24 it, the parties may file a joint written request to continue the scheduling conference.

25 ³ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
26 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like
27 shall be represented by a person or persons who occupy high executive positions in the party organization and
28 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.

⁴ "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.

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CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

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

The Confidential Settlement Conference Statement shall include the following:

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

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

Not applicable at this time.

XII. Related Matters Pending

There are no pending related matters.

XIII. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow both the Federal 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: December 6, 2017

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