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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LINDA OSTROFSKY,

Plaintiff,

No. 2:07-cv-00987 MCE KJN PS

v.

DEPARTMENT OF REHABILITATION,

et al.,

Defendants.

AMENDED STATUS (PRETRIAL
SCHEDULING) ORDER¹

_____ /

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES WHICH THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL AND PARTIES MUST COMPLY. FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR AN ORDER OF JUDGMENT.

This action proceeds before the undersigned for all pretrial scheduling and

¹ This status order is amended to reflect that the final pretrial and trial dates are set before the Honorable Morrison C. England, Jr. This order sets forth the revised final pretrial and trial dates, times and locations.

1 proceedings. See 28 U.S.C. § 636(c)(1); Fed. R. Civ. P. 73; Local Rules 301, 302. Plaintiff filed
2 a status report on July 29, 2010. (Dkt. No. 53.) Defendants filed a status report on July 28, 2010.
3 (Dkt. No. 52.) Having concluded that oral argument would not materially assist the court, the
4 undersigned hereby submits the issue on the reports and record on file. See E. Dist. Local Rule
5 230(g). Accordingly, in consideration of the parties' status reports, the court enters the following
6 scheduling order:

7 NATURE OF CASE

8 Plaintiff's fourth amended complaint, filed December 24, 2009, alleges
9 employment discrimination and retaliation based on a disability. (Dkt. No. 42.) Plaintiff alleges
10 that she was subjected to a series of personnel-related decisions by her supervisors which she
11 alleges were discriminatory. Defendants deny the allegations and claim that plaintiff's causes of
12 action are barred by the statute of limitations and failure to exhaust administrative remedies.
13 Defendants further contend that any actions taken were nondiscriminatory and in the legitimate
14 exercise of managerial discretion.

15 SERVICE OF PROCESS

16 Service of process has been made on all defendants. After a series of amendments
17 to plaintiff's complaint, defendants answered the complaint on April 2, 2010. (Dkt. No. 50.)

18 JOINDER OF PARTIES/AMENDMENTS

19 No further joinder of parties or amendments to pleadings is permitted except with
20 leave of court and upon good cause shown.

21 JURISDICTION/VENUE

22 Jurisdiction and venue are undisputed and are hereby found to be proper. See 28
23 U.S.C. § 1331; 28 U.S.C. § 1391(b).²

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26 ² Defendants state in their status report that by consenting to jurisdiction and venue, they
are not waiving any claim of immunity. (Dkt. No. 52 at 3.)

1 MOTION HEARING SCHEDULES

2 All law and motion, except as to discovery-related matters, shall be completed by
3 November 17, 2011. The word “completed” in this context means that all law and motion
4 matters must be heard by the above date. Counsel (and/or pro se parties)³ are cautioned to refer
5 to the Local Rules regarding the requirements for noticing such motions on the court’s regularly
6 scheduled law and motion calendar. This paragraph does not preclude motions for continuances,
7 temporary restraining orders or other emergency applications, and is subject to any special
8 scheduling set forth in the “MISCELLANEOUS PROVISIONS” paragraph below.

9 The parties should keep in mind that the purpose of law and motion is to narrow
10 and refine the legal issues raised by the case and to dispose of by pretrial motion those issues that
11 are susceptible to resolution without trial. To accomplish that purpose, the parties need to
12 identify and fully research the issues presented by the case, and then examine those issues in light
13 of the evidence obtained through discovery. If it appears to counsel after examining the legal
14 issues and facts that an issue can be resolved by pretrial motion, counsel are to file the
15 appropriate motion consistent with the law and motion cutoff set forth above.

16 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY
17 PRETRIAL MOTION. Counsel are reminded that motions in limine are procedural devices
18 designed to address the admissibility of evidence. COUNSEL ARE CAUTIONED THAT THE
19 COURT WILL LOOK WITH DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED
20 UNDER THE GUISE OF MOTIONS IN LIMINE AT THE TIME OF TRIAL.

21 DISCOVERY

22 Initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) shall take
23 place on or before September 1, 2010.

24 All additional discovery shall be *completed* by August 25, 2011. The word

25 ³ Any reference to “counsel” in this order includes parties appearing without counsel, or
26 in propria persona.

1 “completed” means that all discovery shall have been conducted so that all depositions have been
2 taken and any disputes relative to discovery shall have been resolved by appropriate order if
3 necessary and, where discovery has been ordered, the order has been complied with. Motions to
4 compel discovery must be noticed on the undersigned’s law and motion calendar in accordance
5 with the Local Rules and must be heard not later than July 21, 2011.

6 EXPERT DISCLOSURE

7 The parties are to designate in writing and file with the court, and serve upon all
8 other parties, the names of all experts they propose to tender at trial, pursuant to the following
9 schedule: initial expert disclosures shall be made on or before June 2, 2011; rebuttal expert
10 disclosures shall be made on or before June 23, 2011.

11 An expert witness not appearing on such lists will not be permitted to testify
12 unless the party offering the witness demonstrates: (a) that the necessity of the witness could not
13 have been reasonably anticipated at the time the lists were exchanged; (b) the court and opposing
14 counsel were promptly notified upon discovery of the witness; and (c) that the witness was
15 promptly proffered for deposition. Failure to provide the information required along with the
16 expert designation may lead to preclusion of the expert’s testimony or other appropriate
17 sanctions.

18 For the purposes of this scheduling order, experts are defined as “percipient” and
19 “Rule 26” experts. Both types of experts shall be listed. Percipient experts are persons who,
20 because of their expertise, have rendered expert opinions in the normal course of their work
21 duties or observations pertinent to the issues in the case. Another term for their opinions are
22 “historical opinions.” Percipient experts are experts who, unless also designated as Rule 26
23 experts, are limited to testifying to their historical opinions and the reasons for them. That is,
24 they may be asked to testify about their opinions given in the past and the whys and wherefores
25 concerning the development of those opinions. However, they may not be asked to render a
26 current opinion for the purposes of the litigation.

1 Rule 26 experts, who may also be percipient experts, shall be specifically
2 designated by a party to be a testifying expert for the purposes of the litigation.⁴ A Rule 26
3 expert may express opinions formed for the purposes of the litigation. A party designating a
4 Rule 26 expert will be assumed to have acquired the express permission of the witness to be so
5 listed.

6 The parties shall comply with the information disclosure provisions of Federal
7 Rule of Civil Procedure 26(a)(2) for any expert, who is in whole or in part designated as a Rule
8 26 expert. This information is due at the time of designation. Failure to supply the required
9 information may result in the Rule 26 expert being stricken. All Rule 26 experts are to be fully
10 prepared to render an informed opinion at the time of *designation* so that they may fully
11 participate in any deposition taken by the opposing party. Rule 26 experts will not be permitted
12 to testify at trial as to any information gathered or evaluated, or opinion formed, which should
13 have been reasonably available at the time of designation. The court will closely scrutinize for
14 discovery abuse opinions offered at deposition that differ markedly in nature and/or in bases from
15 those expressed in the mandatory information disclosure.

16 FINAL PRETRIAL CONFERENCE

17 The final pretrial conference is set before the Honorable Morrison C. England, Jr.
18 on December 8, 2011, at 2:00 p.m., in Courtroom No. 7. Counsel are cautioned that counsel
19 appearing for pretrial will in fact try the matter. Counsel for all parties or parties representing
20 themselves are to be fully prepared for trial at the time of the pretrial conference, with no matters
21 remaining to be accomplished except production of witnesses for oral testimony. Counsel are
22 referred to Local Rules 281 and 282 relating to pretrial statements and conferences. A FAILURE
23 TO COMPLY WITH LOCAL RULES 281 AND 282 WILL BE GROUNDS FOR SANCTIONS.

24 Notwithstanding Local Rule 281, the parties shall submit a *joint pretrial statement*
25

26 ⁴ The court is not interested in a designation of non-testifying Rule 26 experts.

1 not later than fourteen days prior to the pretrial conference. The joint pretrial statement shall
2 conform with the requirements of Local Rule 281(b). The undisputed facts and disputed factual
3 issues shall be set forth in two separate sections. The parties should identify those facts which
4 are relevant to each separate cause of action. In this regard, the parties are to number each
5 individual fact or factual issues. Where the parties are unable to agree as to what factual issues
6 are properly before the court for trial, they should nevertheless list in the section on “DISPUTED
7 FACTUAL ISSUES” all issues asserted by any of the parties and explain by parenthetical the
8 controversy concerning each issue. The parties should keep in mind that, in general, each fact
9 should relate or correspond to an element of the relevant cause of action. The parties should also
10 keep in mind that the purpose of listing the disputed factual issues is to apprise the court and all
11 parties about the precise *issues* that will be litigated at trial. *The court is not interested in a*
12 *listing of all evidentiary facts underlying the issues that are in dispute.*⁵ The joint statement of
13 undisputed facts and disputed factual issues is to be filed with the court concurrently with the
14 filing of the joint pretrial statement.

15 Pursuant to Local Rule 281(b), the parties are required to provide with their
16 pretrial statement a list of witnesses and exhibits that they propose to proffer at trial, no matter
17 for what purpose. These lists shall not be contained in the pretrial statement itself, but shall be
18 attached as separate documents to be used as addenda to the final pretrial order. Plaintiff’s
19 exhibits shall be listed numerically; defendant’s exhibits shall be listed alphabetically. The
20 pretrial order will contain a stringent standard for the proffering of witnesses and exhibits at trial
21 not listed in the pretrial order. Counsel are cautioned that the standard will be strictly applied.
22 On the other hand, the listing of exhibits or witnesses which counsel do not intend or use will be
23 viewed as an abuse of the court’s processes.

24 Counsel are reminded that, pursuant to Federal Rule of Civil Procedure 16, it will

25 ⁵ However, with respect to the listing of undisputed facts, the court will accept
26 agreements as to evidentiary facts.

1 be their duty at the pretrial conference to aid the court in (a) formulation and simplification of
2 issues and the elimination of meritless claims or defenses; (b) settling of facts which should be
3 properly admitted; and (c) avoidance of unnecessary proof and cumulative evidence. The parties
4 must prepare their joint pretrial statement, and participate in good faith at the pretrial conference,
5 with these aims in mind. A FAILURE TO DO SO MAY RESULT IN THE IMPOSITION OF
6 SANCTIONS which may include monetary sanctions, orders precluding proof, eliminations of
7 claims or defenses, or such other sanctions as the court deems appropriate.

8 TRIAL SETTING

9 A jury trial is set to commence before the Honorable Morrison C. England, Jr. on
10 February 6, 2012, at 9:00 a.m., in Courtroom No. 7. The parties anticipate that the jury trial will
11 take approximately five days.

12 SETTLEMENT CONFERENCE & VOLUNTARY DISPUTE RESOLUTION PROGRAM

13 Defendants request a settlement conference with a judge different from the trial
14 judge after the ruling on any summary judgment motion. Plaintiff states that a settlement
15 conference is appropriate to settle this matter. If the parties agree to request a settlement
16 conference, they may contact the undersigned's courtroom clerk to request one.

17 MISCELLANEOUS PROVISIONS

18 The parties are reminded that pursuant to Fed. R. Civ. P. 16(b)(4), this order shall
19 not be modified except by leave of court upon a showing of good cause. Counsel are cautioned
20 that changes to any of the scheduled dates will necessarily result in changes to all other dates.
21 Thus, even where good cause has been shown, the court will not grant a request to change the
22 discovery cutoff date without modifying the pretrial and trial dates.

23 Agreement by the parties pursuant to stipulation does not constitute good cause.
24 Nor does the unavailability of witnesses or counsel, except in extraordinary circumstances,
25 constitute good cause.

26 This Status Order will become final without further order of the Court unless

1 objections are filed within seven days of service of this Order.

2 SUMMARY OF ORDER

3 Subject to the foregoing, THE COURT SUMMARIZES THE SCHEDULING
4 ORDER AS FOLLOWS:

5 1. Initial discovery disclosures shall take place on or before September 1,
6 2010. The parties may conduct further discovery until August 25, 2011. Motions to compel
7 discovery are to be noticed for hearing no later than July 21, 2011, as more specifically described
8 in this order.

9 2. The parties shall make their initial expert disclosures on or before June 2,
10 2011, and their rebuttal expert disclosures on or before June 23, 2011, as described herein.


11 3. All pretrial motions, except motions to compel discovery, shall be
12 completed as described herein and pursuant to the Local and Federal Rules on or before
13 September 22, 2011.

14 4. The final pretrial conference is set before the Honorable Morrison C.
15 England, Jr. on December 8, 2011, at 2:00 p.m., in Courtroom No. 7. A joint pretrial statement
16 shall be filed by November 17, 2011, in accordance with Local Rules 281 and 282, and the
17 requirements set forth herein.

18 5. A jury trial is set to commence before the Honorable Morrison C. England,
19 Jr. on February 6, 2012, at 9:00 a.m., in Courtroom No. 7.

20 IT IS SO ORDERED.

21 DATED: August 23, 2010

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23 
24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE
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