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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS W. BALL, an individual,

NO. CIV. S-07-1190 LKK/DAD

Plaintiff,

v.

MIKE JOHANNNS, et al.,

Defendants.

\_\_\_\_\_  
DENNIS W. BALL, an individual; INDIAN SPRINGS VINEYARDS, a California partnership,

Plaintiffs,

v.

PREMIERWEST BANK, a banking corporation; DOES ONE THROUGH THIRTY, inclusive,

Defendants.

**STATUS (PRETRIAL SCHEDULING) CONFERENCE**

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES WHICH THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL AND

1 PARTIES MUST COMPLY. A FAILURE TO COMPLY WITH THE TERMS OF THIS  
2 ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER  
3 SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR AN  
4 ORDER OF JUDGMENT.

5 Pursuant to court order, a Status (Pretrial Scheduling)  
6 Conference was held in the courtroom on January 28, 2008. William  
7 Lukens and Louis Pugh appeared as counsel for plaintiffs Dennis  
8 Ball and Indian Springs Vineyards; Zachary Smith and Stephen Lerner  
9 appeared as counsel for defendant Premier West Bank; Ana Maria  
10 Martel appeared as counsel for U.S. Department of Agriculture and  
11 Mike Johanns. After hearing, the court makes the following  
12 findings and orders:

13 **SERVICE OF PROCESS**

14 All parties defendant have been served and no further service  
15 is permitted except with leave of court, good cause having been  
16 shown.

17 **JOINDER OF PARTIES/AMENDMENTS**

18 Except as provided below, no further joinder of parties or  
19 amendments to pleadings is permitted except with leave of court,  
20 good cause having been shown. See Johnson v. Mammoth Recreations,  
21 Inc., 975 F.2d 604 (9th Cir. 1992).

22 The government is granted 15 days from the court's order to  
23 file an amended complaint.

24 **JURISDICTION/VENUE**

25 Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1332, is  
26 undisputed and is hereby found to be proper, as is venue.

1            **FICTITIOUSLY-NAMED DEFENDANTS**

2            This action, including any counterclaims, cross-claims, and  
3 third-party complaints is hereby DISMISSED as to all DOE or other  
4 fictitiously-named defendants.

5            **MOTION HEARING SCHEDULES**

6            All law and motion except as to discovery is left open, save  
7 and except that it shall be conducted so as to be completed by  
8 November 28, 2008. The word "completed" in this context means that  
9 all law and motion matters must be **heard** by the above date.  
10 Because this date is not necessarily a date previously set aside  
11 for law and motion hearings, it is incumbent upon counsel to  
12 contact this court's courtroom deputy, Ana Rivas at (916) 930-4133,  
13 sufficiently in advance so as to ascertain the dates upon which law  
14 and motion will be heard and to properly notice its motion for  
15 hearing before that date. Counsel are cautioned to refer to Local  
16 Rule 78-230 regarding the requirements for noticing such motions  
17 on the court's regularly scheduled law and motion calendar.  
18 **Opposition or statement of non-opposition to all motions shall be**  
19 **filed not later than 4:30 p.m. fourteen (14) days preceding the**  
20 **hearing date, or by proof of service by mail not less than**  
21 **seventeen (17) days preceding the hearing date.** This paragraph  
22 does not preclude motions for continuances, temporary restraining  
23 orders or other emergency applications, and is subject to any  
24 special scheduling set forth in the "MISCELLANEOUS PROVISIONS"  
25 paragraph below.

26            At the time of filing a motion, opposition, or reply, counsel

1 are directed to email a copy in word processing format to [lk-](mailto:lk-pleadings@caed.uscourts.gov)  
2 [pleadings@caed.uscourts.gov](mailto:pleadings@caed.uscourts.gov).

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

13 **Unless prior permission has been granted, memoranda of law in**  
14 **support of and in opposition to motions are limited to thirty (30)**  
15 **pages, and reply memoranda are limited to fifteen (15) pages. The**  
16 **parties are also cautioned against filing multiple briefs to**  
17 **circumvent this rule.**

18 Where the parties bring motions for summary judgment, the  
19 court will deem facts which are apparently undisputed as undisputed  
20 under Fed. R. Civ. P. 56(d), unless specifically reserved and that  
21 party tenders evidence to support the reservation.

22 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL  
23 MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL ORDINARILY BE  
24 VIEWED AS A WAIVER AT THE TIME OF PRETRIAL. COUNSEL ARE CAUTIONED  
25 THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE BEEN TENDERED TO THE COURT  
26 BY PRETRIAL MOTION MUST BE RESOLVED BY THE COURT AFTER LAW AND

1 MOTION CUTOFF, FOR INSTANCE WHERE THE ISSUE IS JURISDICTION,  
2 SUBSTANTIAL SANCTIONS WILL BE LEVIED AGAINST COUNSEL WHO FAIL TO  
3 TIMELY FILE AN APPROPRIATE MOTION.

4 Counsel are further reminded that motions in limine are  
5 procedural devices designed to address the admissibility of  
6 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH  
7 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF MOTIONS  
8 IN LIMINE AT THE TIME OF TRIAL.

9 **DISCOVERY**

10 No modifications of the discovery requirements found in the  
11 Federal Rules is ordered.

12 All discovery is left open, save and except that it shall be  
13 so conducted as to be completed by September 28, 2008. The word  
14 "completed" means that all discovery shall have been conducted so  
15 that all depositions have been taken and any disputes relative to  
16 discovery shall have been resolved by appropriate order if  
17 necessary and, where discovery has been ordered, the order has been  
18 complied with. Motions to compel discovery must be noticed on the  
19 magistrate judge's calendar in accordance with the local rules of  
20 this court and so that such motions will be heard not later than  
21 August 28, 2008. In this regard, all counsel are to designate in  
22 writing and file with the court and serve upon all other parties  
23 a final list of the names of all experts that they propose to  
24 tender at trial not later than forty-five (45) days before the  
25 close of discovery herein established. At the time of designation,  
26 all experts shall submit a written report. The contents of the

1 report must comply with Federal Rule of Civil Procedure 26  
2 (A)(2)(b). All experts so designated are to be fully prepared to  
3 render an informed opinion at the time of designation so that they  
4 may fully participate in any deposition taken by the opposing  
5 party. Experts will not be permitted to testify at the trial as  
6 to any information gathered or evaluated, or opinion formed, after  
7 deposition taken subsequent to designation.

8 An expert witness not appearing on said lists will not be  
9 permitted to testify unless the party offering the witness  
10 demonstrates: (a) that the necessity of the witness could not have  
11 been reasonably anticipated at the time the lists were exchanged;  
12 (b) the court and opposing counsel were promptly notified upon  
13 discovery of the witness; and (c) that the witness was promptly  
14 proffered for deposition.

15 **MID-LITIGATION STATEMENTS**

16 Not later than fourteen (14) days prior to the close of  
17 discovery, all parties shall file with the court and serve on all  
18 other parties a brief statement summarizing all law and motion  
19 practice heard by the court as of the date of the filing of the  
20 statement, whether the court has disposed of the motion at the time  
21 the statement is filed and served, and the likelihood that any  
22 further motions will be noticed prior to the close of law and  
23 motion. The filing of this statement shall not relieve the parties  
24 or counsel of their obligation to timely notice all appropriate  
25 motions as set forth above.

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1           **FINAL PRETRIAL CONFERENCE**

2           The Final Pretrial Conference is **SET** for February 23, 2009,  
3 at 1:30 p.m. Counsel are cautioned that counsel appearing for  
4 Pretrial will in fact try the matter.

5           Counsel for all parties are to be fully prepared for trial at  
6 the time of the Pretrial Conference, with no matters remaining to  
7 be accomplished except production of witnesses for oral testimony.  
8 Counsel are referred to Local Rules 40-280 and 16-281 relating to  
9 the contents of and time for filing Pretrial Statements. In  
10 addition to those subjects listed in Local Rule 16-281(b), the  
11 parties are to provide the court with a plain, concise statement  
12 which identifies every non-discovery motion tendered to the court,  
13 and its resolution. A FAILURE TO COMPLY WITH LOCAL RULES 40-280  
14 AND 16-281 WILL BE GROUNDS FOR SANCTIONS.

15           The parties shall file Separate Pretrial Statements, the  
16 contents and timing of which are set forth in Local Rule 16-281,  
17 except that the parties are to prepare a JOINT STATEMENT with  
18 respect to the undisputed facts and disputed factual issues of the  
19 case. See Local Rule 16-281(b)(3), (4), and (6). The parties are  
20 reminded to include in their joint statement all disputed and  
21 undisputed special factual information as required by Local Rule  
22 16-281(b)(6).

23           The undisputed facts and disputed factual issues are to be set  
24 forth in two separate sections. In each section, the parties  
25 should identify first the general facts relevant to all causes of  
26 action. After identifying the general facts, the parties should

1 then identify those facts which are relevant to each separate cause  
2 of action. In this regard, the parties are to number each  
3 individual fact or factual issue. Where the parties are unable to  
4 agree as to what factual issues are properly before the court for  
5 trial, they should nevertheless list in the section on "DISPUTED  
6 FACTUAL ISSUES" all issues asserted by any of the parties and  
7 explain by parenthetical the controversy concerning each issue.  
8 Each individual disputed fact or factual issue shall include the  
9 following introductory language: "Whether or not . . . ." The  
10 parties should keep in mind that, in general, each fact should  
11 relate or correspond to an element of the relevant cause of action.  
12 Notwithstanding the provisions of Local Rule 16-281, the Joint  
13 Statement of Undisputed Facts and Disputed Factual Issues is to be  
14 filed with the court concurrently with the filing of plaintiff's  
15 Pretrial Statement. If the case is tried to a jury, the undisputed  
16 facts will be read to the jury.

17 Pursuant to Local Rule 16-281(b)(10) and (11), the parties are  
18 required to provide in their Pretrial Statements a list of  
19 witnesses and exhibits that they propose to proffer at trial, no  
20 matter for what purpose. These lists shall not be contained in the  
21 Pretrial Statement itself, but shall be attached as separate  
22 documents to be used as addenda to the Final Pretrial Order.  
23 Plaintiff's exhibits shall be listed numerically; defendant's  
24 exhibits shall be listed alphabetically. In the event that the  
25 alphabet is exhausted, defendant's exhibits shall be marked "2A-2Z,  
26 3A-3Z, etc." The Pretrial Order will contain a stringent standard

1 for the proffering of witnesses and exhibits at trial not listed  
2 in the Pretrial Order. Counsel are cautioned that the standard  
3 will be strictly applied. On the other hand, the listing of  
4 exhibits or witnesses which counsel do not intend to call or use  
5 will be viewed as an abuse of the court's processes.

6 Pursuant to Local Rule 16-281(b)(12), a party is required to  
7 provide a list of all answers to interrogatories and responses to  
8 requests for admission that the party expects to offer at trial.  
9 This list should include only those documents or portions thereof  
10 which the party expects to offer in its case-in-chief. Unless  
11 otherwise barred by a rule of evidence or order of this court, the  
12 parties remain free to tender appropriate discovery documents  
13 during trial for such purposes as, but not limited to, impeachment  
14 or memory refreshment.

15 Pursuant to Local Rule 16-281(b)(8), the parties' Pretrial  
16 Statements shall contain a "statement of legal theory, etc." Each  
17 party shall commence this section by specifying as to each claim  
18 whether federal or state law governs, and if state law, the state  
19 whose law is applicable.

20 Counsel are also reminded that, pursuant to Fed. R. Civ. P.  
21 16, it will be their duty at the Pretrial Conference to aid the  
22 court in (a) formulation and simplification of issues and the  
23 elimination of frivolous claims or defenses; (b) settling of facts  
24 which should be properly admitted; and (c) the avoidance of  
25 unnecessary proof and cumulative evidence. Counsel must prepare  
26 their Pretrial Statements, and participate in good faith at the

1 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO  
2 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include  
3 monetary sanctions, orders precluding proof, eliminations of claims  
4 or defenses, or such other sanctions as the court deems  
5 appropriate.

6 **TRIAL SETTING**

7 Trial is **SET** for May 19, 2009, at 10:30 a.m. Trial will be  
8 by jury. The parties represent in good faith that the trial will  
9 take approximately seven (7) days.

10 **SETTLEMENT CONFERENCE**

11 A Settlement Conference will be set before a judge other than  
12 the trial judge at the time of the Pretrial Conference.

13 Counsel are cautioned to have a principal capable of  
14 disposition present at the Settlement Conference or to be fully  
15 authorized to settle the matter on any terms and at the Settlement  
16 Conference.

17 **MISCELLANEOUS PROVISIONS**

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

26 **Agreement by the parties pursuant to stipulation does not**

1 constitute good cause. Nor does the unavailability of witnesses  
2 or counsel, except in extraordinary circumstances, constitute good  
3 cause.

4 The parties are reminded of their continuing obligation to  
5 supplement their statements relative to the identification of  
6 parent corporations and any publicly held company that owns 10% or  
7 more of the party's stock within a reasonable time of any change  
8 in the information.

9 The parties are admonished that they are not to cite or refer  
10 to any of the quotations inscribed in the pavers on the front plaza  
11 of the United States Courthouse in any written or oral presentation  
12 to the court or a jury.

13 There appear to be no other matters presently pending before  
14 the court that will aid the just and expeditious disposition of  
15 this matter.

16 IT IS SO ORDERED.

17 DATED: February 1, 2008.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT