

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

NEWARK GROUP, INC.,) 2:08-cv-02623-GEB-DAD
Plaintiff,)
v.) STATUS (PRETRIAL
DOPACO INC.,) SCHEDULING) ORDER
Defendant.¹)

The status (pretrial scheduling) conference scheduled for February 2, 2009, is vacated since the parties' Joint Status Report ("JSR") indicates that the following Order should issue.

DISMISSAL OF DOE DEFENDANTS

Since Plaintiff has not justified Doe defendants remaining in this action, Does 1 - 10 are dismissed. See Order Setting Status (Pretrial Scheduling) Conference filed November 3, 2008, at 2 n.2 (indicating that if Plaintiff or Plaintiffs fail to set forth in the JSR a date and specific information by when the identities of any

¹ The caption has been amended according to the Dismissal of Doe Defendants portion of this Order.

1 "Doe" defendants are expected to be discovered, any claim against such
2 Doe defendants would be deemed abandoned and a dismissal order would
3 follow).

4 SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

5 No further service, joinder of parties or amendments to
6 pleadings is permitted, except with leave of Court, good cause having
7 been shown.

8 DISCOVERY

9 All non-expert discovery shall be completed by October 1,
10 2009. In this context, "completed" means that all discovery shall
11 have been conducted so that all depositions have been taken and any
12 disputes relative to discovery shall have been resolved by appropriate
13 orders, if necessary, and, where discovery has been ordered, the order
14 has been complied with or, alternatively, the time allowed for such
15 compliance shall have expired.²

16 Each party shall comply with Federal Rule of Civil Procedure
17 26(a)(2)'s expert witness disclosure requirements on or before
18 November 2, 2009. All expert discovery shall be completed by February
19, 2010.

20 MOTION HEARING SCHEDULE

21 The last hearing date for motions shall be August 30, 2010,
22 at 9:00 a.m.³

23 ² The parties are advised that the Magistrate Judges in the
24 Eastern District are responsible for resolving discovery disputes. See
25 Local Rule 72-302(c)(1). Accordingly, counsel shall direct all
26 discovery-related matters to the Magistrate Judge assigned to this case.
27 A party conducting discovery near the discovery "completion" date runs
the risk of losing the opportunity to have a judge resolve discovery
motions pursuant to the Local Rules.

28 ³ This time deadline does not apply to motions for continuances,
(continued...)

1 Motions shall be filed in accordance with Local Rule 78-
2 230(b). Opposition papers shall be filed in accordance with Local
3 Rule 78-230(c). Failure to comply with this local rule may be deemed
4 consent to the motion and the Court may dispose of the motion
5 summarily. Brydges v. Lewis, 18 F.3d 651, 652-53 (9th Cir. 1994).
6 Further, failure to timely oppose a summary judgment motion may result
7 in the granting of that motion if the movant shifts the burden to the
8 nonmovant to demonstrate a genuine issue of material fact remains for
9 trial. Cf. Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995).

10 Absent highly unusual circumstances, reconsideration of a
11 motion is appropriate only where:

12 (1) The Court is presented with newly discovered evidence
13 that could not reasonably have been discovered prior to the filing of
14 the party's motion or opposition papers;

15 (2) The Court committed clear error or the initial decision
16 was manifestly unjust; or

17 (3) There is an intervening change in controlling law.
18 A motion for reconsideration based on newly discovered evidence shall
19 set forth, in detail, the reason why said evidence could not
20 reasonably have been discovered prior to the filing of the party's
21 motion or opposition papers. Motions for reconsideration shall comply
22 with Local Rule 78-230(k) in all other respects.

23 The parties are cautioned that an untimely motion
24 characterized as a motion in limine may be summarily denied. A motion
25 in limine addresses the admissibility of evidence.

26
27

³(...continued)
28 temporary restraining orders, emergency applications, or motions under
Rule 16(e) of the Federal Rules of Civil Procedure.

FINAL PRETRIAL CONFERENCE

The final pretrial conference is set for October 25, 2010, at 1:30 p.m. The parties are cautioned that the lead attorney who WILL TRY THE CASE for each party shall attend the final pretrial conference. In addition, all persons representing themselves and appearing in propria persona must attend the pretrial conference.

The parties are warned that non-trial worthy issues could be eliminated *sua sponte* "[i]f the pretrial conference discloses that no material facts are in dispute and that the undisputed facts entitle one of the parties to judgment as a matter of law." Portsmouth Square v. S'holders Protective Comm., 770 F.2d 866, 869 (9th Cir. 1985).

The parties shall file a JOINT pretrial statement no later than seven (7) calendar days prior to the final pretrial conference.⁴ The joint pretrial statement shall specify the issues for trial and shall estimate the length of the trial.⁵ The Court uses the parties' joint pretrial statement to prepare its final pretrial order and could issue the final pretrial order without holding the scheduled final pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th Cir. 1999) ("There is no requirement that the court hold a pretrial conference."). The final pretrial order supersedes the pleadings and controls the facts and issues which may be presented at trial. Issues

⁴ The failure of one or more of the parties to participate in the preparation of any joint document required to be filed in this case does not excuse the other parties from their obligation to timely file the document in accordance with this Order. In the event a party fails to participate as ordered, the party or parties timely submitting the document shall include a declaration explaining why they were unable to obtain the cooperation of the other party.

5 The joint pretrial statement shall also state how much time each party desires for voir dire, opening statements, and closing arguments.

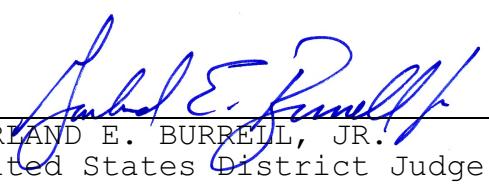
1 asserted in pleadings which are not preserved for trial in the final
2 pretrial order cannot be raised at trial. Hotel Emp., et al. Health
3 Tr. v. Elks Lodge 1450, 827 F.2d 1324, 1329 (9th Cir. 1987) ("Issues
4 not preserved in the pretrial order are eliminated from the action.");
5 Valley Ranch Dev. Co. v. F.D.I.C., 960 F.2d 550, 554 (5th Cir. 1992)
6 (indicating that an issue omitted from the pretrial order is waived,
7 even if it appeared in the pleading); cf. Raney v. Dist. of Columbia,
8 892 F. Supp. 283 (D.D.C. 1995) (refusing to modify the pretrial order
9 to allow assertion of a previously-pled statute of limitations
10 defense); Olympia Co. v. Celotex Corp., 597 F. Supp. 285, 289 (E.D.
11 La. 1984) (indicating that "[a]ny factual contention, legal
12 contention, any claim for relief or defense in whole or in part, or
13 affirmative matter not set forth in [the pretrial statement] shall be
14 deemed . . . withdrawn, notwithstanding the contentions of any
15 pleadings or other papers previously filed [in the action]").

16 If possible, at the time of filing the joint pretrial
17 statement counsel shall also email it in a format compatible with
18 WordPerfect to: qeborders@caed.uscourts.gov.

19 TRIAL SETTING

20 Trial is set for January 25, 2011, commencing at 9:00 a.m.

21 Dated: February 2, 2009

22 
23 GARLAND E. BURRELL, JR.
24 United States District Judge