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

JESSE OLIVAR,

Plaintiff,

No. CIV S-09-0091 JAM DAD PS

vs.

JOHN E. POTTER, Postmaster
General, USPS, et al.,

Defendants.

_____ /

AMENDED¹ STATUS (PRETRIAL SCHEDULING) ORDER

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

Pursuant to court order, a Status (Pretrial Scheduling) Conference was held on September 11, 2009, at 11:00 a.m. Plaintiff Jesse Olivar, who is proceeding pro se, appeared on

_____ ¹ This order is amended to include an additional jurisdictional ground and to reflect a bench trial rather than a jury trial. The amendments are shown in italics on pages 2 and 6.

1 his own behalf. Assistant United States Attorney Bobbie J. Montoya appeared for defendant
2 John E. Potter, Postmaster General.

3 After hearing, the court makes the following findings and orders:

4 **SERVICE OF PROCESS**

5 Service of process on the remaining defendant has been completed. No further
6 service is permitted except with leave of court, good cause having been shown.

7 **JOINDER OF PARTIES/AMENDMENTS**

8 No further joinder of parties or amendments to pleadings is permitted except with
9 leave of court, good cause having been shown. See Johnson v. Mammoth Recreations, Inc., 975
10 F.2d 604, 609-10 (9th Cir. 1992).

11 **JURISDICTION/VENUE**

12 Jurisdiction over plaintiff's claims appears to be predicated upon 42 U.S.C. §
13 2000e (Title VII) and 42 U.S.C. §§ 12112 - 12117 (ADA). Venue is not disputed and is hereby
14 found to be proper.

15 **MOTION HEARING SCHEDULES**

16 All law and motion, except as to discovery, which is discussed below, shall be
17 conducted so as to be completed by **October 11, 2010**. The word "completed" in this context
18 means that all law and motion matters must be **heard** on or before the above date. Because this
19 date is not necessarily a date that will be set aside for law and motion hearings, it is incumbent
20 upon counsel and parties proceeding pro se to contact this court's courtroom deputy, Pete Buzo,
21 at (916) 930-4128 sufficiently in advance so as to ascertain dates upon which law and motion
22 will be heard and to properly notice motions for hearing on or before the specified date. This
23 paragraph does not preclude the filing of motions for continuances, motions for temporary
24 restraining orders, and other emergency applications that are subject to special scheduling.

25 The parties are cautioned to refer to Local Rule 78-230 regarding the requirements
26 for noticing non-discovery motions on this court's regularly scheduled law and motion calendar.

1 **Opposition or statement of non-opposition to all properly noticed motions shall be filed and**
2 **served not later than 4:30 p.m. fourteen (14) days preceding the hearing date except that**
3 **opposition served by mail must be served no less than seventeen (17) days preceding the**
4 **hearing date.**

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

12 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY
13 PRETRIAL MOTION. Counsel and parties proceeding pro se are reminded that motions in
14 limine are procedural devices designed to address the admissibility of evidence. Counsel and
15 parties proceeding pro se are cautioned that the court will look with disfavor upon substantive
16 motions presented in the guise of motions in limine at the time of trial. Counsel and parties
17 proceeding pro se are further cautioned that if any legal issue that should have been tendered to
18 the court by pretrial motion must be resolved by the court after law and motion cutoff, substantial
19 sanctions may be levied against the attorney or the party proceeding pro se who failed to timely
20 file an appropriate motion.

21 **DISCOVERY**

22 As suggested by the parties, there shall be a simultaneous exchange of initial
23 disclosures pursuant to Rule 26(a) of the Federal Rules of Civil Procedure thirty days after the
24 issuance of this order. All limitations on discovery set forth in the Federal Rules shall govern
25 this action absent further order of the court.

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1 All discovery shall be conducted so as to be completed by **August 16, 2010**. The
2 word “completed” in this context means that all discovery shall have been conducted so that all
3 depositions have been taken and any disputes relative to discovery shall have been resolved by
4 appropriate order if necessary and, where discovery has been ordered, the order has been
5 complied with.

6 All discovery motions must be noticed on the magistrate judge’s calendar in
7 accordance with the local rules of this court. See Local Rule 37-251.

8 Plaintiff shall designate in writing and file with the court and serve upon
9 defendant the names of any experts that he proposes to tender at trial not later than **May 3, 2010**.
10 Defendant shall designate in writing and file with the court and serve upon all other parties the
11 names of any experts that they propose to tender at trial not later than **June 7, 2010**. All experts
12 so designated are to be fully prepared to render an informed opinion at the time of designation so
13 that they may fully participate in any deposition taken by the opposing party. Experts will not be
14 permitted to testify at the trial as to any information gathered or evaluated, or opinion formed,
15 after deposition taken subsequent to designation. An expert witness not listed in the party’s
16 designation of witnesses will not be permitted to testify unless the party offering the witness
17 demonstrates that: (a) the necessity of the witness could not have been reasonably anticipated at
18 the time the lists were exchanged; (b) the court and opposing counsel were promptly notified
19 upon discovery of the witness; and (c) the witness was promptly proffered for deposition.

20 **FINAL PRETRIAL CONFERENCE**

21 Final Pretrial Conference is **SET** for **December 10, 2010**, at **3:00 p.m.**, before the
22 Honorable John A. Mendez. The parties are cautioned that any counsel appearing for Final
23 Pretrial Conference shall in fact try the matter.

24 Counsel and parties proceeding pro se are to be fully prepared for trial at the time
25 of the Pretrial Conference, with no matters remaining to be accomplished except production of
26 witnesses for oral testimony.

1 Counsel and parties proceeding pro se are referred to Local Rules 40-280 and 16-
2 281 relating to the contents of and time for filing Pretrial Statements. In addition to all subjects
3 listed in Local Rule 16-281(b), the parties shall include in their pretrial statements a plain,
4 concise statement that identifies every non-discovery motion tendered to the court and its
5 resolution. A FAILURE TO COMPLY WITH LOCAL RULES 40-280 AND 16-281 WILL BE
6 GROUNDS FOR SANCTIONS.

7 Plaintiff and defendant shall each file a separate Pretrial Statement in accordance
8 with the provisions of Local Rule 16-281(a)(1). Additionally, the parties shall prepare a JOINT
9 STATEMENT with respect to the undisputed facts and disputed factual issues of the case. See
10 Local Rule 16-281(b)(3), (4), and (6). In the joint statement, the undisputed facts and disputed
11 factual issues are to be set forth in two separate sections. In each section, the parties should
12 identify first the general facts relevant to all causes of action. After identifying the general facts,
13 the parties should then identify those facts which are relevant to each separate cause of action. In
14 this regard, the parties are to number each individual fact or factual issue. Where the parties are
15 unable to agree as to what factual issues are properly before the court for trial, they should list in
16 the section on "DISPUTED FACTUAL ISSUES" all issues asserted by any party and explain by
17 parenthetical the controversy concerning each issue. In general, each fact should relate or
18 correspond to an element of the relevant cause of action. Notwithstanding the provisions of
19 Local Rule 16-281, the Joint Statement of Undisputed Facts and Disputed Factual Issues is to be
20 filed with the court concurrently with the filing of plaintiff's Pretrial Statement.

21 Pursuant to Local Rule 16-281(b)(10) and (11), the parties are required to provide
22 with their separate Pretrial Statements a list of witnesses and a list of exhibits that they propose
23 to proffer at trial for any purpose. These lists shall not be contained in the party's Pretrial
24 Statement itself but shall be attached as separate documents. Plaintiff's exhibits shall be listed
25 numerically. Defendant's exhibits shall be listed alphabetically. In the event that the alphabet
26 is exhausted, defendant's additional exhibits shall be marked "2A-2Z, 3A-3Z," etc. The court's

1 Pretrial Order will contain a stringent standard for the proffering at trial of witnesses and exhibits
2 not listed in the Pretrial Order. Counsel and parties proceeding pro se are cautioned that the
3 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses which the
4 party does not intend to call or use will be viewed as an abuse of the court's processes.

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

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

15 The parties are also reminded that, pursuant to Fed. R. Civ. P. 16, it will be their
16 duty at the Final Pretrial Conference to aid the court in (a) the formulation and simplification of
17 issues and the elimination of frivolous claims or defenses; (b) the settling of facts that should be
18 properly admitted; and (c) the avoidance of unnecessary proof and cumulative evidence. Each
19 party must prepare its Pretrial Statement, and participate in good faith at the Final Pretrial
20 Conference, with these aims in mind. FAILURE TO DO SO MAY RESULT IN THE
21 IMPOSITION of SANCTIONS, which may include monetary sanctions, orders precluding proof,
22 the elimination of claims or defenses, or such other sanctions as the court deems appropriate.

23 TRIAL SETTING

24 A *Bench* Trial is **SET** for **February 14, 2011**, at **9:00 a.m.** before the Honorable
25 John A. Mendez.

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1 **SETTLEMENT CONFERENCE**

2 At the time of the Final Pretrial Conference, a Settlement Conference may be
3 scheduled unless all parties request an early settlement conference. The parties must have a
4 principal capable of disposition present at the Settlement Conference or to be fully authorized to
5 settle the matter on any terms and at the Settlement Conference.

6 **MISCELLANEOUS PROVISIONS**

7 The parties are reminded that pursuant to Fed. R. Civ. P. 16(b), this order **shall**
8 **not be modified except by leave of court upon a showing of good cause.** The parties are
9 cautioned that changes to any of the scheduled dates may necessarily result in changes to all other
10 dates. Thus, even where good cause has been shown, the court may deny a request to change the
11 discovery cutoff date without modifying the pretrial conference and trial dates. Any request for
12 modification of the pretrial conference date or the trial date must be submitted to the assigned
13 district judge. **Agreement by the parties pursuant to stipulation does not constitute good**
14 **cause. Nor does the unavailability of witnesses or counsel, except in extraordinary**
15 **circumstances, constitute good cause.**

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

18 IT IS SO ORDERED.

19 DATED: October 26, 2009.

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22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

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