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

SCOTT JOHNSON,	)	
	)	2:09-cv-01333-GEB-EFB
Plaintiff,	)	
	)	<u>STATUS (PRETRIAL</u>
v.	)	<u>SCHEDULING) ORDER</u>
	)	
DORIS L. AZEVEDO; JAMES MARVIN	)	
HENRY BERGH,	)	
	)	
Defendants.	)	
_____	)	

The status (pretrial scheduling) conference scheduled for September 21, 2009 is vacated since the parties indicate in the Joint Status Report that the following Order should issue.

SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

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

DISCOVERY

All discovery shall be completed by November 10, 2010. In this context, "completed" means that all discovery shall have been conducted so that all depositions have been taken and any disputes relative to discovery shall have been resolved by appropriate orders, if necessary, and, where discovery has been ordered, the order has

1 been complied with or, alternatively, the time allowed for such  
2 compliance shall have expired.<sup>1</sup>

3 Each party shall comply with Federal Rule of Civil Procedure  
4 26(a)(2)(c)(i)'s initial expert witness disclosure requirements on or  
5 before June 10, 2010, and any contradictory and/or rebuttal expert  
6 disclosure authorized under Rule 26(a)(2)(c)(ii) on or before July 12,  
7 2010.

8 MOTION HEARING SCHEDULE

9 The last hearing date for motions shall be January 10, 2011,  
10 at 9:00 a.m.<sup>2</sup>

11 Motions shall be filed in accordance with Local Rule 78-  
12 230(b). Opposition papers shall be filed in accordance with Local  
13 Rule 78-230(c). Failure to comply with this local rule may be deemed  
14 consent to the motion and the Court may dispose of the motion  
15 summarily. Brydges v. Lewis, 18 F.3d 651, 652-53 (9th Cir. 1994).  
16 Further, failure to timely oppose a summary judgment motion may result  
17 in the granting of that motion if the movant shifts the burden to the  
18 nonmovant to demonstrate a genuine issue of material fact remains for  
19 trial. Cf. Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995).

20 Absent highly unusual circumstances, reconsideration of a  
21 motion is appropriate only where:  
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24 <sup>1</sup> The Magistrate Judges in the Eastern District are responsible  
25 for resolving discovery disputes. See Local Rule 72-302(c)(1). A party  
26 conducting discovery near the discovery "completion" date risks losing  
27 the opportunity to have a judge resolve a discovery dispute concerning  
28 that discovery.

<sup>2</sup> This time deadline does not apply to motions for continuances,  
temporary restraining orders, emergency applications, or motions under  
Rule 16(e) of the Federal Rules of Civil Procedure.

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

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

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

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

15  
16 FINAL PRETRIAL CONFERENCE

17 The final pretrial conference is set for March 7, 2011,  
18 at 2:30 p.m. The parties are cautioned that the lead attorney who  
19 WILL TRY THE CASE for each party shall attend the final pretrial  
20 conference. In addition, all persons representing themselves and  
21 appearing in propria persona must attend the pretrial conference.

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

1 The parties shall file a JOINT pretrial statement no later  
2 than seven (7) calendar days prior to the final pretrial conference.<sup>3</sup>  
3 The joint pretrial statement shall specify the issues for trial and  
4 shall estimate the length of the trial.<sup>4</sup> The Court uses the parties'  
5 joint pretrial statement to prepare its final pretrial order and could  
6 issue the final pretrial order without holding the scheduled final  
7 pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th  
8 Cir. 1999) ("There is no requirement that the court hold a pretrial  
9 conference.").

10 If possible, at the time of filing the joint pretrial statement  
11 counsel shall also email it in a format compatible with WordPerfect  
12 to: [geborders@caed.uscourts.gov](mailto:geborders@caed.uscourts.gov).

13  
14 TRIAL SETTING

15 Trial shall commence at 9:00 a.m. on June 7, 2011.

16  
17 MISCELLANEOUS

18 The parties are reminded that pursuant to Federal Rule of  
19 Civil Procedure 16(b), the Status (Pretrial Scheduling) Order **shall**  
20 **not be modified except by leave of Court upon a showing of good cause.**  
21

22 \_\_\_\_\_  
23 <sup>3</sup> The failure of one or more of the parties to participate in  
24 the preparation of any joint document required to be filed in this case  
25 does not excuse the other parties from their obligation to timely file  
26 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.

27 <sup>4</sup> **The joint pretrial statement shall also state how much time**  
28 **each party desires for voir dire, opening statements, and closing**  
**arguments.**

1 Counsel are cautioned that a mere stipulation by itself to change  
2 dates does not constitute good cause.

3 IT IS SO ORDERED.

4 Dated: September 18, 2009

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8 GARLAND E. BURRELL, JR.  
9 United States District Judge  
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