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

ASSOCIATED GENERAL CONTRACTORS  
OF AMERICA, et al

CIV. S-09-1622 JAM GGH

Plaintiff,

v.

STATUS (Pre-trial  
Scheduling) ORDER

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION, et al  
Defendants.

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After review of the Joint Status Report, the court  
makes the following order:

SERVICE OF PROCESS

All parties defendant to this lawsuit have been served and  
no further service will be permitted except with leave of court,  
good cause having been shown.

JOINDER OF ADDITIONAL PARTIES/AMENDMENTS

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

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JURISDICTION AND VENUE

Jurisdiction and venue are not contested.

FICTITIOUSLY-NAMED DEFENDANTS

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

MOTION HEARINGS SCHEDULES

All dispositive motions shall be filed by October 20, 2010. Hearing on such motions shall be on November 17, 2010 at 9:00 a.m.

**The parties are reminded of the notice requirements as outlined in Local Rule 78-230(b).**

The time deadline for dispositive motions does not apply to motions for continuances, temporary restraining orders or other emergency applications.

**THE OPPOSITION AND REPLY MUST BE FILED BY 4:00 P.M. ON THE DAY DUE.**

All purely legal issues are to be resolved by timely pre-trial motions. The parties are reminded that motions in limine are procedural devices designed to address the admissibility of evidence and are cautioned that the court will look with disfavor upon substantive motions presented at the final pre-trial conference or at trial in the guise of motions in limine. The parties are further cautioned that if any legal issue which should have been tendered to the court by proper pre-trial motion requires resolution by the court after the established law and

1 motion cut-off date, substantial sanctions may be assessed for  
2 the failure to file the appropriate pre-trial motion.

3 **Unless prior permission has been granted, memoranda of law**  
4 **in support of and in opposition to motions are limited to twenty-**  
5 **five (25) pages, and reply memoranda are limited to ten (10)**  
6 **pages. The parties are also cautioned against filing multiple**  
7 **briefs to circumvent this rule. The parties request to exceed**  
8 **the page limitations is declined.**

9 DISCOVERY

10 All discovery shall be completed by September 3, 2010. In  
11 this context, "completed" means that all discovery shall have  
12 been conducted so that all depositions have been taken and any  
13 disputes relative to discovery shall have been resolved by  
14 appropriate order if necessary and, where discovery has been  
15 ordered, the order has been complied with. **Plaintiff's request to**  
16 **increase the number of interrogatories propounded to defendants**  
17 **is declined.**

18 DISCLOSURE OF EXPERT WITNESSES

19 The parties shall make expert witness disclosures under  
20 Fed. R. Civ. P. 26(a)(2) by July 9, 2010. Supplemental  
21 disclosure and disclosure of any rebuttal experts under  
22 Fed. R. Civ. P. 26(a)(2)(c) shall be made by July 23, 2010.

23 Failure of a party to comply with the disclosure schedule as  
24 set forth above in all likelihood will preclude that party from  
25 calling the expert witness at the time of trial absent a showing  
26 that the necessity for the witness could not have been reasonably

1 anticipated at the time the disclosures were ordered and that the  
2 failure to make timely disclosure did not prejudice any other  
3 party. See Fed. R. Civ. P. 37(c).

4 All experts designated are to be fully prepared at the time  
5 of designation to render an informed opinion, and give their  
6 reasons therefore, so that they will be able to give full and  
7 complete testimony at any deposition taken by the opposing  
8 parties. Experts will not be permitted to testify at the trial  
9 as to any information gathered or evaluated, or opinion formed,  
10 after deposition taken subsequent to designation.

11 JOINT MID-LITIGATION STATEMENTS

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

22 FINAL PRE-TRIAL CONFERENCE

23 The final pre-trial conference is set for January 14, 2011  
24 at 2:00 p.m. In each instance an attorney who will try the case  
25 for a given party shall attend the final pretrial conference on  
26 behalf of that party; provided, however, that if by reason of

1 illness or other unavoidable circumstance the trial attorney is  
2 unable to attend, the attorney who attends in place of the trial  
3 attorney shall have equal familiarity with the case and equal  
4 authorization to make commitments on behalf of the client. All  
5 pro se parties must attend the pre-trial conference.

6 Counsel for all parties and all pro se parties are to be  
7 fully prepared for trial at the time of the pre-trial conference,  
8 with no matters remaining to be accomplished except production of  
9 witnesses for oral testimony. The parties shall file with the  
10 court, no later than seven days prior to the final pre-trial  
11 conference, a joint pre-trial statement.

12 **Also at the time of filing the Joint Pretrial Statement, counsel**  
13 **are requested to e-mail the Joint Pretrial Statement in WPD or**  
14 **Word format to Judge Mendez's assistant, Jane Pratt**  
15 **at: [jpratt@caed.uscourts.gov](mailto:jpratt@caed.uscourts.gov).**

16 Where the parties are unable to agree as to what legal or  
17 factual issues are properly before the court for trial, they  
18 should nevertheless list all issues asserted by any of the  
19 parties and indicate by appropriate footnotes the disputes  
20 concerning such issues. The provisions of Local Rule 16-281  
21 shall, however, apply with respect to the matters to be included  
22 in the joint pre-trial statement. Failure to comply with Local  
23 Rule 16-281, as modified herein, may be grounds for sanctions.

24 The parties are reminded that pursuant to Local Rule  
25 16-281(b)(10) and (11) they are required to list in the final  
26 pre-trial statement all witnesses and exhibits they propose to

1 offer at trial, no matter for what purpose. These lists shall  
2 not be contained in the body of the final pre-trial statement  
3 itself, but shall be attached as separate documents so that the  
4 court may attach them as an addendum to the final pre-trial  
5 order. The final pre-trial order will contain a stringent  
6 standard for the offering at trial of witnesses and exhibits not  
7 listed in the final pre-trial order, and the parties are  
8 cautioned that the standard will be strictly applied. On the  
9 other hand, the listing of exhibits or witnesses that a party  
10 does not intend to offer will be viewed as an abuse of the  
11 court's processes.

12       The parties are also reminded that pursuant to Rule 16,  
13 Fed. R. Civ. P., it will be their duty at the final pre-trial  
14 conference to aid the court in: (a) formulation and  
15 simplification of issues and the elimination of frivolous claims  
16 or defenses; (b) settling of facts which should properly be  
17 admitted; and (c) the avoidance of unnecessary proof and  
18 cumulative evidence. Counsel must cooperatively prepare the  
19 joint pre-trial statement and participate in good faith at the  
20 final pre-trial conference with these aims in mind. A failure to  
21 do so may result in the imposition of sanctions which may include  
22 monetary sanctions, orders precluding proof, elimination of  
23 claims or defenses, or such other sanctions as the court deems  
24 appropriate.

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TRIAL SETTING

Jury trial in this matter is set for March 7, 2011 at 9:00 a.m. The parties estimate a trial length of approximately 10 days.

SETTLEMENT CONFERENCE

No Settlement Conference is currently scheduled. If the parties wish to have a settlement conference, one will be scheduled at the final pretrial conference or at an earlier time upon request of the parties.

OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

This Status Order will become final without further Order of Court unless objection is lodged within seven (7) days of the date of the filing of this Order.

IT IS SO ORDERED.

Dated: August 26, 2009

/s/ John A. Mendez  
JOHN A. MENDEZ  
United States District Judge