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

UNITED STATES OF AMERICA,)	
)	2:09-cv-01940-GEB-GGH
Plaintiff,)	
)	
v.)	<u>STATUS (PRETRIAL SCHEDULING)</u>
)	<u>ORDER</u>
REAL PROPERTY LOCATED AT 1 MILE)	
UP HENNESSEY ROAD, BURNT RANCH,)	
CALIFORNIA, TRINITY COUNTY, APN:)	
008-430-02, INCLUDING ALL)	
APPURTENANCES AND IMPROVEMENTS)	
THERE TO,)	
)	
Defendant.)	
_____)	

The status (pretrial scheduling) conference scheduled for March 28, 2011, is vacated since the parties' Joint Status Report filed on March 14, 2011 ("JSR") indicates that the following Order should issue.

DEFAULT PROCEEDINGS

Plaintiff states in the JSR:

The Clerk entered defaults against James Pickle and Terry J. Williams on January 15, 2010. The Clerk entered Thomas Pickle's default on March 2, 2010, after the claim and answer filed on his behalf were stricken. As stated in footnote one, above, subsequent to entry of Thomas Pickles' default, Erlinda Thomas filed a claim asserting an interest against the property in her own right (based on "ownership") and on behalf of Thomas Pickle as his appointed conservator. Erlinda Thomas' claims raise potential standing issues as the default against Thomas Pickle has not been set aside, and with respect to her claim, it may be untimely and against real property that appears to have been held as Thomas Pickle's sole and separate property.

1 (ECF No. 37, 2:18-3:1.)

2 Plaintiff shall either file whatever document is required to
3 prosecute this case as a default matter against Thomas Pickle, James
4 Pickle and Terry Williams, or shall file a writing no later explaining
5 its failure to do so, no later than 4:00 p.m. on April 29, 2011. If a
6 hearing is requested on this show cause issue, it will be held on May
7 23, 2011, at 9:00 a.m.

8 SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

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

11 DISCOVERY

12 All discovery shall be completed by February 6, 2012. In this
13 context, "completed" means that all discovery shall have been conducted
14 so that all depositions have been taken and any disputes relative to
15 discovery shall have been resolved by appropriate orders, if necessary,
16 and, where discovery has been ordered, the order has been complied with
17 or, alternatively, the time allowed for such compliance shall have
18 expired.

19 Each party shall comply with Federal Rule of Civil Procedure
20 26(a)(2)(c)(i)'s initial expert witness disclosure requirements on or
21 before October 3, 2011, and any contradictory and/or rebuttal expert
22 disclosure authorized under Rule 26(a)(2)(c)(ii) on or before November
23 17, 2011.

24 MOTION HEARING SCHEDULE

25 The last hearing date for motions shall be April 2, 2012, at
26 9:00 a.m.¹

27 _____
28 ¹ This time deadline does not apply to motions for continuances,
(continued...)

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

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

13 FINAL PRETRIAL CONFERENCE

14 The final pretrial conference is set for June 4, 2012, at 1:30
15 p.m. The parties are cautioned that the lead attorney who WILL TRY THE
16 CASE for each party shall attend the final pretrial conference. In
17 addition, all persons representing themselves and appearing in propria
18 persona must attend the pretrial conference.

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

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27 ¹(...continued)
28 temporary restraining orders, emergency applications, or motions under
Rule 16(e) of the Federal Rules of Civil Procedure.

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

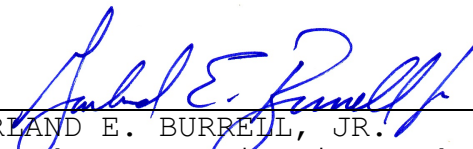
11 If possible, at the time of filing the joint pretrial
12 statement counsel shall also email it in a format compatible with
13 WordPerfect to: geborders@caed.uscourts.gov.

14 TRIAL SETTING

15 Trial shall commence at 9:00 a.m. on September 11, 2012.

16 IT IS SO ORDERED.

17 Dated: March 23, 2011

18
19 
20 _____
21 GARLAND E. BURRELL, JR.
22 United States District Judge

23 ² 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
27 to participate as ordered, the party or parties timely submitting the
28 document shall include a declaration explaining why they were unable to
obtain the cooperation of the other party.

³ If a trial by jury has been preserved, the joint pretrial
statement shall also state how much time each party desires for voir
dire, opening statements, and closing arguments.