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

DAVID WARREN,)	
)	2:09-cv-01963-GEB-GGH
Plaintiff,)	
)	<u>STATUS (PRETRIAL</u>
v.)	<u>SCHEDULING) ORDER</u>
)	
SUNRISE ASSESSMENT SERVICES,)	
)	
)	
Defendant.)	
_____)	

A lawyer in this action had the audacity to call chambers for the purpose of requesting a telephonic appearance at the scheduled status conference, even though counsel had not filed a timely status report. The parties eventually filed a late status. "The cogs of the wheel of justice move much more smoothly when attorneys who practice in this court follow the rules of practice and procedure" Dela Rosa v. Scottsdale Memorial Health Systems, Inc., 136 F.3d 1241, 1244 (9th Cir. 1998). Counsel should know that "[a] scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril Disregard of the order [c]ould undermine the court's ability to control its docket . . . and reward the indolent and the cavalier," unless judicial action dissuade counsel from such behavior. Johnson v. Mammoth Recreations, Inc. 975 F.2d 604, 610 (9th Cir. 1992) (citation and quotations omitted). If counsel do not heed this warning, the Court could determine in a sanctions proceeding commenced in the future

1 whether sanctions should be imposed for failure to comply with a court
2 order.

3 The status (pretrial scheduling) conference scheduled for
4 December 14, 2009 is vacated since the parties indicate in their
5 untimely Joint Status Report, filed December 7, 2009, that the
6 following Order should issue.

7 SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

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

11 DISCOVERY

12 All discovery shall be completed by August 23, 2010. In
13 this context, "completed" means that all discovery shall have been
14 conducted so that all depositions have been taken and any disputes
15 relative to discovery shall have been resolved by appropriate orders,
16 if necessary, and, where discovery has been ordered, the order has
17 been complied with or, alternatively, the time allowed for such
18 compliance shall have expired.¹

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 March 22, 2010, and any contradictory and/or rebuttal expert
22 disclosure authorized under Rule 26(a)(2)(c)(ii) on or before April
23 22, 2010.

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26 ¹ The Magistrate Judges in the Eastern District are responsible
27 for resolving discovery disputes. See Local Rule 302(c)(1). A party
28 conducting discovery near the discovery "completion" date risks losing
the opportunity to have a judge resolve a discovery dispute concerning
that discovery.

1 MOTION HEARING SCHEDULE

2 The last hearing date for motions shall be October 25, 2010,
3 at 9:00 a.m.²

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

7 FINAL PRETRIAL CONFERENCE

8 The final pretrial conference is set for December 20, 2010,
9 at 2:30 p.m. The parties are cautioned that the lead attorney who
10 WILL TRY THE CASE for each party shall attend the final pretrial
11 conference. In addition, all persons representing themselves and
12 appearing in propria persona must attend the pretrial conference.

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

18 The parties shall file a JOINT pretrial statement no later
19 than seven (7) calendar days prior to the final pretrial conference.³
20 The parties shall include in the joint pretrial statement: (1) a list
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22

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

25 ³ The failure of one or more of the parties to participate in
26 the preparation of any joint document required to be filed in this case
27 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
28 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.

1 of the remaining claims against each defendant; (2) a list of the
2 remaining affirmative defenses; and (3) the estimated number of trial
3 days.⁴ Further, in accordance with Local Rule 281(b)(3)-(4), the
4 parties shall provide the undisputed facts they agree can be read to
5 the jury before opening statements, or used by the judge in deciding a
6 bench trial; and a concise statement of disputed factual issues
7 pertinent to the claims and affirmative defenses to be tried.

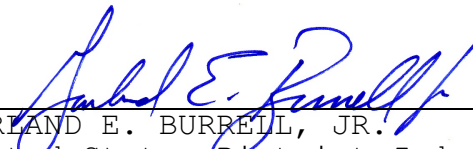
8 The Court uses the parties' joint pretrial statement to
9 prepare its final pretrial order and could issue the final pretrial
10 order without holding the scheduled final pretrial conference. See
11 Mizwicki v. Helwig, 196 F.3d 828, 833 (7th Cir. 1999) ("There is no
12 requirement that the court hold a pretrial conference.").

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

16 TRIAL SETTING

17 Trial shall commence at 9:00 a.m. on February 22, 2011.

18 Dated: December 9, 2009

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20 
21 _____
22 GARLAND E. BURRELL, JR.
23 United States District Judge
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28 ⁴ The joint pretrial statement shall also state how much time
each party desires for voir dire, opening statements, and closing
arguments.