

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

SCOTT N. JOHNSON,

Plaintiff,

V.

NO. CIV. S-09-2716 GGH

ELIAS H. JBEILY, et al.,

Defendant.

STATUS (PRETRIAL  
SCHEDULING) ORDER

Each of the parties in the above-captioned case has filed a "Consent to Proceed

Before a United States Magistrate Judge.” See 28 U.S.C. § 636(c). According to E.D. Cal. R.

305, both the district court judge assigned to the case and the magistrate judge must approve the

reference to the magistrate judge. The undersigned hereby approves the reference

The parties have filed a joint statement regarding scheduling. Accordingly, the

court makes the following findings and orders:

## SERVICE OF PROCESS

All defendants have been served and no further service is permitted except with leave of court, good cause having been shown.<sup>1</sup>

<sup>1</sup> Defendant Marrach has been terminated from this case.

1        JOINDER OF PARTIES/AMENDMENTS

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

4        JURISDICTION/VENUE

5                Jurisdiction is undisputed and is hereby found to be proper, as is venue.

6        MOTION HEARING SCHEDULES

7                All law and motion except as to discovery is left open, save and except that it  
8 shall be conducted so as to be completed by April 21, 2011. The word "completed" in this  
9 context means that all law and motion matters must be heard by the above date. Counsel are  
10 cautioned to refer to the local rules regarding the requirements for noticing such motions on the  
11 court's regularly scheduled law and motion calendar. This paragraph does not preclude motions  
12 for continuances, temporary restraining orders or other emergency applications, and is subject to  
13 any special scheduling set forth in the "MISCELLANEOUS PROVISIONS" paragraph below.

14                The parties should keep in mind that the purpose of law and motion is to narrow  
15 and refine the legal issues raised by the case, and to dispose of by pretrial motion those issues  
16 that are susceptible to resolution without trial. To accomplish that purpose, the parties need to  
17 identify and fully research the issues presented by the case, and then examine those issues in light  
18 of the evidence gleaned through discovery. If it appears to counsel after examining the legal  
19 issues and facts that an issue can be resolved by pretrial motion, counsel are to file the  
20 appropriate motion by the law and motion cutoff set forth supra.

21                **ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY**  
22 **PRETRIAL MOTION.** Counsel are reminded that motions in limine are procedural devices  
23 designed to address the admissibility of evidence. **COUNSEL ARE CAUTIONED THAT THE**  
24 **COURT WILL LOOK WITH DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED**  
25 **IN THE GUISE OF MOTIONS IN LIMINE AT THE TIME OF TRIAL.**

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1        DISCOVERY

2                All discovery is left open, save and except that it shall be so conducted as to be  
3        completed by March 10, 2011. The word “completed” means that all discovery shall have been  
4        conducted so that all depositions have been taken and any disputes relative to discovery shall  
5        have been resolved by appropriate order if necessary and, where discovery has been ordered, the  
6        order has been complied with. Motions to compel discovery must be noticed on the  
7        undersigned’s calendar in accordance with the local rules of this court and so that such motions  
8        will be heard not later than February 24, 2011.

9        EXPERT DISCLOSURE

10               All counsel (and/or pro se parties) are to designate in writing and file with the  
11       court, and serve upon all other parties, the names of all experts that they propose to tender at trial  
12       not later than December 23, 2010. An expert witness not appearing on said lists will not be  
13       permitted to testify unless the party offering the witness demonstrates: (a) that the necessity of  
14       the witness could not have been reasonably anticipated at the time the lists were exchanged; (b)  
15       the court and opposing counsel were promptly notified upon discovery of the witness; and (c)  
16       that the witness was promptly proffered for deposition. Failure to provide the information  
17       required along with the expert designation may lead to preclusion of the expert’s testimony or  
18       other appropriate sanctions.

19               For the purposes of this scheduling order, experts are defined as “percipient”(Rule  
20       26(a)(2)(A)) and designated Rule 26(a)(2)(B) experts. Both types of experts shall be listed.  
21       Percipient experts are persons who, because of their expertise, have rendered expert opinions in  
22       the normal course of their work duties or observations pertinent to the issues in the case.  
23       Another term for their opinions are “historical opinions.” Percipient experts are experts who,  
24       unless also designated as Rule 26(a)(2)(B) experts, are limited to testifying to their historical  
25       opinions and the reasons for them. That is, they may be asked to testify to their opinions given in  
26       the past and the why’s and wherefore’s concerning the development of that opinion. However,

1 they may not be asked to render a current opinion for the purposes of the litigation.

2 Designated Rule 26(a)(2)(B) experts, who may be percipient experts as well, are  
3 specifically designated by a party to be a testifying expert for the purposes of the litigation.<sup>2</sup> The  
4 designated Rule 26 expert may express opinions formed for the purposes of the litigation. A  
5 party designating a Rule 26 expert will be assumed to have acquired the express permission of  
6 the witness to be so listed.

7 The parties shall comply with the information disclosure provisions of Fed. R.  
8 Civ. P. 26 (a)(2) for any expert, who is in whole or in part designated as a Rule 26(a)(2)(B)  
9 expert. This information is due at the time of designation. Failure to supply the required  
10 information may result in the striking of the designated Rule 26 expert. All Rule 26 experts are  
11 to be fully prepared to render an informed opinion at the time of *designation* so that they may  
12 fully participate in any deposition taken by the opposing party. Rule 26 experts will not be  
13 permitted to testify at trial as to any information gathered or evaluated, or opinion formed, which  
14 should have been reasonably available at the time of designation. The court will closely  
15 scrutinize for discovery abuse deposition opinions which differ markedly in nature and/or in  
16 bases from those expressed in the mandatory information disclosure.

17 **FINAL PRETRIAL CONFERENCE**

18 The Final Pretrial Conference is set in courtroom #9 of the undersigned on June 9,  
19 2011, at 10:00 a.m. Counsel are cautioned that counsel appearing for Pretrial will in fact try the  
20 matter.

21 All parties are to be fully prepared for trial at the time of the Pretrial Conference,  
22 with no matters remaining to be accomplished except production of witnesses for oral testimony.  
23 Counsel are referred to Local Rules 281 and 282 relating to the contents of and time for filing  
24 Pretrial Statements. A FAILURE TO COMPLY WITH LOCAL RULES 281 AND 282 WILL

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26 <sup>2</sup> The court is not interested in a designation of non-testifying Rule 26 experts.

1 BE GROUNDS FOR SANCTIONS.

2 Notwithstanding the provisions of Local Rule 281, which contemplates the filing  
3 of separate Pretrial Statements by plaintiffs and defendants, the parties are to prepare a JOINT  
4 STATEMENT with respect to the undisputed facts and disputed factual issues of the case. See  
5 Local Rule 281(b)(3), (4), and (6). The undisputed facts and disputed factual issues are to be set  
6 forth in two separate sections. The parties should identify those facts which are relevant to each  
7 separate cause of action. In this regard, the parties are to number each individual fact or factual  
8 issue. Where the parties are unable to agree as to what factual issues are properly before the  
9 court for trial, they should nevertheless list in the section on "DISPUTED FACTUAL ISSUES"  
10 all issues asserted by any of the parties and explain by parenthetical the controversy concerning  
11 each issue. The parties should keep in mind that, in general, each fact should relate or  
12 correspond to an element of the relevant cause of action. The parties should also keep in mind  
13 that the purpose of listing the disputed factual issues is to apprise the court and all parties about  
14 the precise issues that will be litigated at trial. The court is not interested in a listing of all  
15 evidentiary facts underlying the issues that are in dispute.<sup>3</sup> The joint statement of undisputed  
16 facts and disputed factual issues is to be filed with the court concurrently with the filing of  
17 plaintiff's Pretrial Statement. If the case is tried to a jury, the undisputed facts will be read to the  
18 jury.

19 Pursuant to Local Rule 281(b)(10) and (11), the parties are required to provide in  
20 their Pretrial Statements a list of witnesses and exhibits that they propose to proffer at trial, no  
21 matter for what purpose. These lists shall not be contained in the Pretrial Statement itself, but  
22 shall be attached as separate documents to be used as addenda to the Final Pretrial Order.  
23 Plaintiff's exhibits shall be listed numerically; defendant's exhibits shall be listed alphabetically.  
24 The Pretrial Order will contain a stringent standard for the proffering of witnesses and exhibits at

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25  
26 <sup>3</sup> However, with respect to the listing of undisputed facts, the court will accept agreements  
as to evidentiary facts.

1 trial not listed in the Pretrial Order. Counsel are cautioned that the standard will be strictly  
2 applied. On the other hand, the listing of exhibits or witnesses which counsel do not intend to  
3 call or use will be viewed as an abuse of the court's processes.

4 Counsel are also reminded that, pursuant to Fed. R. Civ. P. 16, it will be their duty  
5 at the pretrial conference to aid the court in (a) formulation and simplification of issues and the  
6 elimination of frivolous claims or defenses; (b) settling of facts which should be properly  
7 admitted; and (c) the avoidance of unnecessary proof and cumulative evidence. Counsel must  
8 prepare their Pretrial Statements, and participate in good faith at the Pretrial Conference, with  
9 these aims in mind. A FAILURE TO DO SO MAY RESULT IN THE IMPOSITION OF  
10 SANCTIONS which may include monetary sanctions, orders precluding proof, eliminations of  
11 claims or defenses, or such other sanctions as the court deems appropriate.

12 TRIAL SETTING

13 Trial is set for August 8, 2011 at 9:00 a.m. in Courtroom No. #9 before the  
14 undersigned. Trial will be by the court. The court expects the trial will take approximately three  
15 days.

16 SETTLEMENT CONFERENCE

17 A Settlement Conference will be set at the time of the pretrial conference.

18 MISCELLANEOUS PROVISIONS

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

21 IT IS SO ORDERED.

22 Pursuant to Fed. R. Civ. P. 16(b), THIS COURT SUMMARIZES THE  
23 SCHEDULING ORDER AS FOLLOWS:

24 1. The parties may conduct discovery until March 10, 2011. Motions  
25 to compel discovery are to be noticed to be heard by February 24,  
26 2011, as more specifically described in this order.

2. The parties shall disclose experts, as described herein, by December 23, 2010.
3. All pretrial motions, except motions to compel discovery, shall be completed as described herein on or before April 21, 2011.
4. Pretrial conference (as described in local rule 282) is set in this case for June 9, 2011, at 10:00 a.m. Pretrial statements shall be filed in accord with Local Rules 281 and 282.
5. This matter is set for court trial on August 8, 2011, at 9:00 a.m.

DATED: April 14, 2010

/s/ Gregory G. Hollows

**GREGORY G. HOLLOW  
U.S. MAGISTRATE JUDGE**

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