

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

The status (pretrial scheduling) conference scheduled for June 14, 2010, is vacated since the Joint Status Report filed on May 28, 2010 ("JSR") indicates that the following Order should issue.

DISMISSAL OF DOE DEFENDANTS

Since Plaintiff has not justified Doe defendants remaining in this action, Does 1-10 are dismissed. See Order Setting Status (Pretrial Scheduling) Conference filed February 10, 2010, at 2 n. 2 (indicating that if justification for "Doe" defendant allegations not provided Doe defendants would be dismissed).

SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

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

<sup>1</sup> The caption has been amended according to the Dismissal of Doe Defendants portion of this Order.

## DISCOVERY

Non-expert discovery shall be completed by December 17, 2010. Expert discovery shall be completed by August 19, 2011. 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 been complied with or, alternatively, the time allowed for such compliance shall have expired.<sup>2</sup>

Each party shall comply with Federal Rule of Civil Procedure 26(a)(2)(c)(i)'s initial expert witness disclosure requirements on or before February 18, 2011, and any contradictory and/or rebuttal expert disclosure authorized under Rule 26(a)(2)(c)(ii) on or before March 18, 2011.

MOTION HEARING SCHEDULE

The last hearing date for motions shall be October 24, 2011,  
at 9:00 a.m.<sup>3</sup>

Motions shall be filed in accordance with Local Rule 230(b). Opposition papers shall be filed in accordance with Local Rule 230(c). **Failure to comply with this local rule may be deemed consent to the motion and the Court may dispose of the motion summarily. Brydges v. Lewis, 18 F.3d 651, 652-53 (9th Cir. 1994).** Further, failure to

<sup>2</sup> The Magistrate Judges in the Eastern District are responsible for resolving discovery disputes. See Local Rule 302(c)(1). A party conducting discovery near the discovery "completion" date risks losing the opportunity to have a judge resolve a discovery dispute concerning that discovery.

<sup>3</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 timely oppose a summary judgment motion may result in the granting of  
2 that motion if the movant shifts the burden to the nonmovant to  
3 demonstrate a genuine issue of material fact remains for trial. Cf.  
4 Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995).

5 Absent highly unusual circumstances, reconsideration of a  
6 motion is appropriate only where:

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

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

12 (3) There is an intervening change in controlling law.

13 A motion for reconsideration based on newly discovered evidence shall  
14 set forth, in detail, the reason why said evidence could not  
15 reasonably have been discovered prior to the filing of the party's  
16 motion or opposition papers. Motions for reconsideration shall comply  
17 with Local Rule 203(j) in all other respects.

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

21 FINAL PRETRIAL CONFERENCE

22 The final pretrial conference is set for December 19, 2011,  
23 at 1:30 p.m. The parties are cautioned that the lead attorney who  
24 WILL TRY THE CASE for each party shall attend the final pretrial  
25 conference. In addition, all persons representing themselves and  
26 appearing in propria persona must attend the pretrial conference.

27 The parties are warned that **non-trial worthy issues could be**  
28 **eliminated *sua sponte*** "[i]f the pretrial conference discloses that no

1 material facts are in dispute and that the undisputed facts entitle  
2 one of the parties to judgment as a matter of law." Portsmouth Square  
3 v. S'holders Protective Comm., 770 F.2d 866, 869 (9th Cir. 1985).

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

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

18 TRIAL SETTING

19 The bench trial shall commence at 9:00 a.m. on March 20,  
20 2012.

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23  
24 <sup>4</sup> The failure of one or more of the parties to participate in  
25 the preparation of any joint document required to be filed in this case  
26 does not excuse the other parties from their obligation to timely file  
27 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.

28 <sup>5</sup> **The joint pretrial statement shall also state how much time  
each party desires for opening statements, and closing arguments.**

## MISCELLANEOUS

The parties are reminded that pursuant to Federal Rule of Civil Procedure 16(b), the Status (Pretrial Scheduling) Order **shall not be modified except by leave of Court for good cause shown.** Counsel are cautioned that a mere stipulation by itself to change dates does not constitute good cause.

IT IS SO ORDERED.

Dated: June 7, 2010

GARLAND E. BURRELL, JR.  
United States District Judge