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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SCOTT N. JOHNSON,
Plaintiff,

NO. CIV. S-10-0741 KJM-DAD

v.

STATUS (PRETRIAL SCHEDULING)
ORDER

ROY WILSON; et al.,
Defendants.

_____ /
The court has set this schedule without holding a scheduling conference. Having reviewed the parties' Joint Status Report filed on November 30, 2011, the court makes the following orders:

I. SERVICE OF PROCESS

All named defendants have been served and no further service is permitted without leave of court, good cause having been shown.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

No further joinder of parties or amendments to pleadings is permitted without leave of court, good cause having been shown. *See* FED. R. CIV. P. 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

III. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1343, and 1367. Jurisdiction and venue are not disputed.

1 IV. DISCOVERY

2 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be
3 completed within thirty (30) days of the issuance of this scheduling order. All discovery shall be
4 completed by **October 15, 2012**. In this context, “completed” means that all discovery shall
5 have been conducted so that all depositions have been taken and any disputes relative to
6 discovery shall have been resolved by appropriate order if necessary and, where discovery has
7 been ordered, the order has been obeyed. All motions to compel discovery must be noticed on
8 the magistrate judge’s calendar in accordance with the local rules of this court.

9 V. DISCLOSURE OF EXPERT WITNESSES

10 All counsel are to designate in writing, file with the court, and serve upon all other
11 parties the name, address, and area of expertise of each expert that they propose to tender at trial
12 not later than **August 6, 2012**. The designation shall be accompanied by a written report
13 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).
14 By **August 27, 2012**, any party who previously disclosed expert witnesses may submit a
15 supplemental list of expert witnesses who will express an opinion on a subject covered by an
16 expert designated by an adverse party, if the party supplementing an expert witness designation
17 has not previously retained an expert to testify on that subject. The supplemental designation
18 shall be accompanied by a written report which shall also comply with the conditions as stated
19 above.

20 Failure of a party to comply with the disclosure schedule as set forth above in all
21 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
22 witness not appearing on the designation will not be permitted to testify unless the party offering
23 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably
24 anticipated at the time the list was proffered; (b) that the court and opposing counsel were
25 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
26 available for deposition.

27 For purposes of this scheduling order, an “expert” is any person who may be used at trial
28 to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence, which

1 include both “percipient experts” (persons who, because of their expertise, have rendered expert
2 opinions in the normal course of their work duties or observations pertinent to the issues in the
3 case) and “retained experts” (persons specifically designated by a party to be a testifying expert
4 for the purposes of litigation). Each party shall identify whether a disclosed expert is percipient,
5 retained, or both. It will be assumed that a party designating a retained expert has acquired the
6 express permission of the witness to be so listed. Parties designating percipient experts must
7 state in the designation who is responsible for arranging the deposition of such persons.

8 All experts designated are to be fully prepared at the time of designation to render an
9 informed opinion, and give their bases for their opinion, so that they will be able to give full and
10 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
11 to testify at the trial as to any information gathered or evaluated, or opinion formed, after
12 deposition taken subsequent to designation. All expert discovery shall be completed by

13 **September 26, 2012.**

14 **VI. MOTION HEARING SCHEDULE**

15 All dispositive motions, except motions for continuances, temporary restraining orders or
16 other emergency applications, shall be heard no later than **December 14, 2012**. The parties may
17 obtain available hearing dates by calling Casey Schultz, the Courtroom Deputy, at (916) 930-
18 4193.

19 All purely legal issues are to be resolved by timely pretrial motions. Local Rule 230
20 governs the calendaring and procedures of civil motions with the following additions:

- 21 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and
22 (b) When the last day for filing an opposition brief falls on a legal holiday, the
23 opposition brief shall be filed on the last court day immediately preceding
24 the legal holiday.

25 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
26 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
27 652-53 (9th Cir. 1994).

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1 The court places a page limit of twenty (20) pages on all moving papers, twenty (20)
2 pages on oppositions, and ten (10) pages for replies. All requests for page limit increases must
3 be made through the courtroom deputy clerk at least fourteen (14) days prior to the filing of the
4 motion.

5 The parties are reminded that a motion *in limine* is a pretrial procedural device designed
6 to address the admissibility of evidence. The court will look with disfavor upon dispositional
7 motions presented at the Final Pretrial Conference or at trial in the guise of motions *in limine*.

8 The parties are cautioned that failure to raise a dispositive legal issue that could have
9 been tendered to the court by proper pretrial motion prior to the dispositive motion cut-off date
10 may constitute waiver of such issue.

11 VII. FINAL PRETRIAL CONFERENCE

12 The Final Pretrial Conference is set for **February 7, 2013**, at 3:30 p.m. At least one of
13 the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
14 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable
15 to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with
16 the case and equal authorization to make commitments on behalf of the client.

17 Counsel for all parties are to be fully prepared for trial at the time of the Final Pretrial
18 Conference, with no matters remaining to be accomplished except production of witnesses for
19 oral testimony. The parties shall confer and file a joint pretrial conference statement by
20 **January 17, 2013**. The provisions of Local Rule 281 shall apply with respect to the matters to
21 be included in the joint pretrial statement. In addition to those subjects listed in Local Rule
22 281(b), the parties are to provide the court with a plain, concise statement that identifies every
23 non-discovery motion tendered to the court and its resolution.

24 Failure to comply with Local Rule 281, as modified by this order, may be grounds for
25 sanctions.

26 Concurrently with the filing of the Joint Final Pretrial Conference Statement, counsel
27 shall submit to chambers the word processing version of the statement, in its entirety (including
28 the witness and exhibit lists) to: kjmorders@caed.uscourts.gov.

1 The parties shall, in a concise manner, jointly identify only undisputed core facts
2 separately that are relevant to each claim. Disputed core facts should then be identified in the
3 same manner. The parties are reminded not to identify every fact in dispute but only those
4 disputed facts that are essential to the formulation of each claim. Each disputed fact and
5 undisputed fact should be separately numbered or lettered. Where the parties are unable to agree
6 what are the core disputed facts, they should nevertheless list core disputed facts in the above
7 manner.

8 Each party shall identify and concisely list each disputed evidentiary issue which will be
9 the subject of a party's motion *in limine*.

10 Each party shall identify the points of law which concisely describe the legal issues of the
11 trial which will be discussed in the parties' respective trial briefs. Points of law should reflect
12 issues derived from the core undisputed and disputed facts. Parties shall not include argument or
13 authorities with any point of law.

14 The parties shall prepare a joint statement of the case in plain concise language which
15 will be read to the jury at the beginning of the trial. The purpose of the joint statement is to
16 inform the jury what the case is about.

17 The parties are reminded that pursuant to Local Rule 281 they are required to attach to
18 the Final Pretrial Conference Statement an exhibit listing witnesses and exhibits they propose to
19 offer at trial. After the name of each witness, each party shall provide a brief statement of the
20 nature of the testimony to be proffered. The parties may file a joint list or each party may file
21 separate lists. These list(s) shall not be contained in the body of the Final Pretrial Conference
22 Statement itself, but shall be attached as separate documents to be used as addenda to the Final
23 Pretrial Order.

24 Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed
25 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for
26 plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be
27 marked "AA-ZZ". However, if the amount of defendant exhibits exceeds "ZZ" exhibits shall be
28 then listed as A-3, A-4, A-5 etc. All multi page exhibits shall be stapled or otherwise fastened

1 together and each page within the exhibit shall be numbered. The list of exhibits shall not
2 include excerpts of depositions, which may be used to impeach witnesses. In the event that
3 plaintiff(s) and defendant(s) offer the same exhibit during trial, that exhibit shall be referred to
4 by the designation the exhibit is first identified. The court cautions the parties to pay attention to
5 this detail so that all concerned, including the jury, will not be confused by one exhibit being
6 identified with both a number and a letter. The parties are encouraged to consult concerning
7 exhibits and, to the extent possible, provide joint exhibits, which shall be designated as JX and
8 listed numerically, e.g., JX-1, JX-2.

9 The Final Pretrial Order will contain a stringent standard for the offering at trial of
10 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the
11 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a
12 party does not intend to offer will be viewed as an abuse of the court's processes.

13 Counsel shall produce all trial exhibits to Casey Schultz, the Courtroom Deputy, no later
14 than 3:00 p.m. on the Friday before trial.

15 Discovery documents to be listed in the pretrial statement shall not include documents
16 which will be used only for impeachment and in rebuttal.

17 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of Civil
18 Procedure it will be their duty at the Final Pretrial Conference to aid the court in: (a) the
19 formulation and simplification of issues and the elimination of frivolous claims or defenses; (b)
20 the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary proof
21 and cumulative evidence. Counsel must cooperatively prepare the joint Final Pretrial
22 Conference Statement and participate in good faith at the Final Pretrial Conference with these
23 aims in mind.¹ A failure to do so may result in the imposition of sanctions which may include
24 monetary sanctions, orders precluding proof, elimination of claims or defenses, or such other
25 sanctions as the court deems appropriate.

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27 ¹ "If the pretrial conference discloses that no material facts are in dispute and that the
28 undisputed facts entitle one of the parties to judgment as a matter of law," the court may
summarily dispose of the case or claims. *Portsmouth Square v. Shareholders Protective Comm.*,
770 F.2d 866, 868-69 (9th Cir. 1985).

1 **VIII. TRIAL SETTING**

2 The trial is set for **March 4, 2013** at 1:30 p.m. The parties estimate a jury trial length of
3 approximately four (4) days. Trial briefs are due by **February 19, 2013**.

4 **IX. SETTLEMENT CONFERENCE**

5 No settlement conference is currently scheduled. A settlement conference may be set at
6 the time of the Final Pretrial Conference or at an earlier time at the parties' request. In the event
7 that an earlier settlement conference date or referral to the Voluntary Dispute Resolution
8 Program (VDRP) is requested, the parties shall file said request jointly, in writing. Because the
9 case will be tried to a jury, all parties should be prepared to advise the court whether they will
10 stipulate to the trial judge acting as settlement judge and waive disqualification by virtue thereof.
11 However, the parties may not request referral to VDRP or a judge-convened settlement
12 conference until the court receives, in writing from both parties, a status report describing what
13 steps they have taken to settle the case on their own and a representation that they have
14 exhausted other settlement possibilities.

15 **X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER**

16 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil
17 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court
18 upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not
19 constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or
20 counsel does not constitute good cause.

21 **XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER**

22 This Status Order will become final without further order of the court unless objections
23 are filed within fourteen (14) *calendar* days of service of this Order.

24 **IT IS SO ORDERED.**

25 **DATED:** December 7, 2011.

26 
27 _____
28 UNITED STATES DISTRICT JUDGE