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

TONY MARTINEZ,	)	
	)	2:10-cv-01338-GEB-EFB
Plaintiff,	)	
	)	
v.	)	<u>STATUS (PRETRIAL SCHEDULING)</u>
	)	<u>ORDER</u>
CSK AUTO, INC. dba KRAGEN	)	
AUTO PARTS #01497,	)	
	)	
Defendant.	)	
_____	)	

The status (pretrial scheduling) conference scheduled for October 18, 2010, is vacated since the parties' Joint Status Report filed on October 4, 2010 ("JSR"), indicates that the following Order should issue.

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.

DISCOVERY

Non-expert discovery shall be completed by April 4, 2012. 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.

1 Each party shall comply with Federal Rule of Civil Procedure  
2 26(a)(2)(c)(i)'s initial expert witness disclosure requirements on or  
3 before February 6, 2012, and any contradictory and/or rebuttal expert  
4 disclosure authorized under Rule 26(a)(2)(c)(ii) on or before March 6,  
5 2012.

6 MOTION HEARING SCHEDULE

7 The last hearing date for motions shall be June 4, 2012, at  
8 9:00 a.m.<sup>1</sup>

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

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 August 6, 2012, at  
23 2:30 p.m. The parties are cautioned that the lead attorney who WILL TRY  
24 THE CASE for each party shall attend the final pretrial conference. In  
25  
26

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27 <sup>1</sup> This time deadline does not apply to motions for continuances,  
28 temporary restraining orders, emergency applications, or motions under  
Rule 16(e) of the Federal Rules of Civil Procedure.

1 addition, all persons representing themselves and appearing in propria  
2 persona must attend the pretrial conference.

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

8 The parties shall file a **JOINT** pretrial statement no later  
9 than seven (7) calendar days prior to the final pretrial conference.<sup>2</sup>  
10 The joint pretrial statement shall specify the issues for trial,  
11 including a description of each theory of liability and affirmative  
12 defense, and shall estimate the length of the trial.<sup>3</sup> The Court uses the  
13 parties’ joint pretrial statement to prepare its final pretrial order  
14 and could issue the final pretrial order without holding the scheduled  
15 final pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833  
16 (7th Cir. 1999) (“There is no requirement that the court hold a pretrial  
17 conference.”).

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

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23 <sup>2</sup> 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.

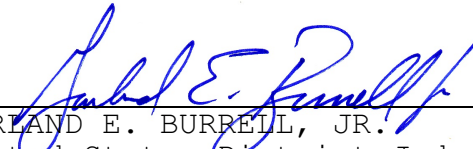
<sup>3</sup> **The joint pretrial statement shall also state how much time  
each party desires for voir dire, opening statements, and closing  
arguments.**

TRIAL SETTING

Trial shall commence at 9:00 a.m. on November 6, 2012.

IT IS SO ORDERED.

Dated: October 12, 2010

  
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GARLAND E. BURRELL, JR.  
United States District Judge

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