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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL SHUGERT,
Plaintiff,

NO. CIV. S-10-1679 KJM-EFB

v.

STATUS (PRETRIAL SCHEDULING)
ORDER

THE UNITED STATES OF AMERICA,
and DOES 1-10,
Defendants.

_____ /
An initial scheduling conference was held in this case on June 1, 2011; Jared Pitt appeared for plaintiff; Edward Olsen appeared for defendant. Having reviewed the parties' Joint Status Report filed on March 15, 2011, and discussed a schedule for the case with counsel at the hearing, 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).

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1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 2674. Jurisdiction and venue are not
3 disputed.

4 IV. DISCOVERY

5 Initial disclosures shall be made within thirty days of the entry of this order. All
6 discovery shall be completed by **December 16, 2011**. In this context, “completed” means that
7 all discovery shall have been conducted so that all depositions have been taken and any disputes
8 relative to discovery shall have been resolved by appropriate order if necessary and, where
9 discovery has been ordered, the order has been obeyed. All motions to compel discovery must
10 be noticed on the magistrate judge’s calendar in accordance with the local rules of this court.

11 V. DISCLOSURE OF EXPERT WITNESSES

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

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

1 For purposes of this scheduling order, an “expert” is any person who may be used at trial
2 to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence, which
3 include both “percipient experts” (persons who, because of their expertise, have rendered expert
4 opinions in the normal course of their work duties or observations pertinent to the issues in the
5 case) and “retained experts” (persons specifically designated by a party to be a testifying expert
6 for the purposes of litigation). Each party shall identify whether a disclosed expert is percipient,
7 retained, or both. It will be assumed that a party designating a retained expert has acquired the
8 express permission of the witness to be so listed. Parties designating percipient experts must
9 state in the designation who is responsible for arranging the deposition of such persons.

10 All experts designated are to be fully prepared at the time of designation to render an
11 informed opinion, and give their bases for their opinion, so that they will be able to give full and
12 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
13 to testify at the trial as to any information gathered or evaluated, or opinion formed, after
14 deposition taken subsequent to designation. All expert discovery shall be completed by **March**
15 **16, 2012.**

16 VI. MOTION HEARING SCHEDULE

17 All dispositive motions, except motions for continuances, temporary restraining orders or
18 other emergency applications, shall be heard no later than **May 9, 2012**. The parties may obtain
19 available hearing dates by calling Casey Schultz, the Courtroom Deputy, at (916) 930-4193.

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

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

26 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
27 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
28 652-53 (9th Cir. 1994).

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 court requires the parties to submit a joint statement of undisputed facts in
6 connection with any motion for summary judgment. If the nonmoving party refuses to confer
7 about or to join in the statement, the moving party may file a statement of undisputed facts and a
8 declaration explaining why the joint statement was not filed. The court retains the discretion to
9 impose sanctions on any party who fails to participate in the creation and filing of a joint
10 statement of undisputed facts.

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

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

17 VII. FINAL PRETRIAL CONFERENCE

18 The Final Pretrial Conference is set for **June 20, 2012**, at 11:00 a.m. At least one of the
19 attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
20 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable
21 to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with
22 the case and equal authorization to make commitments on behalf of the client.

23 Counsel for all parties are to be fully prepared for trial at the time of the Final Pretrial
24 Conference, with no matters remaining to be accomplished except production of witnesses for
25 oral testimony. The parties shall confer and file a joint pretrial conference statement by **May**
26 **30, 2012**. The provisions of Local Rule 281 shall apply with respect to the matters to be
27 included in the joint pretrial statement. In addition to those subjects listed in Local Rule 281(b),

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1 the parties are to provide the court with a plain, concise statement that identifies every non-
2 discovery motion tendered to the court and its resolution.

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

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

8 The parties shall, in a concise manner, jointly identify only undisputed core facts
9 separately that are relevant to each claim. Disputed core facts should then be identified in
10 the same manner. The parties are reminded not to identify every fact in dispute but only
11 those disputed facts that are essential to the formulation of each claim. Each disputed fact
12 and undisputed fact should be separately numbered or lettered. Where the parties are
13 unable to agree what are the core disputed facts, they should nevertheless list core
14 disputed facts in the above manner.

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

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

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

24 The parties are reminded that pursuant to Local Rule 281 they are required to attach to
25 the Final Pretrial Conference Statement an exhibit listing witnesses and exhibits they propose to
26 offer at trial. After the name of each witness, each party shall provide a brief statement of the
27 nature of the testimony to be proffered. The parties may file a joint list or each party may file
28 separate lists. These list(s) shall not be contained in the body of the Final Pretrial Conference

1 Statement itself, but shall be attached as separate documents to be used as addenda to the Final
2 Pretrial Order.

3 Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed
4 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for
5 plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be
6 marked "AA-ZZ". However, if the amount of defendant exhibits exceeds "ZZ" exhibits shall be
7 then listed as A-3, A-4, A-5 etc. All multi page exhibits shall be stapled or otherwise fastened
8 together and each page within the exhibit shall be numbered. The list of exhibits shall not
9 include excerpts of depositions, which may be used to impeach witnesses. In the event that
10 plaintiff(s) and defendant(s) offer the same exhibit during trial, that exhibit shall be referred to
11 by the designation the exhibit is first identified. The court cautions the parties to pay attention to
12 this detail so that all concerned, including the jury, will not be confused by one exhibit being
13 identified with both a number and a letter. The parties are encouraged to consult concerning
14 exhibits and, to the extent possible, provide joint exhibits, which shall be designated as JX and
15 listed numerically, e.g., JX-1, JX-2.

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

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

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

24 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of Civil
25 Procedure it will be their duty at the Final Pretrial Conference to aid the court in: (a) the
26 formulation and simplification of issues and the elimination of frivolous claims or defenses; (b)
27 the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary proof
28 and cumulative evidence. Counsel must cooperatively prepare the joint Final Pretrial

1 Conference Statement and participate in good faith at the Final Pretrial Conference with these
2 aims in mind.¹ A failure to do so may result in the imposition of sanctions which may include
3 monetary sanctions, orders precluding proof, elimination of claims or defenses, or such other
4 sanctions as the court deems appropriate.

5 **VIII. TRIAL SETTING**

6 The bench trial is set for **July 16, 2012** at 9:00 a.m. The parties estimate a trial length of
7 approximately three to five days.

8 **IX. SETTLEMENT CONFERENCE**

9 No court convened settlement conference is currently scheduled. A settlement
10 conference may be set at the time of the Final Pretrial Conference or at an earlier time at the
11 parties' request. In the event that an earlier settlement conference date or referral to the court's
12 Voluntary Dispute Resolution Program (VDRP) is requested, the parties shall file said request
13 jointly, in writing. In any event, by **April 19, 2012**, the parties shall notify the court of their
14 positions regarding the feasibility and desirability of setting a settlement conference.

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.

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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 XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

4 IT IS SO ORDERED.

5 DATED: June 13, 2011.

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8 UNITED STATES DISTRICT JUDGE
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