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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH HARDESTY, et al.,

No. 2:10-CV-002414-KJM-KJN

Plaintiffs,

v.

SACRAMENTO METROPOLITAN AIR
QUALITY MANAGEMENT DISTRICT,
et al.,

Defendants,

JAY SCHNEIDER,

No. 2:12-CV-002457-KJM-KJN

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

**FURTHER AMENDED STATUS
(PRETRIAL SCHEDULING) ORDER**

Defendants,

A scheduling conference was held in these cases on September 18, 2014. G. David Robertson appeared telephonically for the Hardesty plaintiffs; Richard Ross appeared for the Schneider plaintiffs; Mark O’Dea appeared for the Sacramento County defendants; David

1 Alderson appeared telephonically for defendants Dennis O’Bryant, Gay Norris, Steve Testa, and
2 Curt Taras; Jeff Reich appeared for defendant Liz Gregory. A separate scheduling conference for
3 defendant Bieber in the severed *Schneider* case was scheduled for October 2, 2014, but was
4 vacated.

5 The court issued an amended status (pretrial scheduling) order on September 23,
6 2014. ECF No. 193. In that order the court required the parties to submit a stipulation and
7 proposed discovery scheduling order for the cases consolidated under No. 2:10-cv-02414-KJM-
8 KJN, the *Hardesty* case, and for Mr. Bieber, the sole defendant severed in No. 2:12-cv-02457-
9 KJM-KJN, the *Schneider* case. The parties were ordered to file this schedule no later than
10 October 6, 2014. In the same order the court also informed the parties it had vacated a conference
11 set for Mr. Bieber in the severed *Schneider* case; had required Mr. Bieber to meet and confer with
12 the parties in the *Hardesty* case to coordinate discovery; and had required Mr. Bieber to submit no
13 later than October 8, 2014, if necessary, a proposed schedule alternative to that submitted by the
14 parties in the *Hardesty* case.

15 On October 6, 2014, Joe and Yvette Hardesty, acting through counsel, filed a
16 proposed schedule. ECF No. 194. The proposed schedule explained the parties had been unable
17 to reach agreement on a schedule along the lines contemplated by the court in its September 23,
18 2014 order. Nevertheless, the proposed schedule included dates to match those contemplated in
19 the September 23, 2014 order: a discovery cut-off date of March 6, 2015, a deadline for the
20 hearing of dispositive motions on July 8, 2015, and a trial on October 5, 2015.

21 On October 7, 2014, all other parties in the *Hardesty* case submitted a proposed
22 schedule, ECF No. 195, one day after the deadline imposed in the court’s September 23, 2014
23 order. The court reminds the parties that “[f]ailure of counsel or of a party to comply with . . .
24 any order of the Court may be grounds for imposition by the Court of any and all sanctions
25 authorized by statute or Rule or within the inherent power of the Court.” Local Rule 110. The
26 proposed schedule recommended, among other deadlines, a discovery cut-off date of July 7,
27 2015, a deadline for the hearing of dispositive motions in January of 2016, and a trial in April or
28 May of 2016.

1 On October 8, 2014, defendant Bieber submitted a proposed schedule for the
2 severed *Schneider* case. ECF No. 88. It was essentially identical to the schedule proposed on
3 October 7, 2014 by the parties other than Joe and Yvette Hardesty.

4 After considering the parties' positions and proposed schedules, the court orders as
5 follows.

6 I. SERVICE OF PROCESS

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

9 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

13 III. JURISDICTION/VENUE

14 Jurisdiction is predicated upon 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C.
15 § 1983. Jurisdiction and venue are not disputed.

16 IV. DISCOVERY

17 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be
18 completed by **November 21, 2014**. All discovery shall be completed by **July 7, 2015**. In this
19 context, "completed" means that all discovery shall have been conducted so that all depositions
20 have been taken and any disputes relative to discovery shall have been resolved by appropriate
21 order if necessary and, where discovery has been ordered, the order has been obeyed. All
22 motions to compel discovery must be noticed on the magistrate judge's calendar in accordance
23 with the local rules of this court. While the assigned magistrate judge reviews proposed
24 discovery phase protective orders, requests to seal or redact are decided by Judge Mueller as
25 discussed in more detail below. In addition, while the assigned magistrate judge handles
26 discovery motions, the magistrate judge cannot change the schedule set in this order, even in
27 connection with a discovery matter.

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1 V. DISCLOSURE OF EXPERT WITNESSES

2 Expert disclosures in the *Hardesty* case were completed before consolidation.
3 Unless otherwise allowed by the court, no further expert disclosures may be made by the parties
4 remaining in the *Hardesty* case, specifically Joseph Hardesty, Yvette Hardesty, Cindy Storelli,
5 Leighann Moffit, Dennis O’Bryant, Gay Norris, Steve Testa, Liz Gregory, Curt Taras,
6 Sacramento County, and Robert Sherry. This prohibition does not apply to the ability of
7 Sacramento County, Cindy Storelli, Leighann Moffit, and Robert Sherry to disclose experts as to
8 claims and defenses made in the partially consolidated *Schneider* case.

9 If permitted under the prohibition described in the previous paragraph, all counsel
10 are to designate in writing, file with the court, and serve upon all other parties the name, address,
11 and area of expertise of each expert that they propose to tender at trial not later than **May 18,**
12 **2015**. The designation shall be accompanied by a written report prepared and signed by the
13 witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B). By **June 8, 2015**, any party
14 who previously disclosed expert witnesses may submit a supplemental list of expert witnesses
15 who will express an opinion on a subject covered by an expert designated by an adverse party, if
16 the party supplementing an expert witness designation has not previously retained an expert to
17 testify on that subject. The supplemental designation shall be accompanied by a written report,
18 which shall also comply with the conditions stated above.

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

26 For purposes of this scheduling order, an “expert” is any person who may be used
27 at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence, which
28 include both “percipient experts” (persons who, because of their expertise, have rendered expert

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

7 All experts designated are to be fully prepared at the time of designation to render
8 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
9 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
10 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition
11 taken subsequent to designation. All expert discovery shall be completed by **July 7, 2015**.

12 VI. MID-LITIGATION STATUS

13 A mid-litigation status conference will be held on **July 30, 2015**. At the status
14 conference, the parties shall be prepared to discuss (1) the number of motions for summary
15 judgment and summary adjudication anticipated; (2) the deadlines for filing such motions, related
16 oppositions, and replies; (3) whether the parties are able to file consolidated dispositive motions;
17 and (4) the potential for settlement.

18 VII. MOTION HEARING SCHEDULE

19 All dispositive motions, except motions for continuances, temporary restraining
20 orders or other emergency applications, shall be heard no later than **December 18, 2015**. The
21 parties may obtain available hearing dates by checking Judge Mueller’s page on the court’s
22 website.

23 All purely legal issues are to be resolved by timely pretrial motions. Local Rule
24 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

25 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and

26 (b) When the last day for filing an opposition brief falls on a legal holiday, the
27 opposition brief shall be filed on the last court day immediately preceding the legal holiday.

28 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to

1 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
2 652-53 (9th Cir. 1994).

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

7 Prior to filing a motion in a case in which the parties are represented by counsel,
8 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the
9 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate
10 the defendant's contentions as to deficiencies in the complaint and in many instances the party
11 considering a motion should agree to any amendment that would cure a curable defect. Counsel
12 should discuss the issues sufficiently so that if a motion of any kind is filed, including for
13 summary judgment, the briefing is directed only to those substantive issues requiring resolution
14 by the court. Counsel should resolve minor procedural or other non-substantive matters during
15 the meet and confer. **A notice of motion shall contain a certification by counsel filing the**
16 **motion that meet and confer efforts have been exhausted, with a brief summary of meet and**
17 **confer efforts.**

18 The parties are reminded that a motion in limine is a pretrial procedural device
19 designed to address the admissibility of evidence. The court looks with disfavor upon
20 dispositional motions presented at the Final Pretrial Conference or at trial in the guise of motions
21 in limine. Although all motions in limine must be filed in conjunction with the joint pretrial
22 statement, the court will hear only those motions it has identified to counsel before the hearing
23 date.

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

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1 VIII. SEALING

2 No document will be sealed, nor shall a redacted document be filed, without the
3 prior approval of the court. If a document for which sealing or redaction is sought relates to the
4 record on a motion to be decided by Judge Mueller, the request to seal or redact should be
5 directed to her and not the assigned Magistrate Judge. All requests to seal or redact shall be
6 governed by Local Rules 141 (sealing) and 140 (redaction); protective orders covering the
7 discovery phase of litigation shall not govern the filing of sealed or redacted documents on the
8 public docket. The court will only consider requests to seal or redact filed by the proponent of
9 sealing or redaction. If a party plans to make a filing that includes material an opposing party has
10 identified as confidential and potentially subject to sealing, the filing party shall provide the
11 opposing party with sufficient notice in advance of filing to allow for the seeking of an order of
12 sealing or redaction from the court.

13 IX. FINAL PRETRIAL CONFERENCE

14 The Final Pretrial Conference is set for **March 31, 2016**, at 3:30 p.m. At least one
15 of the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
16 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to
17 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the
18 case and equal authorization to make commitments on behalf of the client.

19 Counsel for all parties are to be fully prepared for trial at the time of the Final
20 Pretrial Conference, with no matters remaining to be accomplished except production of
21 witnesses for oral testimony. The parties shall confer and file a joint pretrial conference
22 statement by **March 10, 2016**. The provisions of Local Rule 281 shall apply with respect to the
23 matters to be included in the joint pretrial statement. In addition to those subjects listed in Local
24 Rule 281(b), the parties are to provide the court with the following:

25 - A plain, concise statement that identifies every non-discovery motion previously
26 tendered to the court and its resolution.

27 - A concise, joint list of undisputed core facts that are relevant to each claim.

28 Disputed core facts should then be identified in the same manner. The parties are reminded not to

1 identify every fact in dispute but only those disputed facts that are essential to the formulation of
2 each claim. Each disputed fact and undisputed fact should be separately numbered or lettered.

3 Where the parties are unable to agree on the core disputed facts, they should nevertheless list core
4 disputed facts in the above manner.

5 - Concise lists of disputed evidentiary issues that will be the subject of a party's
6 motion *in limine*.

7 - Each party's points of law, which concisely describe the legal basis or theory
8 underlying their claims and defenses. Points of law should reflect issues derived from the core
9 undisputed and disputed facts. Parties shall not include argument with any point of law; the
10 parties may include concise arguments in their trial briefs.

11 - A joint statement of the case in plain concise language, which will be read to the
12 jury during voir dire and at the beginning of the trial. The purpose of the joint statement is to
13 inform the jury what the case is about.

14 - The parties' position on the number of jurors to be impaneled to try the case.
15 Discovery documents to be listed in the pretrial statement shall not include
16 documents to be used only for impeachment and in rebuttal.

17 The parties are reminded that pursuant to Local Rule 281 they are required to
18 attach to the Final Pretrial Conference Statement an exhibit listing witnesses and exhibits they
19 propose to offer at trial. After the name of each witness, each party shall provide a brief
20 statement of the nature of the testimony to be proffered. The parties may file a joint list or each
21 party may file separate lists. These list(s) shall not be contained in the body of the Final Pretrial
22 Conference Statement itself, but shall be attached as separate documents to be used as addenda to
23 the Final 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 include
2 excerpts of depositions to be used only for impeachment. In the event that plaintiff(s) and
3 defendant(s) offer the same exhibit during trial, that exhibit shall be referred to by the designation
4 the exhibit is first identified. The court cautions the parties to pay attention to this detail so that
5 all concerned, including the jury, will not be confused by one exhibit being identified with both a
6 number and a letter. The parties are encouraged to consult concerning exhibits and, to the extent
7 possible, provide joint exhibits, which shall be designated as JX and listed numerically, e.g., JX-
8 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,
14 no later than 3:00 p.m. on the Friday before trial.

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

17 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of
18 Civil 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 Conference
22 Statement and participate in good faith at the Final Pretrial Conference with these aims in mind.¹
23 A failure to do so may result in the imposition of sanctions which may include monetary
24 sanctions, orders precluding proof, elimination of claims or defenses, or such other sanctions as
25 the court deems appropriate.

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

1 Concurrently with the filing of the Joint Final Pretrial Conference Statement,
2 counsel shall submit to chambers the word processable version of the Statement, in its entirety
3 (including the witness and exhibit lists) to: kjmorders@caed.uscourts.gov.

4 X. TRIAL SETTING

5 The jury trial is set for **April 25, 2016** at 9:00 a.m. The parties estimate a trial
6 length of approximately three weeks. Trial briefs are due by **April 11, 2016**.

7 XI. SETTLEMENT CONFERENCE

8 No settlement conference is currently scheduled. A settlement conference may be
9 set at the time of the Final Pretrial Conference or at an earlier time at the parties' request. In the
10 event that an earlier settlement conference date or referral to the Voluntary Dispute Resolution
11 Program (VDRP) is requested, the parties shall file said request jointly, in writing. Because the
12 case will be tried to a jury, all parties should be prepared to advise the court whether they will
13 stipulate to the trial judge acting as settlement judge and waive disqualification by virtue thereof.

14 Counsel are instructed to have a principal with full settlement authority present at
15 any Settlement Conference or to be fully authorized to settle the matter on any terms. Each judge
16 has different requirements for the submission of settlement conference statements; the appropriate
17 instructions will be sent to you after the settlement judge is assigned.

18 XII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

24 XIII. COORDINATION WITH THE SEVERED SCHNEIDER CASE

25 This further amended status (pretrial scheduling) order shall be equally effective as
26 to Mr. Bieber, the sole defendant severed and remaining in the *Schneider* case, No. 2:12-cv-
27 02457-KJM-KJN.

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XIV. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

IT IS SO ORDERED.

DATED: October 14, 2014.



UNITED STATES DISTRICT JUDGE