

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JAMES O. MOLEN, et al.,
Defendants.

No. 2:10-cv-02591-MCE-KJN

**SUPPLEMENTAL PRETRIAL
SCHEDULING ORDER**

The Court makes the following Supplemental Pretrial Scheduling Order.

I. DISCOVERY AND DISPOSITIVE MOTIONS

Discovery and the period for filing dispositive motions are closed.

II. FINAL PRETRIAL CONFERENCE

The Final Pretrial Conference is set for **September 22, 2016, at 2:00 p.m.** At least one of the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the case and equal authorization to make commitments on behalf of the client.

///

///

1 Counsel for all parties are to be fully prepared for trial at the time of the Final
2 Pretrial Conference, with no matters remaining to be accomplished except production of
3 witnesses for oral testimony.

4 The parties shall file, not later than **September 8, 2016**, a Joint Final Pretrial
5 Conference Statement. The provisions of Local Rules 281 shall apply with respect to
6 the matters to be included in the Joint Final Pretrial Conference Statement. In addition
7 to those subjects listed in Local Rule 281(b), the parties are to provide the Court with a
8 plain, concise statement that identifies every non-discovery motion tendered to the Court
9 and its resolution. Failure to comply with Local Rule 281, as modified by this Pretrial
10 Scheduling Order, may be grounds for sanctions.

11 At the time of filing the Joint Final Pretrial Conference Statement, counsel shall
12 also electronically mail to the Court in digital format compatible with Microsoft Word, the
13 Joint Final Pretrial Conference Statement in its entirety including the witness and exhibit
14 lists. **These documents shall be sent to: mceorders@caed.uscourts.gov.**

15 The parties should identify first the core undisputed facts relevant to all claims.
16 The parties should then, in a concise manner, identify those undisputed core facts that
17 are relevant to each claim. The disputed facts should be identified in the same manner.
18 Where the parties are unable to agree as to what disputed facts are properly before the
19 Court for trial, they should nevertheless list all disputed facts asserted by each party.
20 Each disputed fact or undisputed fact should be separately numbered or lettered.

21 Each party shall identify and concisely list each disputed evidentiary issue which
22 will be the subject of a motion in limine.

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

27 The parties are reminded that pursuant to Local Rule 281 they are required to list
28 in the Joint Final Pretrial Conference Statement all witnesses and exhibits they propose

1 to offer at trial. After the name of each witness, each party shall provide a brief
2 statement of the nature of the testimony to be proffered. The parties may file a joint list
3 or each party may file separate lists. These list(s) shall not be contained in the body of
4 the Joint Final Pretrial Conference Statement itself, but shall be attached as separate
5 documents to be used as addenda to the Final Pretrial Order.

6 Plaintiff's exhibits shall be listed numerically. Defendants' exhibits shall be listed
7 alphabetically. The parties shall use the standard exhibit stickers provided by the Court
8 Clerk's Office: pink for plaintiff and blue for defendant. In the event that the alphabet is
9 exhausted, the exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters,
10 note the number of letters in parenthesis (i.e., "AAAA(4)") to reduce confusion at trial. All
11 multi-page exhibits shall be stapled or otherwise fastened together and each page within
12 the exhibit shall be numbered. All photographs shall be marked individually. The list of
13 exhibits shall not include excerpts of depositions, which may be used to impeach
14 witnesses. In the event that Plaintiff and Defendants offer the same exhibit during trial,
15 that exhibit shall be referred to by the designation the exhibit is first identified. The Court
16 cautions the parties to pay attention to this detail so that all concerned will not be
17 confused by one exhibit being identified with both a number and a letter.

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

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

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

5 **III. TRIAL BRIEFS**

6 The parties shall file trial briefs not later than **September 8, 2016**. Counsel are
7 directed to Local Rule 285 regarding the content of trial briefs.

8 **IV. EVIDENTIARY AND/OR PROCEDURAL MOTIONS**

9 In order to precisely delineate the scope of evidentiary or procedural
10 disagreements—and to encourage resolution of such disagreements without the Court's
11 direct involvement—the parties shall meet and confer regarding any issue that will be the
12 subject of a motion in limine. Any party filing a motion in limine shall affirm, in writing
13 and under oath, that it has complied with this requirement. Any evidentiary or procedural
14 motions are to be filed by **September 1, 2016**. Oppositions must be filed by
15 **September 8, 2016** and any reply must be filed by **September 15, 2016**. The motions
16 will be heard by the Court at the same time as the Final Pretrial Conference.

17 **V. TRIAL SETTING**

18 The trial is set for **October 31, 2016, at 9:00 a.m.** Trial will be a **three (3) day**
19 bench trial.

20 **VI. SETTLEMENT CONFERENCE**

21 The parties may request a settlement conference if they feel it would lead to the
22 possible resolution of the case. In the event an early settlement conference date is
23 requested, the parties shall file said request jointly, in writing. The request must state
24 whether the parties waive disqualification, pursuant to Local Rule 270(b), before a
25 settlement judge can be assigned to the case. Absent the parties' affirmatively
26 requesting that the assigned Judge or Magistrate Judge participate in the settlement
27 conference AND waiver, pursuant to Local Rule 270(b), a settlement judge will be
28 randomly assigned to the case.

1 In the event a settlement conference is set by the Court, counsel are instructed to
2 have a principal with full settlement authority present at the Settlement Conference or to
3 be fully authorized to settle the matter on any terms. At least seven (7) calendar days
4 before the settlement conference, counsel for each party shall submit to the chambers of
5 the settlement judge a confidential Settlement Conference Statement. Such statements
6 are neither to be filed with the Clerk nor served on opposing counsel. Each party,
7 however, shall serve notice on all other parties that the statement has been submitted. If
8 the settlement judge is not the trial judge, the Settlement Conference Statement shall not
9 be disclosed to the trial judge.

10 **VII. VOLUNTARY DISPUTE RESOLUTION PROGRAM**

11 Pursuant to Local Rule 271 parties will need to lodge a stipulation and proposed
12 order requesting referral to the Voluntary Dispute Resolution Program.

13 **VIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER**

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

20 **IX. OBJECTIONS TO PRETRIAL SCHEDULING ORDER**

21 This Pretrial Scheduling Order will become final without further order of the Court
22 unless objections are filed within seven (7) court days of service of this Order.

23 IT IS SO ORDERED.

24 Dated: July 6, 2016

25 
26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
28