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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT KALANI,

Plaintiff,

v.

STANLEY J. LUKOWICZ, et al.,

Defendants.

NO. CIV. S-12-1316 KJM DAD

STATUS (PRETRIAL SCHEDULING)  
ORDER

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An initial scheduling conference was held in this case on September 20, 2012. Tanya Moore appeared for plaintiff; Esther Ralich appeared for defendant Lukowicz; and defendant Balhar Dosanjh appeared pro se. Having reviewed the parties' Joint Status Report filed on September 13, 2012, 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

Plaintiff may seek to amend his complaint. Any such amendment shall be filed by November 16, 2012.

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1 III. JURISDICTION/VENUE

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

4 IV. DISCOVERY

5 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be  
6 completed by **September 27, 2012**. The parties confirmed that an inspection of the facility  
7 identified in the complaint shall occur by **October 9, 2012**. All discovery shall be completed by  
8 **June 10, 2013**. In this context, “completed” means that all discovery shall have been conducted  
9 so that all depositions have been taken and any disputes relative to discovery shall have been  
10 resolved by appropriate order if necessary and, where discovery has been ordered, the order has  
11 been obeyed. All motions to compel discovery must be noticed on the magistrate judge’s  
12 calendar in accordance with the local rules of this court. While the assigned magistrate judge  
13 reviews proposed discovery phase protective orders, requests to seal or redact are decided by  
14 Judge Mueller as discussed in more detail below.

15 V. DISCLOSURE OF EXPERT WITNESSES

16 All counsel are to designate in writing, file with the court, and serve upon all  
17 other parties the name, address, and area of expertise of each expert that they propose to tender  
18 at trial not later than **July 12, 2013**. The designation shall be accompanied by a written report  
19 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).  
20 By **August 2, 2013**, any party who previously disclosed expert witnesses may submit a  
21 supplemental list of expert witnesses who will express an opinion on a subject covered by an  
22 expert designated by an adverse party, if the party supplementing an expert witness designation  
23 has not previously retained an expert to testify on that subject. The supplemental designation  
24 shall be accompanied by a written report, which shall also comply with the conditions stated  
25 above.

26 Failure of a party to comply with the disclosure schedule as set forth above in all  
27 likelihood will preclude that party from calling the expert witness at the time of trial. An expert  
28 witness not appearing on the designation will not be permitted to testify unless the party offering

1 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably  
2 anticipated at the time the list was proffered; (b) that the court and opposing counsel were  
3 promptly notified upon discovery of the witness; and (c) that the witness was promptly made  
4 available for deposition.

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

15 All experts designated are to be fully prepared at the time of designation to render  
16 an informed opinion, and give the bases for their opinion, so that they will be able to give full  
17 and complete testimony at any deposition taken by the opposing party. Experts will not be  
18 permitted to testify at trial as to any information gathered or evaluated, or opinion formed, after  
19 deposition taken subsequent to designation. All expert discovery shall be completed by  
20 **September 3, 2013.**

21 VI. MOTION HEARING SCHEDULE

22 All dispositive motions, except motions for continuances, temporary restraining  
23 orders or other emergency applications, shall be heard no later than **November 8, 2013**. The  
24 parties may obtain available hearing dates by calling Casey Schultz, the Courtroom Deputy, at  
25 (916) 930-4193.

26 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
27 230 governs the calendaring and procedures of civil motions; the following provisions also  
28 apply:

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

5 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
6 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
7 652-53 (9th Cir. 1994).

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

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

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

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

4 VII.   SEALING

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

16 VIII.   FINAL PRETRIAL CONFERENCE

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

22           Counsel for all parties are to be fully prepared for trial at the time of the Final  
23 Pretrial Conference, with no matters remaining to be accomplished except production of  
24 witnesses for oral testimony. The parties shall confer and file a joint pretrial conference  
25 statement by **November 21, 2013**. The provisions of Local Rule 281 shall apply with respect to  
26 the matters to be included in the joint pretrial statement. In addition to those subjects listed in  
27 Local Rule 281(b), the parties are to provide the court with the following:

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

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

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

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

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

18 Discovery documents to be listed in the pretrial statement shall not include  
19 documents to be used only for impeachment and in rebuttal.

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

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

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

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

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

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

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

7 IX. TRIAL SETTING

8 The jury trial is set for **February 3, 2014** at 9:00 a.m. The parties estimate a trial  
9 length of approximately five days. Trial briefs are due by **January 17, 2014.**

10 X. SETTLEMENT CONFERENCE

11 The parties have expressed interest in appearing before another judge of the court  
12 for settlement conference. Magistrate Judge Gregory G. Hollows has been randomly selected. A  
13 settlement conference is scheduled before Judge Hollows for **October 16, 2012** at 9:00 a.m. in  
14 Courtroom No. 9, 13th Floor.

15 Counsel are instructed to have a principal with full settlement authority present at  
16 any Settlement Conference or to be fully authorized to settle the matter on any terms. At least  
17 seven (7) calendar days before the Settlement Conference, counsel for each party shall submit to  
18 the chambers of the settlement judge a confidential Settlement Conference Statement. Such  
19 statements are neither to be filed with the Clerk nor served on opposing counsel. Each party,  
20 however, shall serve notice on all other parties that the statement has been submitted. The  
21 Settlement Conference Statements shall not be disclosed to the trial judge.

22 XI. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

23 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil  
24 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court  
25 upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not  
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27 <sup>1</sup> “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 constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or  
2 counsel does not constitute good cause.

3 **XII. RELATED CASES**

4 Defendant Lukowicz indicates he believes this case is related to two other cases  
5 proceeding in this court: Kalani v. Mother Lode Investors, Stan Lukowicz, Barbara Wierschein  
6 dba Wierschein's Train Town, Civ S-12-0304 KJM GGH and Kalani v. Mother Lode Real  
7 Investors, Richard Glade dba Full Circle Trading, Civ S-12-0212 MCE EFB. Having reviewed  
8 the dockets of those two cases, the court does not find them related within the meaning of Local  
9 Rule 123(a).

10 **XIII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER**

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

13 IT IS SO ORDERED.

14 DATED: September 27, 2012.

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17 UNITED STATES DISTRICT JUDGE  
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