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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
L. RICHARD SHEARER, et al.,
Defendants.

No. 2:12-cv-02334-DJC-DB

MODIFIED PRETRIAL ORDER

On October 19, 2023 the Court conducted a Pretrial Status Conference. Alexander E. Stevko and Chelsea Bissell appeared on behalf of the United States, Matthew Gilmartin appeared on behalf of Dr. L. Richard Shearer; Joe A. Izen appeared on behalf of Stanley Swenson, Vernon L. Swenson, Leora Swenson, the Hotlum Trust, the Berryvale Trust, and the Regency Trust; and Diane Shearer appeared pro se. Based on the results of that pretrial conference, the Court now issues this Final Pretrial Order.

This action proceeds on Plaintiff's First Amended Complaint against Defendants to adjudicate the status of the above-named trusts as either nominee or sham trusts, and the ownership of property held by the trusts. This matter is set for trial on May 7, 2024.

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1 **I. Jurisdiction/Venue**

2 Jurisdiction is predicated on 28 U.S. Code § 1331. Venue is proper pursuant to
3 28 U.S.C. § 1391(b). Venue and Jurisdiction are not contested.

4 **II. Pretrial Conference and Joint Pretrial Statement**

5 The Final Pretrial Conference is set for March 7, 2024. The parties are ordered
6 to file a Joint Pretrial Statement in accordance with the Court’s Standing Order seven
7 days before the Final Pretrial Conference.

8 **III. Jury**

9 This action will be tried by the court, not a jury, pursuant to the Court’s Order,
10 ECF No. 102.

11 **IV. Motions in Limine/Disputed Evidentiary Issues**

12 The parties have not yet filed motions in limine. The Court does not encourage
13 the filing of motions in limine unless they are addressed to issues that can realistically
14 be resolved by the Court prior to trial and without reference to the other evidence
15 which will be introduced by the parties at trial. Any motions in limine counsel elect to
16 file shall be filed on or before April 25, 2024. Each party’s motions in limine should be
17 filed in a single document with each motion beginning on a new page within that
18 document. Opposition shall be filed on or before April 30, 2024. Each party’s
19 oppositions to motions in limine should be filed in a single document with each
20 opposition beginning on a new page within that document. Where necessary for
21 sealing purposes, a motion in limine or opposition to a motion in limine may be filed
22 separately from the rest of the motions/oppositions. Parties should be prepared to
23 present argument on these motions at the final status conference.

24 **V. Witnesses**

25 Plaintiff’s and Defendants’ witnesses shall be those described in the Joint
26 Pretrial Statement. Each party may call any witnesses designated by the other.

27 **The court does not allow undisclosed witnesses to be called for any**
28 **purpose, including impeachment or rebuttal, unless they meet the following**

1 **criteria:**

- 2 1. The party offering the witness demonstrates that the witness is for the
3 purpose of rebutting evidence that could not be reasonably anticipated at
4 the pretrial conference, or
5 2. The witness was discovered after the pretrial conference and the proffering
6 party makes the showing described below.

7 Upon the post pretrial discovery of any witness a party wishes to present at trial,
8 the party shall promptly inform the court and opposing parties of the existence of the
9 unlisted witnesses by filing a notice on the docket so the court may consider whether
10 the witnesses shall be permitted to testify at trial. The witnesses will not be permitted
11 unless:

- 12 1. The witness could not reasonably have been discovered prior to the
13 discovery cutoff;
14 2. The court and opposing parties were promptly notified upon discovery of
15 the witness;
16 3. If time permitted, the party proffered the witness for deposition; and
17 4. If time did not permit, a reasonable summary of the witness's testimony was
18 provided to opposing parties.

19 **VI. Exhibits**

20 Plaintiff's and Defendants' exhibits shall be those identified in the Joint Pretrial
21 Statement. Counsel and/or parties shall file a copy of their respective final exhibit lists
22 no later than April 25, 2024.

23 No exhibit shall be marked with or entered into evidence under multiple exhibit
24 numbers. All exhibits must be pre-marked as discussed below.

25 At trial, joint exhibits shall be identified as JX and listed numerically, e.g., JX-1,
26 JX-2. Plaintiff's exhibits shall be listed numerically, and Defendants' exhibits shall be
27 listed alphabetically. The parties must prepare three (3) separate exhibit binders for
28 use by the court at trial, with a side tab identifying each exhibit in accordance with the

1 specifications above. Each binder shall have an identification label on the front and
2 spine. **The final exhibit binders are due to the court on the first day of trial.**

3 The parties must exchange exhibits no later than 28 days before trial. Any
4 objections to exhibits shall be filed on or before April 30, 2024. In making any
5 objection, the party is to set forth the grounds for the objection. As to each exhibit
6 that is not objected to, no further foundation will be required for it to be received into
7 evidence, if offered.

8 The court will not admit exhibits other than those identified on the exhibit lists
9 referenced above unless:

- 10 1. The party proffering the exhibit demonstrates that the exhibit is for the
11 purpose of rebutting evidence that could not have been reasonably
12 anticipated, or
- 13 2. The exhibit was discovered after the issuance of this order and the
14 proffering party makes the showing required in paragraph B, below.

15 Upon the discovery of exhibits after the discovery cutoff, a party shall promptly
16 inform the court and opposing parties of the existence of such exhibits by filing a
17 notice on the docket so that the court may consider their admissibility at trial. The
18 exhibits will not be received unless the proffering party demonstrates:

- 19 1. The exhibits could not reasonably have been discovered earlier;
- 20 2. The court and the opposing parties were promptly informed of their
21 existence;
- 22 3. The proffering party forwarded a copy of the exhibits (if physically possible)
23 to the opposing party. If the exhibits may not be copied the proffering party
24 must show that it has made the exhibits reasonably available for inspection
25 by the opposing parties.

26 **VII. Further Discovery**

27 Discovery has been completed and is now closed.

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1 **VIII. Stipulations**

2 None.

3 **IX. Trial Briefs**

4 Trial Briefs from both parties shall be filed on April 25, 2024. The parties' Trial
5 Briefs shall be considered in lieu of opening statements.

6 **X. Joint Statement of the Case**

7 As this is a bench trial, presentation of an agreed neutral statement of the case
8 is not necessary.

9 **XI. Filing Documents**

10 All documents mentioned above, including but not limited to the Joint Pretrial
11 Statement, Witness Lists, Exhibit Lists, and Motions in Limine, shall be filed on the
12 docket in this action **and** also emailed as a Word document to
13 djcorders@caed.uscourts.gov.

14 **XII. Final Status Conference**

15 The Court will conduct a Final Status Conference on May 2, 2024. At that time,
16 the Court will hear argument on motions in limine and any outstanding matters to be
17 resolved before trial.

18 **XIII. Trial Date/Estimated Time of Trial**

19 Bench Trial is set for May 7, 2024, at 9 a.m. in Courtroom 10 before the
20 Honorable Daniel J. Calabretta. Trial is anticipated to last three court days. The
21 parties are directed to Judge Calabretta's standard procedures available on his
22 webpage on the court's website.

23 The parties are to contact Gabriel Michel, Courtroom Deputy for Judge
24 Calabretta, via email (gmichel@caed.uscourts.gov), one week prior to trial to ascertain
25 the status of the trial date.

26 **XIV. Post Trial Briefs**

27 Within five days of trial, each party shall request a copy of the full trial transcript.
28 Post Trial Briefs of no more than 15 pages, and each party's Proposed Findings of Fact

1 and Conclusions of Law, shall be filed 30 days after receipt of the transcript. The Post
2 Trial Briefs will be considered in lieu of closing arguments. The Proposed Findings of
3 Fact and Conclusions of Law must include a record citation for each finding of fact.
4 The parties may file Reply Briefs of no more than 5 pages within 14 days of the Post
5 Trial Brief filing date.

6 The matter will be submitted upon completion of the briefing. If the Court
7 subsequently concludes that oral argument is necessary, a hearing will be set and the
8 parties notified accordingly.

9 **XV. Objections to Pretrial Order**

10 Each party is granted 7 days from the date of this order to file objections to the
11 modified portions of the order. If no objections are filed, the order will become final
12 without further order of this Court.

13 The parties are reminded that pursuant to Rule 16(e) of the Federal Rules of
14 Civil Procedure and Local Rule 283 of this Court, this order shall control the
15 subsequent course of this action and shall be modified only to prevent manifest
16 injustice.

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18 Dated: April 11, 2024

/s/ Daniel J. Calabretta

19 THE HONORABLE DANIEL J. CALABRETTA
20 UNITED STATES DISTRICT JUDGE
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