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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARLENE ERVIN, ET AL.,
Plaintiffs,
v.
OMNICARE, INC.,
Defendant.

No. 2:13-cv-00146-MCE-KJN

**INITIAL PRETRIAL
SCHEDULING ORDER**

This action is assigned to the Honorable Morrison C. England, Jr. Pursuant to the provisions of Rule 16 of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED:

I. SERVICE OF PROCESS

Plaintiff(s) shall complete service of process on all parties within ninety (90) days of the date of the filing of the second amended complaint. Concurrently with the service of process, or as soon thereafter as possible, plaintiff(s) shall serve upon each of the parties named in the second amended complaint, and upon all parties subsequently joined, a copy of this Order, and shall file with the Clerk of the Court a proof of service. Any party who impleads a third-party defendant shall serve upon that party a copy of this Order and shall file with the Clerk of the Court a proof of service reflecting such service.

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1 In the event this action was originally filed in a state court and was thereafter
2 removed to this Court, the removing party shall, immediately following such removal,
3 serve upon each of the other parties named in the second amended complaint and upon
4 all parties subsequently joined a copy of this Order. The removing party shall also file
5 with the Clerk of the Court a proof of service reflecting such service.

6 In order to assist the Court in meeting its recusal responsibilities, any non-
7 governmental corporate party to this action shall file a statement identifying all its parent
8 corporations and listing any publicly-held company that owns ten percent (10%) or more
9 of the party's stock. This statement shall be filed no later than fourteen (14) days after
10 the non-governmental corporate party is served with a copy of this Order. Thereafter, if
11 there is any change in the information, the party shall file and serve a supplemental
12 statement within a reasonable time after such change occurs.

13 **II. DISCOVERY**

14 Within sixty (60) days¹ of service of the second amended complaint on any party,
15 or from the date of removal, whichever is later, the parties shall meet and confer as
16 required by Federal Rule of Civil Procedure 26(f) regarding their discovery plan.

17 All discovery, with the exception of expert discovery, shall be completed no later
18 than three hundred sixty-five (365) days from the date the federal case was opened. In
19 this context, "completed" means that all discovery shall have been conducted so that all
20 depositions have been taken and any disputes relative to discovery shall have been
21 resolved by appropriate order if necessary and, where discovery has been ordered, the
22 order has been obeyed. All motions to compel discovery must be noticed on the
23 magistrate judge's calendar in accordance with the Local Rules.²

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27 ¹ The parties shall refer to Federal Rule of Civil Procedure 6(a) in computing the time periods
specified in this Order.

28 ² A copy of the current Local Rules is available at <http://www.caed.uscourts.gov/caednew/index.cfm/rules/local-rules/>

1 **III. DISCLOSURE OF EXPERT WITNESSES**

2 All counsel are to designate in writing and serve upon all other parties the name,
3 address, and area of expertise of each expert that they propose to tender at trial not later
4 than sixty (60) days after the close of discovery. The designation shall be accompanied
5 by a written report prepared and signed by the witness. The report shall comply with
6 Federal Rule of Civil Procedure 26(a)(2)(B).

7 Within thirty (30) days after the designation of expert witnesses, any party may
8 designate a supplemental list of expert witnesses who will express an opinion on a
9 subject covered by an expert designated by an adverse party. The right to designate a
10 supplemental expert for rebuttal purposes only shall apply to a party who has not
11 previously disclosed an expert witness on the date set for expert witness disclosure by
12 this Order.

13 Failure of a party to comply with the disclosure schedule as set forth above in all
14 likelihood will preclude that party from calling the expert witness at the time of trial. An
15 expert witness not appearing on the designation will not be permitted to testify unless the
16 party offering the witness demonstrates: (a) good cause for the party's failure to
17 designate the expert witness in accordance with this Order; (b) that the Court and
18 opposing counsel were promptly notified upon discovery of the witness; and (c) that the
19 witness was promptly made available for deposition.

20 For purposes of this Order, an "expert" is any person who may be used at trial to
21 present evidence under Federal Rules of Evidence 702, 703, and 705, which include
22 both "percipient experts" (persons who, because of their expertise, have rendered expert
23 opinions in the normal course of their work duties or observations pertinent to the issues
24 in the case) and "retained experts" (persons specifically designated by a party to be a
25 testifying expert for the purposes of litigation).

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1 Each party shall identify whether a disclosed expert is percipient, retained, or
2 both. It will be assumed that a party designating a retained expert has acquired the
3 express permission of the witness to be so listed. Parties designating percipient experts
4 must state in the designation who is responsible for arranging the deposition of such
5 persons.

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

11 Counsel are instructed to complete all discovery of expert witnesses in a timely
12 manner in order to comply with the Court's deadline for filing dispositive motions.

13 **IV. DISPOSITIVE MOTIONS**

14 The parties shall file dispositive motions no later than one hundred eighty (180)
15 days after the close of non-expert discovery. All papers should be filed in conformity
16 with the Local Rules. Absent leave of the Court, all issues the parties wish to resolve on
17 summary judgment must be raised together in one (1) motion or cross-motion. Should
18 the parties wish to file additional motions for summary judgment, they must seek leave of
19 the Court.

20 All purely legal issues are to be resolved in timely pretrial motions. When
21 appropriate, failure to comply with Local Rules 230 and 260, as modified by this Order,
22 may be deemed consent to the motion and the Court may dispose of the motion
23 summarily. With respect to motions for summary judgment, failure to comply with Local
24 Rules 230 and 260, as modified by this Order, may result in dismissal for failure to
25 prosecute (or failure to defend) pursuant to this Court's inherent authority to control its
26 docket and or Federal Rule of Civil Procedure 41(b).

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1 Further, failure to timely oppose a summary judgment motion³ may result in the granting
2 of that motion if the movant shifts the burden to the nonmovant to demonstrate that a
3 genuine issue of material fact remains for trial.

4 The Court places a page limit for points and authorities (exclusive of exhibits and
5 other supporting documentation) of twenty (20) pages on all initial moving papers, twenty
6 (20) pages on oppositions, and ten (10) pages for replies. Sur-replies are viewed with
7 disfavor and will only be considered upon a showing of good cause. All requests for
8 page limit increases must be made in writing with a proposed order setting forth any and
9 all reasons for any increase in page limit at least seven (7) days prior to the filing of the
10 motion.

11 The parties are directed to the Court's website for available hearing dates and
12 Judge England's standard procedures. (www.caed.uscourts.gov – select "Judges" –
13 select "Judge England" – select "Standard Information").

14 Citations to the Supreme Court Lexis database shall include parallel citations to
15 the Westlaw database.

16 The parties are reminded that a motion in limine is a pretrial procedural device
17 designated to address the admissibility of evidence. The Court will look with disfavor
18 upon dispositional motions presented at the Final Pretrial Conference or at trial in the
19 guise of motions in limine.

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

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28 ³ The Court urges any party that contemplates bringing a motion for summary judgment or who
must oppose a motion for summary judgment to review Local Rule 260.

1 **V. TRIAL SETTING**

2 The parties are ordered to file a Joint Notice of Trial Readiness not later than
3 thirty (30) days after receiving this Court's ruling(s) on the last filed dispositive motion(s).
4 If the parties do not intend to file dispositive motions, the parties are ordered to file a
5 Joint Notice of Trial Readiness not later than thirty (30) days after the close of the
6 designation of supplemental expert witnesses and the notice must include statements of
7 intent to forgo the filing of dispositive motions.

8 The parties are to set forth in their Notice of Trial Readiness, the appropriateness
9 of special procedures, whether this case is related to any other case(s) on file in the
10 Eastern District of California, the prospect for settlement, their estimated trial length, any
11 request for a jury, and their availability for trial. The parties' Notice of Trial Readiness
12 Statement shall also estimate how many court days each party will require to present its
13 case, including opening statements and closing arguments. Plaintiff's estimate shall
14 also include the time necessary for jury selection, and Defendant's estimate shall include
15 the time necessary to finalize jury instructions and instruct the jury.

16 This Court is in session for jury selection, opening statements, presentation of
17 evidence, closing arguments, finalizing proposed jury instructions and verdict forms, and
18 instruction of the jury Monday through Wednesday, only. During trial days, the Court
19 adheres to the following schedule:

20 Trial: 9:00—10:30 A.M.

21 Break: 10:30—10:50 A.M.

22 Trial: 10:50—12:00 P.M.

23 Lunch: 12:00—1:30 P.M.

24 Trial: 1:30—3:00 P.M.

25 Break: 3:00—3:20 P.M.

26 Trial: 3:20—4:30 P.M.

27 Jury deliberations only are Monday through Friday if necessary.

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1 After review of the parties' Joint Notice of Trial Readiness, the Court will issue an
2 order that sets forth dates for a final pretrial conference and trial.

3 **VI. SETTLEMENT CONFERENCE**

4 If the parties agree to a settlement conference, a magistrate judge will be
5 randomly assigned to the case to preside over the settlement conference. If the parties
6 specifically request that the assigned District Judge or Magistrate Judge conduct the
7 settlement conference, the parties shall file the appropriate waiver of disqualification in
8 accordance with Local Rule 270(b). If the parties elect to participate in the Voluntary
9 Dispute Resolution Program (VDRP), a stipulation of election is required pursuant to
10 Local Rule 271. See, Attachments 2-1 and 2-2 of this Order.

11 In accordance with Local Rule 160, counsel are to immediately file a notice of
12 settlement or other disposition of this case.

13 **VII. MODIFICATION OF INITIAL PRETRIAL SCHEDULING ORDER**

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

20 **VIII. COURTESY COPIES**

21 No party shall submit paper courtesy copies of pleadings or exhibits to the Court
22 unless expressly ordered to do so.

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IX. OBJECTIONS TO INITIAL PRETRIAL SCHEDULING ORDER

This Initial Pretrial Scheduling Order will become final without further order of the Court unless objections are filed within sixty (60) days of service on all defendant(s).

Dated: January 12, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE