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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPROXIMATELY \$42,000.00 IN U.S.
CURRENCY, and APPROXIMATELY
\$18,000.00 IN U.S. CURRENCY,

Defendants.

No. 2:13-cv-00764-KJM-DAD

STATUS (PRETRIAL SCHEDULING)

ORDER

An initial scheduling conference was held in this case on September 19, 2013. Kevin Khasigian appeared for plaintiff; Edward Burch appeared for claimants Mark Anthony Brown and Enrique Espinoza Leon. Having reviewed the parties' Joint Status Report filed on August 30, 2013, and discussed a schedule for the case with counsel at the hearing, the court makes the following orders:

I. SERVICE OF PROCESS/NOTICE

All notice as required in this in rem action has been provided. All potential claimants to the defendant assets have been served.

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1 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

5 III. JURISDICTION/VENUE

6 Jurisdiction is predicated upon 28 U.S.C. §§ 1345 and 1355(a). Venue is based on
7 28 U.S.C. §§ 1355(b) and 1395. Jurisdiction and venue are not disputed.

8 IV. DISCOVERY

9 Civil forfeiture actions are exempt from the initial disclosure requirements under
10 Federal Rule of Civil Procedure 26(a)(1)(B)(ii). All discovery shall be completed by **September**
11 **1, 2014**. In this context, “completed” means that all discovery shall have been conducted so that
12 all depositions have been taken and any disputes relative to discovery shall have been resolved by
13 appropriate order if necessary and, where discovery has been ordered, the order has been obeyed.
14 All motions to compel discovery must be noticed on the magistrate judge’s calendar in
15 accordance with the local rules of this court. While the assigned magistrate judge reviews
16 proposed discovery phase protective orders, requests to seal or redact are decided by Judge
17 Mueller as discussed in more detail below.

18 As to non-retained witnesses only, including law enforcement officers, fingerprint
19 experts and chemists, the parties stipulate that the reports prepared by these persons during the
20 course of their work will satisfy Rule 26(a)(2)(B) requirements.

21 V. DISCLOSURE OF EXPERT WITNESSES

22 All counsel are to designate in writing, file with the court, and serve upon all other
23 parties the name, address, and area of expertise of each expert that they propose to tender at trial
24 not later than **July 20, 2014**. The designation shall be accompanied by a written report prepared
25 and signed by the witness. The report shall comply with Federal Rule of Civil Procedure
26 26(a)(2)(B). By **August 10, 2014**, any party who previously disclosed expert witnesses may
27 submit a supplemental list of expert witnesses who will express an opinion on a subject covered
28 by an expert designated by an adverse party, if the party supplementing an expert witness

1 designation has not previously retained an expert to testify on that subject. The supplemental
2 designation shall be accompanied by a written report, which shall also comply with the conditions
3 stated above.

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

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

20 All experts designated are to be fully prepared at the time of designation to render
21 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
22 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
23 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition
24 taken subsequent to designation. All expert discovery shall be completed by **September 10,**
25 **2014.**

26 VI. MOTION HEARING SCHEDULE

27 All dispositive motions, except motions for continuances, temporary restraining
28 orders, or other emergency applications, shall be heard no later than **October 10, 2014.** The

1 parties may obtain available hearing dates by calling Casey Schultz, the Courtroom Deputy, at
2 (916) 930-4193.

3 All purely legal issues are to be resolved by timely pretrial motions. Local Rule
4 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

8 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
9 the motion, and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
10 652-53 (9th Cir. 1994).

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

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

26 The parties are reminded that a motion *in limine* is a pretrial procedural device
27 designed to address the admissibility of evidence. The court looks with disfavor upon
28 dispositional motions presented at the Final Pretrial Conference or at trial in the guise of motions

1 *in limine*. Although all motions *in limine* must be filed in conjunction with the joint pretrial
2 statement, the court will hear only those motions it has identified to counsel before the hearing
3 date.

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

7 VII. SEALING

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

19 VIII. FINAL PRETRIAL CONFERENCE

20 The Final Pretrial Conference is set for **December 18, 2014**, at 3:30 p.m. At least
21 one of the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial
22 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to
23 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the
24 case and equal authorization to make commitments on behalf of the client.

25 Counsel for all parties are to be fully prepared for trial at the time of the Final
26 Pretrial Conference, with no matters remaining to be accomplished except production of
27 witnesses for oral testimony. The parties shall confer and file a joint pretrial conference
28 statement by **November 27, 2014**. The provisions of Local Rule 281 shall apply with respect to

1 the matters to be included in the joint pretrial statement. In addition to those subjects listed in
2 Local Rule 281(b), the parties are to provide the court with the following:

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

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

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

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

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

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

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

1 Plaintiff's exhibits shall be listed numerically. Claimants' exhibits shall be listed
2 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for
3 plaintiff and blue for defendants. In the event that the alphabet is exhausted, the exhibits shall be
4 marked "AA-ZZ." However, if the amount of claimants' exhibits exceeds "ZZ" exhibits shall be
5 then listed as A-3, A-4, A-5, etc. All multi-page exhibits shall be stapled or otherwise fastened
6 together, and each page within the exhibit shall be numbered. The list of exhibits shall not
7 include excerpts of depositions, which may be used to impeach witnesses. In the event that
8 plaintiff and defendants offer the same exhibit during trial, that exhibit shall be referred to by the
9 designation the exhibit is first identified. The court cautions the parties to pay attention to this
10 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 of
15 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the
16 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 Conference
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1 Statement and participate in good faith at the Final Pretrial Conference with these aims in mind.¹
2 A failure to do so may result in the imposition of sanctions, which may include monetary
3 sanctions, orders precluding proof, elimination of claims or defenses, or such other sanctions as
4 the court deems appropriate.

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

8 IX. TRIAL SETTING

9 The trial is set for **February 23, 2015**, at 9:00 a.m. The parties estimate a trial
10 length of approximately three (3) days. Trial briefs are due by **February 9, 2015**. Claimants
11 have demanded a jury trial.

12 X. SETTLEMENT CONFERENCE

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

19 Counsel are instructed to have a principal with full settlement authority present at
20 any Settlement Conference or to be fully authorized to settle the matter on any terms. At least
21 seven (7) *calendar* days before the Settlement Conference, counsel for each party shall submit to
22 the chambers of the settlement judge a confidential Settlement Conference Statement. Such
23 statements are neither to be filed with the Clerk nor served on opposing counsel. Each party,
24 however, shall serve notice on all other parties that the statement has been submitted. If the

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27 ¹ "If the pretrial conference discloses that no material facts are in dispute and that the undisputed
28 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. S'holders Protective Comm.*, 770 F.2d 866, 868-69
(9th Cir. 1985).

1 settlement judge is not the trial judge, the Settlement Conference Statement shall not be disclosed
2 to the trial judge.

3 XI. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

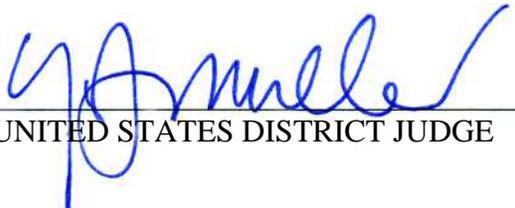
4 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil
5 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court
6 upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not
7 constitute good cause.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

9 XII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

12 IT IS SO ORDERED.

13 DATED: September 23, 2013.

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17 UNITED STATES DISTRICT JUDGE
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