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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL McCUNE,

Plaintiff,

v.

T & S BUSINESS CORPORATION
dba IHOP #649, et al.,

Defendants.

No. CIV 14-469 LKK/AC

STATUS (PRETRIAL SCHEDULING) CONFERENCE

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES WHICH THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL AND PARTIES MUST COMPLY. A FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER SANCTIONS WITHIN THE POWER OF THE COURT, INCLUDING DISMISSAL OR AN ORDER OF JUDGMENT.

Pursuant to court order, a Status (Pretrial Scheduling) Conference was held in chambers on April 28, 2014. Scottlynn J. Hubbard, IV appeared telephonically as counsel for plaintiff; Michael Welch appeared as counsel for defendant T & S Business

1 Corporation; Cris C. Vaughan appeared telephonically as counsel
2 for defendant Sells Financial Services, Inc. After hearing, the
3 court makes the following findings and orders:

4 **SERVICE OF PROCESS**

5 All parties have been served and no further service is
6 permitted except with leave of court, good cause having been
7 shown.

8 **JOINDER OF PARTIES/AMENDMENTS**

9 No further joinder of parties or amendments to pleadings is
10 permitted except with leave of court, good cause having been
11 shown. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604
12 (9th Cir. 1992).

13 **JURISDICTION/VENUE**

14 Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1343 &
15 1367, is undisputed, and is hereby found to be proper, as is
16 venue.

17 **MOTION HEARING SCHEDULES**

18 All law and motion except as to discovery is left open, save
19 and except that it shall be conducted so as to be completed by
20 **July 28, 2015**. The word "completed" in this context means that
21 all law and motion matters must be **heard** by the above date.
22 Because this date is not necessarily a date previously set aside
23 for law and motion hearings, it is incumbent upon counsel to
24 contact this court's courtroom deputy, Ana Rivas at (916) 930-
25 4133, sufficiently in advance so as to ascertain the dates upon
26 which law and motion will be heard and to properly notice its
27 motion for hearing before that date. Counsel are cautioned to
28 refer to Local Rule 230 regarding the requirements for noticing

1 such motions on the court's regularly scheduled law and motion
2 calendar. **Opposition or statement of non-opposition to all**
3 **motions shall be filed not later than 4:30 p.m. fourteen (14)**
4 **days preceding the hearing date, or by proof of service by mail**
5 **not less than seventeen (17) days preceding the hearing date.**
6 This paragraph does not preclude motions for continuances,
7 temporary restraining orders or other emergency applications, and
8 is subject to any special scheduling set forth in the
9 "MISCELLANEOUS PROVISIONS" paragraph below.

10 At the time of filing a motion, opposition, or reply,
11 counsel are directed to email a copy in word processing format to
12 lkk-pleadings@caed.uscourts.gov.

13 The parties should keep in mind that the purpose of law and
14 motion is to narrow and refine the legal issues raised by the
15 case, and to dispose of by pretrial motion those issues that are
16 susceptible to resolution without trial. To accomplish that
17 purpose, the parties need to identify and fully research the
18 issues presented by the case, and then examine those issues in
19 light of the evidence gleaned through discovery. If it appears
20 to counsel after examining the legal issues and facts that an
21 issue can be resolved by pretrial motion, counsel are to file the
22 appropriate motion by the law and motion cutoff set forth supra.

23 **Unless prior permission has been granted, memoranda of law**
24 **in support of and in opposition to motions are limited to thirty**
25 **(30) pages, and reply memoranda are limited to fifteen (15)**
26 **pages. The parties are also cautioned against filing multiple**
27 **briefs to circumvent this rule.**

28 Where the parties bring motions for summary judgment, the

1 court will deem facts which are apparently undisputed as
2 undisputed under Fed. R. Civ. P. 56(e), unless specifically
3 reserved and that party tenders evidence to support the
4 reservation.

5 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY
6 PRETRIAL MOTION AND A FAILURE TO MAKE SUCH A MOTION WILL
7 ORDINARILY BE VIEWED AS A WAIVER AT THE TIME OF PRETRIAL.
8 COUNSEL ARE CAUTIONED THAT IF ANY LEGAL ISSUE THAT SHOULD HAVE
9 BEEN TENDERED TO THE COURT BY PRETRIAL MOTION MUST BE RESOLVED BY
10 THE COURT AFTER LAW AND MOTION CUTOFF, FOR INSTANCE WHERE THE
11 ISSUE IS JURISDICTION, SUBSTANTIAL SANCTIONS WILL BE LEVIED
12 AGAINST COUNSEL WHO FAIL TO TIMELY FILE AN APPROPRIATE MOTION.

13 Counsel are further reminded that motions in limine are
14 procedural devices designed to address the admissibility of
15 evidence. COUNSEL ARE CAUTIONED THAT THE COURT WILL LOOK WITH
16 DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED IN THE GUISE OF
17 MOTIONS IN LIMINE AT THE TIME OF TRIAL.

18 **DISCOVERY**

19 No modifications of the discovery requirements found in the
20 Federal Rules is ordered.

21 All discovery is left open, save and except that it shall be
22 so conducted as to be completed by **May 28, 2015**. The word
23 "completed" means that all discovery shall have been conducted so
24 that all depositions have been taken and any disputes relative to
25 discovery shall have been resolved by appropriate order if
26 necessary and, where discovery has been ordered, the order has
27 been complied with. Motions to compel discovery must be noticed
28 on the magistrate judge's calendar in accordance with the local

1 rules of this court and so that such motions will be heard not
2 later than **April 28, 2015**. In this regard, all counsel are to
3 designate in writing and file with the court and serve upon all
4 other parties a final list of the names of all experts that they
5 propose to tender at trial not later than **ninety (90)** days before
6 the close of discovery herein established. All designated
7 experts shall submit written reports which counsel shall exchange
8 at the time of designation. The contents of the report must
9 comply with Fed. R. Civ. P. 26 (a)(2)(B). All experts so
10 designated are to be fully prepared to render an informed opinion
11 at the time of designation so that they may fully participate in
12 any deposition taken by the opposing party. Experts will not be
13 permitted to testify at the trial as to any information gathered
14 or evaluated, or opinion formed, after deposition taken
15 subsequent to designation.

16 An expert witness not appearing on said lists will not be
17 permitted to testify unless the party offering the witness
18 demonstrates: (a) that the necessity of the witness could not
19 have been reasonably anticipated at the time the lists were
20 exchanged; (b) the court and opposing counsel were promptly
21 notified upon discovery of the witness; and (c) that the witness
22 was promptly proffered for deposition.

23 **MID-LITIGATION STATEMENTS**

24 Not later than fourteen (14) days prior to the close of
25 discovery, all parties shall file with the court and serve on all
26 other parties a brief statement summarizing all law and motion
27 practice heard by the court as of the date of the filing of the
28 statement, whether the court has disposed of the motion at the

1 time the statement is filed and served, and the likelihood that
2 any further motions will be noticed prior to the close of law and
3 motion. The filing of this statement shall not relieve the
4 parties or counsel of their obligation to timely notice all
5 appropriate motions as set forth above.

6 **FINAL PRETRIAL CONFERENCE**

7 The Final Pretrial Conference is **SET** for **October 26, 2015,**
8 **at 1:30 p.m.** Counsel are cautioned that counsel appearing for
9 Pretrial will in fact try the matter.

10 Counsel for all parties are to be fully prepared for trial
11 at the time of the Pretrial Conference, with no matters remaining
12 to be accomplished except production of witnesses for oral
13 testimony. Counsel are referred to Local Rules 280 and 281
14 relating to the contents of and time for filing Pretrial
15 Statements. In addition to those subjects listed in Local Rule
16 281(b), the parties are to provide the court with a plain,
17 concise statement which identifies every non-discovery motion
18 tendered to the court, and its resolution. A FAILURE TO COMPLY
19 WITH LOCAL RULES 280 AND 281 WILL BE GROUNDS FOR SANCTIONS.

20 The parties shall file Separate Pretrial Statements, the
21 contents and timing of which are set forth in Local Rule 281,
22 except that the parties are to prepare a JOINT STATEMENT with
23 respect to the undisputed facts and disputed factual issues of
24 the case. See Local Rule 281(b)(3), (4), and (6). The parties
25 are reminded to include in their joint statement all disputed and
26 undisputed special factual information as required by Local Rule
27 281(b)(6). Notwithstanding the provisions of Local Rule 281, the
28 Joint Statement of Undisputed Facts and Disputed Factual Issues

1 is to be filed with the court concurrently with the filing of
2 plaintiff's Pretrial Statement.

3 The undisputed facts and disputed factual issues are to be
4 set forth in two separate sections. In each section, the parties
5 should identify first the general facts relevant to all causes of
6 action. After identifying the general facts, the parties should
7 then identify those facts which are relevant to each separate
8 cause of action. In this regard, the parties are to number each
9 individual fact or factual issue. Where the parties are unable
10 to agree as to what factual issues are properly before the court
11 for trial, they should nevertheless list in the section on
12 "DISPUTED FACTUAL ISSUES" all issues asserted by any of the
13 parties and explain by parenthetical the controversy concerning
14 each issue. Each individual disputed fact or factual issue shall
15 include the following introductory language: "Whether or not . .
16 . ." The parties should keep in mind that, in general, each fact
17 should relate or correspond to an element of the relevant cause
18 of action. If the case is tried to a jury, the undisputed facts
19 will be read to the jury.

20 Pursuant to Local Rule 281(b)(10) and (11), the parties are
21 required to provide in their Pretrial Statements a list of
22 witnesses and exhibits that they propose to proffer at trial, no
23 matter for what purpose. These lists shall not be contained in
24 the Pretrial Statement itself, but shall be attached as separate
25 documents to be used as addenda to the Final Pretrial Order.
26 Plaintiff's exhibits shall be listed numerically; defendants'
27 exhibits shall be listed alphabetically. In the event that the
28 alphabet is exhausted, defendants' exhibits shall be marked "2A-

1 2Z, 3A-3Z, etc." The Pretrial Order will contain a stringent
2 standard for the proffering of witnesses and exhibits at trial
3 not listed in the Pretrial Order. Counsel are cautioned that the
4 standard will be strictly applied. On the other hand, the
5 listing of exhibits or witnesses which counsel do not intend to
6 call or use will be viewed as an abuse of the court's processes.

7 Pursuant to Local Rule 281(b)(12), a party is required to
8 provide a list of all answers to interrogatories and responses to
9 requests for admission that the party expects to offer at trial.
10 This list should include only those documents or portions thereof
11 which the party expects to offer in its case-in-chief. Unless
12 otherwise barred by a rule of evidence or order of this court,
13 the parties remain free to tender appropriate discovery documents
14 during trial for such purposes as, but not limited to,
15 impeachment or memory refreshment.

16 Pursuant to Local Rule 281(b)(8), the parties' Pretrial
17 Statements shall contain a "statement of legal theory, etc."
18 Each party shall commence this section by specifying as to each
19 claim whether federal or state law governs, and if state law, the
20 state whose law is applicable.

21 Counsel are also reminded that, pursuant to Fed. R. Civ. P.
22 16, it will be their duty at the Pretrial Conference to aid the
23 court in (a) formulation and simplification of issues and the
24 elimination of frivolous claims or defenses; (b) settling of
25 facts which should be properly admitted; and (c) the avoidance of
26 unnecessary proof and cumulative evidence. Counsel must prepare
27 their Pretrial Statements, and participate in good faith at the
28 Pretrial Conference, with these aims in mind. A FAILURE TO DO SO

1 MAY RESULT IN THE IMPOSITION of SANCTIONS which may include
2 monetary sanctions, orders precluding proof, eliminations of
3 claims or defenses, or such other sanctions as the court deems
4 appropriate.

5 **TRIAL SETTING**

6 Trial is **SET** for **January 26, 2016**, at 10:30 a.m. Trial will
7 be by jury. The parties represent in good faith that the trial
8 will take approximately three (3) days.

9 **SETTLEMENT CONFERENCE**

10 A Settlement Conference will be set before a judge other
11 than the trial judge at the time of the Pretrial Conference.

12 Counsel are cautioned to have a principal capable of
13 disposition present at the Settlement Conference or to be fully
14 authorized to settle the matter on any terms and at the
15 Settlement Conference.

16 **MISCELLANEOUS PROVISIONS**

17 The parties are reminded that pursuant to Fed. R. Civ. P.
18 16(b), the Status (pretrial scheduling) Order **shall not be**
19 **modified except by leave of court upon a showing of good cause.**
20 Counsel are cautioned that changes to any of the scheduled dates
21 will necessarily result in changes to all other dates. Thus,
22 even where good cause has been shown, the court will not grant a
23 request to change the discovery cutoff date without modifying the
24 pretrial and trial dates.

25 **Agreement by the parties pursuant to stipulation does not**
26 **constitute good cause. Nor does the unavailability of witnesses**
27 **or counsel, except in extraordinary circumstances, constitute**
28 **good cause.**

1 The parties are reminded of their continuing obligation to
2 supplement their statements relative to the identification of
3 parent corporations and any publicly held company that owns 10%
4 or more of the party's stock within a reasonable time of any
5 change in the information.

6 The parties are admonished that they are not to cite or
7 refer to any of the quotations inscribed in the pavers on the
8 front plaza of the United States Courthouse in any written or
9 oral presentation to the court or a jury.

10 There appear to be no other matters presently pending before
11 the court that will aid the just and expeditious disposition of
12 this matter.

13 IT IS SO ORDERED.

14 DATED: May 1, 2014.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT