

1 SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

2 Plaintiff states in the JSR:

3 Plaintiff intends to conduct an expert
4 led site inspection to identify each barrier
5 that would affect his type of disability and,
6 then, amend the complaint to ensure that the
7 ADA claim reflects his intention to have all
8 unlawful barrier removed or remediated. This
9 is the two-step process permitted and
10 required by *Doran v. 7-Eleven Inc.*, (9th Cir.
11 2008) 524 F.3d 103 and *Chapman v. Pier 1*
12 *Imports (US) Inc.*, 631 F.3d 939 (9th Cir.
13 2011).

14 (JSR 2:10-16, ECF No. 21.)

15 This statement fails to comply with Plaintiff's
16 obligation under Rule 16 to provide meaningful information on
17 when the referenced amendment would be sought.

18 Parties anticipating possible
19 amendments . . . have an unflagging obligation
20 to alert the Rule 16 scheduling judge of the
21 . . . timing of such anticipated amendments
22 in their status reports so that the judge can
23 consider whether such amendments may properly
24 be sought solely under the Rule 15(a)
25 standard, and whether structuring discovery
26 pertinent to the parties' decision whether to
27 amend is feasible.

28 *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999)
 (internal quotation marks omitted).

 Therefore, Plaintiff shall conduct discovery pertinent
to the referenced amendment forthwith, and is authorized to file
a motion in which leave is sought under Federal Rule of Civil
Procedure 15(a) to file the referenced amendment provided that
the motion in which leave is sought is filed no later than sixty
days from the date on which this order is filed; the motion shall
be noticed for hearing on the earliest available regularly
scheduled law and motion hearing date.

1 pretrial conference.

2 The parties shall file a JOINT pretrial statement no
3 later than seven (7) calendar days prior to the final pretrial
4 conference. **The joint pretrial statement shall address the**
5 **applicable portions of Local Rule 281(b), and shall set forth**
6 **each theory of liability ("claim") and affirmative defense which**
7 **remains to be tried, and the ultimate facts on which each**
8 **theory/defense is based.** Furthermore, each party shall estimate
9 the length of trial. The Court uses the parties' joint pretrial
10 statement to prepare its final pretrial order and could issue the
11 final pretrial order without holding the scheduled final pretrial
12 conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th Cir.
13 1999) ("There is no requirement that the court hold a pretrial
14 conference.").

15 Final pretrial procedures are "critical for 'promoting
16 efficiency and conserving judicial resources by identifying the
17 real issues prior to trial, thereby saving time and expense for
18 everyone.'" Friedman & Friedman, Ltd. v. Tim McCandless, Inc.,
19 606 F.3d 494, 498 (8th Cir. 2010) (quoting Fed. R. Civ. P. 16
20 Advisory Committee Note (1983 Amendment to subdivision (c)).
21 "Toward that end, Rule 16 directs courts to use pretrial
22 conferences to weed out unmeritorious claims and defenses before
23 trial begins." Smith v. Gulf Oil Co., 995 F.2d 638, 642 (6th Cir.
24 1993). The parties are therefore provided notice that a claim or
25 affirmative defense may be dismissed *sua sponte* if it is not
26 shown to be triable in the joint final pretrial statement. Cf.
27 Portland Retail Druggists Ass'n v. Kaiser Found. Health Plan, 662
28 F.2d 641, 645 (9th Cir. 1981) (indicating that a party shall be

1 provided notice and an opportunity to respond with facts
2 sufficient to justify having a claim or affirmative defense
3 proceed to trial); Portsmouth Square, Inc. v. S'holders
4 Protective Comm., 770 F.2d 866, 869 (9th Cir. 1985) (stating "the
5 district court has . . . authority to grant summary judgment *sua*
6 *sponte* in the context of a final pretrial conference").

7 If feasible, at the time of filing the joint pretrial
8 statement counsel shall also email it in a format compatible with
9 WordPerfect to: geborders@caed.uscourts.gov.

10 TRIAL SETTING

11 Trial shall commence at 9:00 a.m. on January 24, 2017.

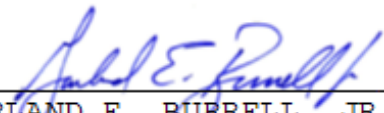
12 IT IS SO ORDERED.

13 Dated: May 12, 2015

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GARLAND E. BURRELL, JR.
Senior United States District Judge

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