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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WENDAL HESTERLY,

Plaintiff,

v.

ACE HARDWARE CORPORATION, a
Delaware corporation,

Defendant*.

No. 2:14-cv-02938-GEB-AC

**STATUS (PRETRIAL SCHEDULING)
ORDER**

The status (pretrial scheduling) conference scheduled for hearing on February 23, 2015, is vacated since the parties' Joint Status Report filed on February 9, 2015 ("JSR") indicates the following Order should issue.

DISMISSAL OF DOE DEFENDANTS

Since Plaintiff states in the JSR that he "does not anticipate that he will identify or name any 'Doe' defendants," Does 1-50 are dismissed. See Order Setting Status (Pretrial Scheduling) Conference filed December 19, 2014, at 2 n.2 (indicating that if justification for "Doe" defendant allegations not provided Doe defendants would be dismissed).

* The caption has been amended according to the Dismissal of Doe Defendants portion of this Order.

1 SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

2 No further service, joinder of parties or amendments to
3 pleadings is permitted, except with leave of Court for good cause
4 shown.

5 DISCOVERY

6 All discovery shall be completed by January 19, 2016.
7 "Completed" means all discovery shall be conducted so that any
8 dispute relative to discovery shall have been resolved by
9 appropriate orders, if necessary, and, where discovery has been
10 ordered, the order has been complied with on or before the
11 prescribed "completion" date.

12 Each party shall comply with Federal Rule of Civil
13 Procedure 26(a)(2)(B) and (C)'s initial expert witness disclosure
14 requirements on or before August 18, 2015, and any contradictory
15 and/or rebuttal expert disclosure authorized under Rule
16 26(a)(2)(D)(ii) on or before September 18, 2015.

17 MOTION HEARING SCHEDULE

18 The last hearing date for a motion is March 21, 2016,
19 commencing at 9:00 a.m. Any motion shall be briefed as prescribed
20 in Local Rule 230.

21 The parties are cautioned that an untimely motion
22 characterized as a motion in limine may be summarily denied.

23 FINAL PRETRIAL CONFERENCE

24 The final pretrial conference is set for May 16, 2016,
25 at 1:30 p.m. The parties are cautioned that the lead attorney who
26 WILL TRY THE CASE for each party shall attend the final pretrial
27 conference. In addition, all persons representing themselves and
28

1 appearing in propria persona must attend the 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").

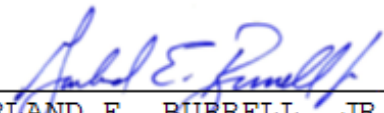
7 If feasible, at the time of filing the joint pretrial
8 statement counsel shall also email it in a format compatible with
9 WordPerfect to: geborders@caed.uscourts.gov.

10 TRIAL SETTING

11 Trial shall commence at 9:00 a.m. on August 23, 2016.

12 IT IS SO ORDERED.

13 Dated: February 12, 2015

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17 GARIAND E. BURRELL, JR.
18 Senior United States District Judge
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