



1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 1332. Jurisdiction and venue are not  
3 disputed.

4 IV. DISCOVERY

5 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall have  
6 been completed within seven (7) days of the hearing. All discovery shall be completed by  
7 **September 9, 2016**. In this context, “completed” means that all discovery shall have been  
8 conducted so that all depositions have been taken and any disputes relative to discovery shall  
9 have been resolved by appropriate order if necessary and, where discovery has been ordered, the  
10 order has been obeyed. All motions to compel discovery must be noticed on the magistrate  
11 judge’s calendar in accordance with the local rules of this court. While the assigned magistrate  
12 judge reviews proposed discovery phase protective orders, requests to seal or redact are decided  
13 by Judge Mueller as discussed in more detail below. In addition, while the assigned magistrate  
14 judge handles discovery motions, the magistrate judge cannot change the schedule set in this  
15 order, even in connection with a discovery matter.

16 V. DISCLOSURE OF EXPERT WITNESSES

17 All counsel are to designate in writing, file with the court, and serve upon all other  
18 parties the name, address, and area of expertise of each expert that they propose to tender at trial  
19 not later than **October 14, 2016**. The designation shall be accompanied by a written report  
20 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).  
21 By **November 4, 2016**, any party who previously disclosed expert witnesses may submit a  
22 supplemental list of expert witnesses who will express an opinion on a subject covered by an  
23 expert designated by an adverse party, if the party supplementing an expert witness designation  
24 has not previously retained an expert to testify on that subject. The supplemental designation  
25 shall be accompanied by a written report, which shall also comply with the conditions stated  
26 above.

27 Failure of a party to comply with the disclosure schedule as set forth above in all  
28 likelihood will preclude that party from calling the expert witness at the time of trial. An expert

1 witness not appearing on the designation will not be permitted to testify unless the party offering  
2 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably  
3 anticipated at the time the list was proffered; (b) that the court and opposing counsel were  
4 promptly notified upon discovery of the witness; and (c) that the witness was promptly made  
5 available for deposition.

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

15 All experts designated are to be fully prepared at the time of designation to render  
16 an informed opinion, and give the bases for their opinion, so that they will be able to give full and  
17 complete testimony at any deposition taken by the opposing party. Experts will not be permitted  
18 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition  
19 taken subsequent to designation. All expert discovery shall be completed by **December 2, 2016**

## 20 VI. MOTION HEARING SCHEDULE

21 All dispositive motions, except motions for continuances, temporary restraining  
22 orders or other emergency applications, shall be heard no later than **January 13, 2017**.<sup>1</sup> The  
23 parties may obtain available hearing dates by checking Judge Mueller’s page on the court’s  
24 website.

25 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
26 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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28 <sup>1</sup> Note that this date may not correspond to a law and motion calendar date.

- 1 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and  
2 (b) When the last day for filing an opposition brief falls on a legal holiday, the  
3 opposition brief shall be filed on the last court day immediately preceding the legal holiday.  
4 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
5 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
6 652-53 (9th Cir. 1994).

7 The court values the importance of training young attorneys. The parties are  
8 encouraged to consider assigning oral argument to a young attorney. If a written request for oral  
9 argument is filed before a hearing, stating an attorney of four or fewer years out of law school  
10 will argue the oral argument, then the court will ordinarily hold the hearing, although the court's  
11 schedule and calendar may require the hearing to be reset. Otherwise, the court may find it  
12 appropriate in some actions to submit a motion without oral argument.

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

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

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

4 VII.    SEALING

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

16 VIII.   FINAL PRETRIAL CONFERENCE

17                   The Final Pretrial Conference is set for **June 2, 2017**, at 10:00 a.m. At least one of  
18 the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial  
19 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to  
20 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the  
21 case and equal authorization to make commitments on behalf of the client.

22                   Counsel for all parties are to be fully prepared for trial at the time of the Final  
23 Pretrial Conference, with no matters remaining to be accomplished except production of  
24 witnesses for oral testimony. The parties shall confer and file a joint pretrial conference  
25 statement by **May 12, 2017**. The provisions of Local Rule 281 shall apply with respect to the  
26 matters to be included in the joint pretrial statement. In addition to those subjects listed in Local  
27 Rule 281(b), the parties are to provide the court with the following:

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

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

9                   - Concise lists of disputed evidentiary issues that will be the subject of a party's  
10 motion *in limine*, and whether the parties believe resolution of any of these motions will be  
11 necessary before the first day of trial.

12                  - Each party's points of law, which concisely describe the legal basis or theory  
13 underlying their claims and defenses. Points of law should reflect issues derived from the core  
14 undisputed and disputed facts. Parties shall not include argument with any point of law; the  
15 parties may include concise arguments in their trial briefs.

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

19                  - The parties' position on the number of jurors to be impaneled to try the case.

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. Defendant's 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 defendant. In the event that the alphabet is exhausted, the exhibits shall be  
4 marked "AA-ZZ". However, if the amount of defendant exhibits exceeds "ZZ" exhibits shall be  
5 then listed as AAA, BBB, CCC 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 include  
7 excerpts of depositions to be used only for impeachment. In the event that plaintiff(s) and  
8 defendant(s) offer the same exhibit during trial, that exhibit shall be referred to by the designation  
9 the exhibit is first identified. The court cautions the parties to pay attention to this detail so that  
10 all concerned, including the jury, will not be confused by one exhibit being identified with both a  
11 number and a letter. The parties are encouraged to consult concerning exhibits and, to the extent  
12 possible, provide joint exhibits, which shall be designated as JX and listed numerically, e.g., JX-  
13 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.<sup>2</sup>  
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](mailto:kjmorders@caed.uscourts.gov).

#### 8 IX. MOTIONS *IN LIMINE*

9 All motions *in limine* must be filed in conjunction with the joint pretrial statement.  
10 In most cases, motions *in limine* are addressed and resolved on the morning of the first day of  
11 trial. As noted above, the parties may alert the court at the final pretrial conference and in their  
12 final pretrial statement that a particular motion or motions should be resolved earlier. At the final  
13 pretrial conference, the court will then set a briefing and hearing schedule on these *motions in*  
14 *limine* as necessary.

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

#### 19 X. TRIAL SETTING

20 The jury trial is set for **July 10, 2017** at 9:00 a.m. The parties estimate a trial  
21 length of approximately three (3) days. Trial briefs are due by **June 26, 2017**.

#### 22 XI. SETTLEMENT CONFERENCE

23 No settlement conference is currently scheduled. A settlement conference may be  
24 set at the time of the Final Pretrial Conference or at an earlier time at the parties' request. In the  
25 event that an earlier court settlement conference date or referral to the Voluntary Dispute

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26 <sup>2</sup> "If the pretrial conference discloses that no material facts are in dispute and that the undisputed  
27 facts entitle one of the parties to judgment as a matter of law," the court may summarily dispose  
28 of the case or claims. *Portsmouth Square v. Shareholders Protective Comm.*, 770 F.2d 866, 868-  
69 (9th Cir. 1985).



1 Resolution Program (VDRP) is requested, the parties shall file said request jointly, in writing.  
2 Because the case will be tried to a jury, all parties should be prepared to advise the court whether  
3 they will stipulate to the trial judge acting as settlement judge and waive disqualification by virtue  
4 thereof.

5 Counsel are instructed to have a principal with full settlement authority present at  
6 any Settlement Conference or to be fully authorized to settle the matter on any terms. Each judge  
7 has different requirements for the submission of settlement conference statements; the appropriate  
8 instructions will be sent to you after the settlement judge is assigned.

9 XII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

15 The assigned magistrate judge is authorized to modify only the discovery dates  
16 shown above to the extent any such modification does not impact the balance of the schedule of  
17 the case.

18 XIII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

21 IT IS SO ORDERED.

22 DATED: June 20, 2016

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26 UNITED STATES DISTRICT JUDGE  
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