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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE I. SANTANA and DAVID  
VASQUEZ,

Plaintiff,

v.

THE COUNTY OF YUBA, YUBA  
COUNTY DISTRICT ATTORNEY  
PATRICK MCGRATH, YUBA COUNTY  
DEPUTY DISTRICT ATTORNEY  
MELANIE BENDORF, FORMER YUBA  
COUNTY DEPUTY DISTRICT  
ATTORNEY JOHN VACEK, YUBA  
COUNTY DISTRICT ATTORNEY  
INVESTIGATOR MARY BARR, YUBA  
COUNTY DISTRICT ATTORNEY  
INVESTIGATOR GENE STOBER,  
TIMOTHY J. EVANS, and DOES 1 through  
20, inclusive,

Defendants.

No. 2:15-CV-00794 KJM EFB

STATUS (PRETRIAL SCHEDULING)

ORDER

The court held an initial scheduling conference on October 13, 2016. Jaime  
Leanos appeared for plaintiff; Carl Fessenden and Wendy Green appeared for defendant.

Having reviewed the parties' Joint Status Report filed on October 6, 2016, and  
discussed a schedule for the case with counsel at hearing, the court makes the following orders:

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1 I. SERVICE OF PROCESS

2 All named defendants have been served and no further service is permitted without  
3 leave of court, good cause having been shown.

4 II. JURISDICTION/VENUE

5 Jurisdiction is predicated upon 28 U.S.C. §§ 1331, and 1367. Venue is predicated  
6 upon 28 U.S.C. § 1391(b)(2). Jurisdiction and venue are not disputed.

7 III. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

11 IV. DISCOVERY

12 Parties have already completed their initial disclosures as required by Federal Rule  
13 of Civil Procedure 26(a). All discovery shall be completed by **July 31, 2017**. In this context,  
14 “completed” means that all discovery shall have been conducted so that all depositions have been  
15 taken and any disputes relative to discovery shall have been resolved by appropriate order if  
16 necessary and, where discovery has been ordered, the order has been obeyed. All motions to  
17 compel discovery must be noticed on the magistrate judge’s calendar in accordance with the local  
18 rules of this court. While the assigned magistrate judge reviews proposed discovery phase  
19 protective orders, requests to seal or redact are decided by Judge Mueller as discussed in more  
20 detail below. In addition, while the assigned magistrate judge handles discovery motions, the  
21 magistrate judge cannot change the schedule set in this order, except that the magistrate judge  
22 may modify a discovery cutoff to the extent such modification does not have the effect of  
23 requiring a change to the balance of the schedule.

24 V. DISCLOSURE OF EXPERT WITNESSES

25 All counsel are to designate in writing, file with the court, and serve upon all other  
26 parties the name, address, and area of expertise of each expert that they propose to tender at trial  
27 not later than **September 29, 2017**. The designation shall be accompanied by a written report  
28 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).

1 By **October 27, 2017**, any party who previously disclosed expert witnesses may designate a list  
2 of rebuttal expert witnesses to express an opinion on a subject covered by an adverse party's  
3 designated expert, if the rebutting party has not previously retained an expert to testify on that  
4 subject. The rebuttal designations shall be accompanied by a written report, which shall also  
5 comply with the conditions stated above.

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

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

22 All experts designated are to be fully prepared at the time of designation to render  
23 an informed opinion, and give the bases for their opinion, so that they can give full and complete  
24 testimony at any deposition taken by the opposing party. Experts will not be permitted to testify  
25 at trial as to any information gathered or evaluated, or opinion formed, after deposition taken  
26 subsequent to designation. All expert discovery shall be completed by **November 27, 2017**.

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1 VI. MID-LITIGATION STATUS

2 At the parties' request, the court will hold a mid-litigation status conference on  
3 **December 8, 2017**. The parties shall file a joint status report seven days before the conference.

4 VII. MOTION HEARING SCHEDULE

5 All dispositive motions, except motions for continuances, temporary restraining  
6 orders or other emergency applications, shall be heard no later than January 12, 2018.<sup>1</sup> The  
7 parties may obtain available hearing dates by checking Judge Mueller's page on the court's  
8 website.

9 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
10 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

14 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
15 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
16 652-53 (9th Cir. 1994).

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

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

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

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

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

15 VIII. SEALING

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

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1 IX. FINAL PRETRIAL CONFERENCE

2 The Final Pretrial Conference is set for **April 6, 2018**, at 10:00 a.m. At least one  
3 of the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial  
4 Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to  
5 attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the  
6 case and equal authorization to make commitments on behalf of the client.

7 Counsel for all parties are to be fully prepared for trial at the time of the Final  
8 Pretrial Conference, with no matters remaining to be accomplished except production of  
9 witnesses for oral testimony. The parties shall confer and file a joint pretrial conference  
10 statement by **March 16, 2018**. The provisions of Local Rule 281 shall apply with respect to the  
11 matters to be included in the joint pretrial statement. In addition to those subjects listed in Local  
12 Rule 281(b), the parties are to provide the court with the following:

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

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

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

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

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

4                   - The parties' position on the number of jurors to be impaneled to try the case.  
5                   Discovery documents to be listed in the pretrial statement shall not include  
6 documents to be used only for impeachment and in rebuttal.

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

14                   Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed  
15 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for  
16 plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be  
17 marked "AA-ZZ". However, if the amount of defendant exhibits exceeds "ZZ" exhibits shall be  
18 then listed as AAA, BBB, CCC etc. All multi-page exhibits shall be stapled or otherwise fastened  
19 together and each page within the exhibit shall be numbered. The list of exhibits shall not include  
20 excerpts of depositions to be used only for impeachment. In the event that plaintiff(s) and  
21 defendant(s) offer the same exhibit during trial, that exhibit shall be referred to by the designation  
22 the exhibit is first identified. The court cautions the parties to pay attention to this detail so that  
23 all concerned, including the jury, will not be confused by one exhibit being identified with both a  
24 number and a letter. The parties are encouraged to consult concerning exhibits and, to the extent  
25 possible, provide joint exhibits, which shall be designated as JX and listed numerically, e.g.,  
26 JX-1, JX-2.

27                   The Final Pretrial Order will contain a stringent standard for the offering at trial of  
28 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the

1 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a  
2 party does not intend to offer will be viewed as an abuse of the court's processes.

3 Counsel shall produce all trial exhibits to Casey Schultz, the Courtroom Deputy,  
4 no later than 3:00 p.m. on the Friday before trial.

5 Failure to comply with Local Rule 281, as modified by this order, may be grounds  
6 for sanctions.

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8 The parties also are reminded that pursuant to Rule 16 of the Federal Rules of  
9 Civil Procedure it will be their duty at the Final Pretrial Conference to aid the court in: (a) the  
10 formulation and simplification of issues and the elimination of frivolous claims or defenses;  
11 (b) the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary  
12 proof and cumulative evidence. Counsel must cooperatively prepare the joint Final Pretrial  
13 Conference Statement and participate in good faith at the Final Pretrial Conference with these  
14 aims in mind.<sup>2</sup> A failure to do so may result in the imposition of sanctions which may include  
15 monetary sanctions, orders precluding proof, elimination of claims or defenses, or such other  
16 sanctions as the court deems appropriate.

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

20 X. MOTIONS *IN LIMINE*

21 All motions *in limine* must be filed in conjunction with the joint pretrial statement.  
22 In most cases, motions *in limine* are addressed and resolved on the morning of the first day of  
23 trial. As noted above, the parties may alert the court at the final pretrial conference and in their  
24 final pretrial statement that a particular motion or motions should be resolved earlier. At the final

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



1 pretrial conference, the court will then set a briefing and hearing schedule on these motions *in*  
2 *limine* as necessary.

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

7 **XI. TRIAL SETTING**

8 A jury trial in this case is set for **June 4, 2018** at 9:00 a.m. The parties estimate a  
9 trial length of approximately ten days. Trial briefs are due by **May 21, 2018**.

10 **XII. SETTLEMENT CONFERENCE**

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

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

22 **XIII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER**

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

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As noted, the assigned magistrate judge is authorized to modify only the discovery dates shown above to the extent any such modification does not impact the balance of the schedule of the case.

XIV. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

IT IS SO ORDERED.

DATED: November 8, 2016

  
UNITED STATES DISTRICT JUDGE