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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARBARA BOGGS,  
Plaintiff,  
v.  
VICTORIA'S SECRET, et al.,  
Defendants.

No. 2:15-CV-1920 KJM KJN

STATUS (PRETRIAL SCHEDULING)

ORDER

An initial scheduling conference was held in this case on January 21, 2016. Michael Kronlund appeared for plaintiff; Richard Sutherland appeared for defendants.

Having reviewed the parties' Joint Status Report filed on January 14, 2016, and discussed a schedule for the case with counsel at the hearing, the court makes the following orders:

I. SERVICE OF PROCESS

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

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1 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

2 Plaintiff may seek to join additional defendants. If the defense will not stipulate to  
3 joinder, any motion to join shall be filed within **thirty (30) days** of the scheduling conference.

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

7 III. JURISDICTION/VENUE

8 Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1343(a)(3) and 1983.  
9 Jurisdiction and venue are not disputed.

10 IV. DISCOVERY

11 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be  
12 completed by **February 12, 2016**. All discovery shall be completed by **September 2, 2016**. In  
13 this context, “completed” means that all discovery shall have been conducted so that all  
14 depositions have been taken and any disputes relative to discovery shall have been resolved by  
15 appropriate order if necessary and, where discovery has been ordered, the order has been obeyed.  
16 All motions to compel discovery must be noticed on the magistrate judge’s calendar in  
17 accordance with the local rules of this court. While the assigned magistrate judge reviews  
18 proposed discovery phase protective orders, requests to seal or redact are decided by Judge  
19 Mueller as discussed in more detail below. In addition, while the assigned magistrate judge  
20 handles discovery motions, the magistrate judge cannot change the schedule set in this order,  
21 even in connection with a discovery matter.

22 The following methods will be used to avoid unnecessary proof and cumulative  
23 evidence, and anticipated limitations or restrictions on the use of testimony under Federal Rule of  
24 Evidence 702:

- 25 a. There is video of the incident, and the Parties will stipulate to the video's  
26 authenticity and genuineness, thereby reducing (if not eliminating) cumulative  
27 evidence regarding the circumstances of the incident;

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1                   b. It is anticipated that the Parties will likely be able to stipulate to much of the  
2                   medical injuries and damages sustained by Plaintiff. It is further anticipated  
3                   that there may be stipulations as to the authenticity, genuineness and  
4                   admissibility of Plaintiffs medical records and medical bills.

5                   c. As the case develops, the Parties will further confer on what methods may be  
6                   best to reduce judicial burdens, including but not limited to potential  
7                   stipulations as to exhibits (documentary or otherwise) to avoid testimony  
8                   intended solely to lay foundations for admission of such evidence.

9                   V.        DISCLOSURE OF EXPERT WITNESSES

10                   All counsel are to designate in writing, file with the court, and serve upon all other  
11                   parties the name, address, and area of expertise of each expert that they propose to tender at trial  
12                   not later than **July 1, 2016**. The designation shall be accompanied by a written report prepared  
13                   and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B). By **July 22,**  
14                   **2016**, any party who previously disclosed expert witnesses may submit a supplemental list of  
15                   expert witnesses who will express an opinion on a subject covered by an expert designated by an  
16                   adverse party, if the party supplementing an expert witness designation has not previously  
17                   retained an expert to testify on that subject. The supplemental designation shall be accompanied  
18                   by a written report, which shall also comply with the conditions stated above.

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

26                   For purposes of this scheduling order, an “expert” is any person who may be used  
27                   at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence, which  
28                   include both “percipient experts” (persons who, because of their expertise, have rendered expert

1 opinions in the normal course of their work duties or observations pertinent to the issues in the  
2 case) and “retained experts” (persons specifically designated by a party to be a testifying expert  
3 for the purposes of litigation). A party shall identify whether a disclosed expert is percipient,  
4 retained, or both. It will be assumed that a party designating a retained expert has acquired the  
5 express permission of the witness to be so listed. Parties designating percipient experts must state  
6 in the designation who is responsible for arranging the deposition of such persons.

7 All experts designated are to be fully prepared at the time of designation to render  
8 an informed opinion, and give the bases for their opinion, so that they will be able to give full and  
9 complete testimony at any deposition taken by the opposing party. Experts will not be permitted  
10 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition  
11 taken subsequent to designation. All expert discovery shall be completed by **September 30,**  
12 **2016.**

13 VI. MOTION HEARING SCHEDULE

14 All dispositive motions, except motions for continuances, temporary restraining  
15 orders or other emergency applications, shall be heard no later than **December 16, 2016.**<sup>1</sup> The  
16 parties may obtain available hearing dates by checking Judge Mueller’s page on the court’s  
17 website.

18 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
19 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

23 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
24 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
25 652-53 (9th Cir. 1994).

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

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

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

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

18 VII. SEALING

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

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1 opposing party with sufficient notice in advance of filing to allow for the seeking of an order of  
2 sealing or redaction from the court.

3 **VIII. METHODS TO AVOID UNNECESSARY PROOF**

4 The court approves the following methods to be used from the outset to avoid  
5 unnecessary proof and cumulative evidence:

6 1. There is video of the incident, and the parties will stipulate to the video's  
7 authenticity and genuineness, thereby reducing if not eliminating cumulative evidence regarding  
8 the circumstances of the incident.

9 2. The parties will endeavor to stipulate to much of the medical injuries and  
10 damages sustained by plaintiff, and to the authenticity, genuineness and admissibility of plaintiffs  
11 medical records and medical bills.

12 3. As the case develops, the parties will further confer on what methods will  
13 reduce judicial burdens, including but not limited to potential stipulations as to exhibits  
14 (documentary or otherwise) to avoid testimony intended solely to lay foundations for admission  
15 of such evidence.

16 **IX. FINAL PRETRIAL CONFERENCE**

17 The Final Pretrial Conference is set for **March 10, 2017**, at 10:00 a.m. At least  
18 one of 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 **February 17, 2017**. The provisions of Local Rule 281 shall apply with respect to  
26 the matters to be included in the joint pretrial statement. In addition to those subjects listed in  
27 Local 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                   Discovery documents to be listed in the pretrial statement shall not include  
17 documents to be used only for impeachment and in rebuttal.

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

25                   Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed  
26 alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for  
27 plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be  
28 marked "AA-ZZ". However, if the amount of defendant exhibits exceeds "ZZ" exhibits shall be

1 then listed as AAA, BBB, CCC etc. All multi-page exhibits shall be stapled or otherwise fastened  
2 together and each page within the exhibit shall be numbered. The list of exhibits shall not include  
3 excerpts of depositions to be used only for impeachment. In the event that plaintiff(s) and  
4 defendant(s) offer the same exhibit during trial, that exhibit shall be referred to by the designation  
5 the exhibit is first identified. The court cautions the parties to pay attention to this detail so that  
6 all concerned, will not be confused by one exhibit being identified with both a number and a  
7 letter. The parties are encouraged to consult concerning exhibits and, to the extent possible,  
8 provide joint exhibits, which shall be designated as JX and listed numerically, e.g., JX-1, JX-2.

9           The Final Pretrial Order will contain a stringent standard for the offering at trial of  
10 witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the  
11 standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a  
12 party does not intend to offer will be viewed as an abuse of the court's processes.

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

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

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

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

4 X. MOTIONS IN LIMINE

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

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

15 XI. TRIAL SETTING

16 The court trial is set for **April 17, 2017** at 9:00 a.m. The parties estimate a trial  
17 length of approximately three (3) to five (5) days. Trial briefs are due by **April 3, 2017**.

18 XII. SETTLEMENT CONFERENCE

19 The parties have expressed interest in appearing for settlement conference and  
20 waive conflict to the assigned magistrate judge acting as settlement judge. A settlement  
21 conference is scheduled before Magistrate Judge Kendall J. Newman for **February 17, 2016** at  
22 9:00 a.m. in Courtroom No. 25, 8th Floor.

23 The parties are directed to exchange non-confidential settlement conference  
24 statements seven (7) days prior to this settlement conference. These statements shall  
25 simultaneously be delivered to the Court using the following email address:  
26 [kjnorders@caed.uscourts.gov](mailto:kjnorders@caed.uscourts.gov). If a party desires to share additional confidential information with  
27 the Court, they may do so pursuant to the provisions of Local Rule 270(d) and (e). Waivers will  
28 be required if not previously filed.

1 XIII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

7 XIV. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

10 IT IS SO ORDERED.

11 DATED: February 4, 2016.

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15 UNITED STATES DISTRICT JUDGE  
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