



1 Pursuant to Rule 4(m), Fed. Rules of Civil Proc., **any unserved defendants shall be**  
2 **served not later than 30 days from the date of this order**, or will be subject to dismissal  
3 without prejudice. Proof of service shall be filed pursuant to Rule 4(l) within 7 days thereafter.

4 B. JOINDER OF PARTIES/AMENDMENTS

5 No further joinder of parties is permitted except with leave of court and upon a showing of  
6 good cause.

7 C. AMENDMENT OF PLEADINGS

8 No further amendment to pleadings is permitted except with leave of court and upon a  
9 showing of good cause.

10 D. JURISDICTION AND VENUE

11 Jurisdiction is predicated upon 28 U.S.C. §§ 1332. Jurisdiction and venue are undisputed  
12 and are hereby found to be proper.

13 E. ANTICIPATED MOTIONS AND THEIR SCHEDULING

14 All law and motion, except as to discovery, shall be completed by April 4, 2018. The  
15 word “completed” in this context means that all law and motion matters must be heard by the  
16 above date, and accordingly, must be filed not later than 28 days prior to that date. See Local  
17 Rule 230(b). Counsel and pro se parties (collectively, “counsel”), are cautioned to refer to the  
18 Local Rules regarding the requirements for noticing such motions on the court’s regularly  
19 scheduled law and motion calendar. Available hearing dates may be obtained by calling Valerie  
20 Callen, the Courtroom Deputy, at (916) 930-4199.

21 Local Rule 230 governs the calendaring and procedures of civil motions with the  
22 following additions:

- 23 1. The opposition and reply must be filed by 4:30 p.m. on the day due; and
- 24 2. When the last day for filing an opposition or reply brief falls on a legal holiday,  
25 the opposition or reply brief shall be filed on the last court day immediately preceding the legal  
26 holiday. Failure to comply with Local Rule 230(c), as modified by this order, may be deemed  
27 consent to the motion and the court may dispose of the motion summarily. Brydges v. Lewis, 18  
28 F.3d 651, 652-53 (9th Cir. 1994) (per curiam).

1 All purely legal issues are to be resolved by timely pretrial motion. The parties should  
2 keep in mind that the purpose of law and motion is to narrow and refine the legal issues raised by  
3 the case, and to dispose of by pretrial motion those issues that are susceptible to resolution  
4 without trial. To accomplish that purpose, the parties need to identify and fully research the  
5 issues presented by the case, and then examine those issues in light of the evidence gleaned  
6 through discovery. If it appears to counsel after examining the legal issues and facts that an issue  
7 can be resolved by pretrial motion, counsel are to file the appropriate motion by the law and  
8 motion cutoff set forth above. The parties are cautioned that failure to raise a dispositive legal  
9 issue that could have been tendered to the court by proper pretrial motion prior to the dispositive  
10 motion cut-off date may constitute waiver of such issue.

11 Counsel are reminded that motions *in limine* are procedural devices designed to address  
12 the admissibility of evidence. Counsel are cautioned that the court will look with disfavor upon  
13 substantive motions presented in the guise of motions *in limine* at the time of trial.

#### 14 F. DISCOVERY SCHEDULE

15 Discovery may commence at any time. This schedule specifies deadlines for when  
16 various types of discovery must be completed.

##### 17 1. Initial Disclosures

18 All initial disclosures under Fed. R. Civ. P. 26(a) shall be made not later than 30 days  
19 from the date of this order.

##### 20 2. Discovery - General

21 All discovery, including expert discovery discussed below, shall be completed by January  
22 17, 2018. The word “completed” means that all discovery shall have been conducted so that all  
23 depositions (including expert depositions) have been taken and any disputes relative to discovery  
24 shall have been resolved by appropriate order if necessary and, where discovery has been ordered,  
25 the order has been complied with. Motions to compel discovery must be noticed on the  
26 undersigned’s calendar in accordance with the Local Rules. Accordingly, they must be heard not  
27 later than January 3, 2018 (leaving two weeks for the court’s decision and the parties’  
28 compliance). See Local Rule 251(a). The parties are well advised not to wait until this deadline

1 before bringing discovery motions, as they may forfeit the discovery if the motion is too massive  
2 or complex to be decided and complied with during the two-week period.

### 3 3. Expert Disclosures

4 All parties are to disclose in writing, file with the court, and serve upon all other parties, a  
5 list containing the name, address and area of expertise of each expert witness they propose to  
6 tender at trial, not later than November 22, 2017. Each expert disclosure shall be accompanied by  
7 a written report that was prepared and signed by the witness, and that complies with Fed. R. Civ.  
8 P. (“Rule”) 26(a)(2)(B), if required by that Rule. If a written report is not required by that Rule,  
9 the disclosure shall provide the information set forth at Rule 26(a)(2)(C).

10 Not later than December 13, 2017, all parties are to disclose in writing, file with the court,  
11 and serve upon all other parties, a list containing the name, address and area of expertise of each  
12 rebuttal expert witness the party proposes to tender at trial.

- 13 • Any party may so disclose rebuttal experts, whether or not that party has already  
14 designated experts.
- 15 • Rebuttal expert witnesses may only express opinions on subjects covered by an expert  
16 disclosed by an adverse party.
- 17 • A party’s rebuttal expert may not express an opinion on a subject if that party has  
18 previously disclosed an expert to testify on that subject.

19 The rebuttal expert disclosures shall be accompanied by a written report that was prepared and  
20 signed by the witness, and that complies with Rule 26(a)(2)(B), if required by that Rule. If a  
21 written report is not required by that Rule, the disclosure shall provide the information set forth at  
22 Rule 26(a)(2)(C).

23 An expert witness or rebuttal expert witness not appearing on said lists will not be  
24 permitted to testify unless the party offering the witness demonstrates: (a) that the necessity of the  
25 witness could not have been reasonably anticipated at the time the lists were exchanged; (b) the  
26 court and opposing counsel were promptly notified upon discovery of the witness; and (c) that the  
27 witness was promptly proffered for deposition. Failure to provide the information required along  
28 with the expert disclosure may lead to preclusion of the expert’s testimony or other appropriate

1 sanctions.

2 For the purposes of this scheduling order, experts are defined as “percipient” and  
3 “Rule 26” experts. Both types of experts shall be listed. Percipient experts are persons who,  
4 because of their expertise, have rendered expert opinions in the normal course of their work  
5 duties or observations pertinent to the issues in the case. Another term for their opinions are  
6 “historical opinions.” Percipient experts are experts who, unless also designated as Rule 26  
7 experts, are limited to testifying to their historical opinions and the reasons for them. That is,  
8 they may be asked to testify about their opinions given in the past and the whys and wherefores  
9 concerning the development of those opinions. However, they may not be asked to render a  
10 current opinion for the purposes of the litigation. Disclosure of percipient experts must contain  
11 the information called for by Rule 26(a)(2)(C).

12 Rule 26 experts, who may be percipient experts as well, shall be specifically designated  
13 by a party to be a testifying expert for the purposes of the litigation. The Rule 26 expert may  
14 express opinions formed for the purposes of the litigation. A party designating a Rule 26 expert  
15 will be assumed to have acquired the express permission of the witness to be so listed.  
16 Disclosure of Rule 26 experts must be accompanied by the written report called for by  
17 Rule 26(a)(2)(B).

18 The parties shall comply with the information disclosure provisions of Rule 26(a)(2)(B)  
19 for any expert, who is in whole or in part designated as a Rule 26 expert, and of Rule 26(a)(2)(C)  
20 for any percipient expert witness. This information is due at the time of disclosure. Failure to  
21 timely supply the required information may result in the expert being stricken.

22 All Rule 26 experts are to be fully prepared to render an informed opinion at the time of  
23 disclosure, so that they may fully participate in any deposition taken by the opposing party.  
24 Rule 26 experts will not be permitted to testify at trial as to any information gathered or  
25 evaluated, or opinion formed, which should have been made available at the time of disclosure,  
26 but was not. The court will closely scrutinize for discovery abuse deposition opinions which  
27 differ markedly in nature and/or in bases from those expressed in the mandatory information  
28 disclosure.

1 G. FUTURE PROCEEDINGS

2 1. Joint Mid-Litigation Statements

3 Not later than fourteen (14) days prior to the close of discovery, the parties shall file with  
4 the court a brief joint statement summarizing all law and motion practice heard by the court as of  
5 the date of the filing of the statement, whether the court has disposed of the motion at the time the  
6 statement is filed and served, and the likelihood that any further motions will be noticed prior to  
7 the close of law and motion.<sup>2</sup> The filing of this statement shall not relieve the parties or counsel  
8 of their obligation to timely notice all appropriate motions as set forth herein.

9 2. Final Pretrial Conference

10 The final pretrial conference is set before District Judge John A. Mendez on June 8, 2018,  
11 at 11:00 a.m., in Courtroom No. 6, 14th Floor. In each instance an attorney who will try the case  
12 for a given party shall attend the final pretrial conference on behalf of that party; provided,  
13 however, that if by reason of illness or other unavoidable circumstance the trial attorney is unable  
14 to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with  
15 the case and equal authorization to make commitments on behalf of the client. All pro se parties  
16 must attend the pre-trial conference.

17 Counsel for all parties, and all pro se parties, are to be fully prepared for trial at the time of  
18 the Final Pretrial Conference, with no matters remaining to be accomplished except production of  
19 witnesses for oral testimony. The parties shall file a joint pretrial conference statement not later  
20 than fourteen (14) days prior to the date of the final pretrial conference.

21 **At the time of filing the Joint Pretrial Statement, counsel shall e-mail the Joint**  
22 **Pretrial Statement and any attachments in Word format to Judge Mendez's judicial**  
23 **assistant Jane Klingelhoets at [jklingelhoets@caed.uscourts.gov](mailto:jklingelhoets@caed.uscourts.gov)**

24 Where the parties are unable to agree as to what legal or factual issues are properly before  
25 the court for trial, they should nevertheless list all issues asserted by any of the parties and  
26 indicate by appropriate footnotes the disputes concerning such issues. The provisions of Local

27 \_\_\_\_\_  
28 <sup>2</sup> If the parties cannot agree to a joint statement, they shall file separate statements not later than  
fourteen (14) days prior to the close of discovery, with the information set forth in the text.

1 Rule 281 shall, however, apply with respect to the matters to be included in the joint pre-trial  
2 statement. Failure to comply with Local Rule 281, as modified herein, may be grounds for  
3 sanctions.

4 The parties are reminded that pursuant to Local Rule 281(b)(10) and (11) they are  
5 required to list in the final pre-trial statement all witnesses and exhibits they propose to offer at  
6 trial, no matter for what purpose. These lists shall not be contained in the body of the final pre-  
7 trial statement itself, but shall be attached as separate documents so that the court may attach  
8 them as an addendum to the final pre-trial order. The final pre-trial order will contain a stringent  
9 standard for the offering at trial of witnesses and exhibits not listed in the final pre-trial order, and  
10 the parties are cautioned that the standard will be strictly applied. On the other hand, the listing  
11 of exhibits or witnesses that a party does not intend to offer will be viewed as an abuse of the  
12 court's processes.

13 The parties are also reminded that pursuant to Rule 16, Fed. R. Civ. P., it will be their duty  
14 at the final pre-trial conference to aid the court in: (a) formulation and simplification of issues and  
15 the elimination of frivolous claims or defenses; (b) settling of facts which should properly be  
16 admitted; and (c) the avoidance of unnecessary proof and cumulative evidence. Counsel must  
17 cooperatively prepare the joint pre-trial statement and participate in good faith at the final pre-  
18 trial conference with these aims in mind. A failure to do so may result in the imposition of  
19 sanctions which may include monetary sanctions, orders precluding proof, elimination of claims  
20 or defenses, or such other sanctions as the court deems appropriate.

### 21 3. Trial Setting

22 A jury trial is set in this matter before District Judge John A. Mendez on August 13, 2018,  
23 at 9:00 a.m., in Courtroom 6, 14th Floor.

#### 24 H. SPECIAL PROCEDURES

25 None.

#### 26 I. ESTIMATED TRIAL TIME

27 Based on the parties' representations, the court estimates a five (5) day jury trial.  
28

1 J. MODIFICATION OF PROCEDURES

2 None.

3 K. RELATED CASES

4 None.

5 L. SETTLEMENT CONFERENCE

6 At the parties' request, a **Settlement Conference is set for June 13, 2017 at 9:30 a.m. in**  
7 **Courtroom No. 24 before Magistrate Judge Carolyn K. Delaney.**<sup>3</sup> The parties are directed to  
8 submit Confidential Settlement Conference Statements to Judge Delaney's chambers seven days  
9 prior to the Settlement Conference. Defense counsel may email his statement using the following  
10 email address: ckdorders@caed.uscourts.gov. Plaintiff may submit the statement by mail to the  
11 Clerk's Office to the attention of Judge Delaney. Such statements are neither to be filed with the  
12 Clerk nor served on opposing counsel; however, each party shall file a one page document  
13 entitled Notice of Submission of Confidential Settlement Conference Statement. Each party is  
14 reminded of the requirement that it be represented in person at the settlement conference by a  
15 person able to dispose of the case or fully authorized to settle the matter at the conference on any  
16 terms. See Local Rule 270.

17 M. WAIVER OF DISQUALIFICATION

18 None disclosed.

19 N. MISCELLANEOUS

20 None.

21 II. SUMMARY OF SCHEDULING ORDER

- 22 1. Initial disclosures completed: 30 days from the date of this order
- 23 2. Expert disclosure schedule:
  - 24 o Disclosure of experts: November 22, 2017
  - 25 o Disclosure of rebuttal experts: December 13, 2017

26 ///

27

28 <sup>3</sup> This is the only date that has changed in this Order.

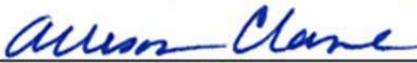
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 3. General discovery schedule (including experts):
  - o Last discovery motions heard: January 3, 2018
  - o Discovery completed: January 17, 2018
- 4. All law and motion, except as to discovery, shall be completed as described herein as follows:
  - o Last law & motion filed: March 7, 2018
  - o Last law & motion heard: April 4, 2018
- 5. Pretrial Conference Schedule:
  - o Mid-Litigation Statement: January 3, 2018
  - o Joint Pretrial Statement: May 25, 2018
  - o Final Pretrial Conference: June 8, 2018
- 6. A five (5) day jury trial is scheduled to begin on:

August 13, 2018
- 7. Failure to comply with the terms of this order may result in the imposition of monetary and all other sanctions within the power of the court, including dismissal or an order of judgment.
- 8. Changes to this schedule may only be made by making application to the undersigned magistrate judge, and for good cause shown.

IT IS SO ORDERED.

DATED: May 30, 2017

  
\_\_\_\_\_  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE