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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD A. FORREST, an individual  
doing business as GOSPELCHOPS,  
  
Plaintiff,  
  
v.  
  
VIC FIRTH COMPANY, a Massachusetts  
corporation,  
  
Defendant.

No. 2:16-cv-02981 KJM EFB  
  
STATUS (PRETRIAL SCHEDULING)  
  
ORDER

Having reviewed the parties' Joint Status Report filed on April 20, 2017, 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.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

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

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1     III.     JURISDICTION/VENUE

2                     Jurisdiction is predicated upon 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332,  
3     1338(a) & (b) and 1367. Jurisdiction and venue are not disputed.

4     IV.     DISCOVERY

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

17    V.     DISCLOSURE OF EXPERT WITNESSES

18                     All counsel are to designate in writing, file with the court, and serve upon all other  
19    parties the name, address, and area of expertise of each expert that they propose to tender at trial  
20    not later than **December 15, 2017**. The designation shall be accompanied by a written report  
21    prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).  
22    By **January 19, 2018**, any party who previously disclosed expert witnesses may submit a  
23    supplemental list of expert witnesses who will express an opinion on a subject covered by an  
24    expert designated by an adverse party, if the party supplementing an expert witness designation  
25    has not previously retained an expert to testify on that subject. The supplemental designation  
26    shall be accompanied by a written report, which shall also comply with the conditions stated  
27    above.

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

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

17 All experts designated are to be fully prepared at the time of designation to render  
18 an informed opinion, and give the bases for their opinion, so that they will be able to give full and  
19 complete testimony at any deposition taken by the opposing party. Experts will not be permitted  
20 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition  
21 taken subsequent to designation. All expert discovery shall be completed by **February 16, 2018**.

## 22 VI. MOTION HEARING SCHEDULE

23 All dispositive motions, except motions for continuances, temporary restraining  
24 orders or other emergency applications, shall be heard no later than **March 23, 2018**.<sup>1</sup> The  
25 parties may obtain available hearing dates by checking Judge Mueller’s page on the court’s  
26 website.

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

1 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
2 230 governs the calendaring and procedures of civil motions; the following provisions also apply:

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

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

6 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
7 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
8 652-53 (9th Cir. 1994).

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

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

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

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 **July 27, 2018**, at 10:00 a.m. At least one  
18 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 **July 6, 2018**. 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 **September 10, 2018** at 9:00 a.m. The parties estimate a  
21 trial length of approximately five (5) to seven (7) days. Trial briefs are due by **August 27, 2018**.

#### 22 XI. SETTLEMENT CONFERENCE

23 On April 24, 2017, the court granted the parties' request for referral to the court's  
24 Voluntary Dispute Resolution Program (VDRP). ECR No. 15.

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

6 XII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

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

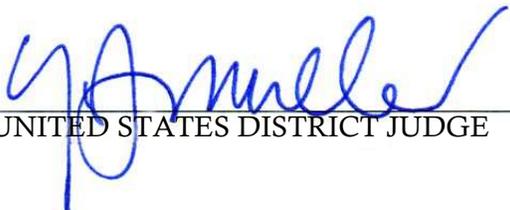
12 As noted, the assigned magistrate judge is authorized to modify only the discovery  
13 dates shown above to the extent any such modification does not impact the balance of the  
14 schedule of the case.

15 XIII. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

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

18 IT IS SO ORDERED.

19 DATED: May 15, 2017.

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23 UNITED STATES DISTRICT JUDGE  
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