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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN FRANKEN,

2:17-cv-1128 JAM KJN

Plaintiff,

v.

STATUS (Pre-trial  
Scheduling) ORDER

MARK T. ESPER, Secretary  
Of the U.S. Army,  
Defendant.

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After review of the Joint Status Report, the court makes the following order:

SERVICE OF PROCESS

All parties defendant to this lawsuit have been served and no further service will be permitted except with leave of court, good cause having been shown.

JOINDER OF ADDITIONAL PARTIES/AMENDMENTS

No further joinder of parties or amendments to pleadings is permitted except with leave of court, good cause having been shown.

JURISDICTION AND VENUE

1           Jurisdiction and/or venue might be contested.

2   FICTITIOUSLY-NAMED DEFENDANTS

3           This action, including any counterclaims, cross-claims, and third party complaints is  
4 hereby DISMISSED as to all DOE or other fictitiously-named defendants.

5   MOTION HEARINGS SCHEDULES

6           All dispositive motions shall be filed by June 18, 2019. Hearing on such motions shall  
7 be on July 16, 2019 at 1:30 p.m.

8           The parties are reminded of the notice requirements as outlined in Local Rule 230(b).

9           The time deadline for dispositive motions does not apply to motions for continuances,  
10 temporary restraining orders or other emergency applications.

11           All purely legal issues are to be resolved by timely pre-trial motions. The parties are  
12 reminded that motions in limine are procedural devices designed to address the admissibility  
13 of evidence and are cautioned that the court will look with disfavor upon substantive motions  
14 presented at the final pre-trial conference or at trial in the guise of motions in limine. The parties  
15 are further cautioned that if any legal issue which should have been tendered to the court by  
16 proper pre-trial motion requires resolution by the court after the established law and motion  
17 cut-off date, substantial sanctions may be assessed for the failure to file the appropriate pre-trial  
18 motion.

19           Unless prior permission has been granted, memoranda of law in support of and in  
20 opposition to motions under Federal Rule of Civil Procedure 56 and 65 and any post-judgment  
21 or post-trial motions are limited to twenty-five (25) pages, and reply memoranda are limited  
22 to ten (10) pages. Memoranda of law in support of and in opposition to all other motions are  
23 limited to fifteen (15) pages, and reply memoranda are limited to five (5) pages. The parties  
24 are also cautioned against filing multiple briefs to circumvent this rule.

1 A violation of this Order will result in monetary sanctions being imposed against counsel in the  
2 amount of \$50.00 per page and the Court will not consider any arguments made past the page  
3 limit.

4 Documentary evidence submitted in support of or in opposition to a motion must be  
5 separately bound or placed in a binder, and exhibits must be separated with labeled tabs that  
6 extend beyond the edge of the page. An Index of exhibits must also be included.

7 At least 28 days before the dispositive motions filing deadline, the parties must meet and  
8 confer to determine whether they intend to file cross motions for summary judgment. If the  
9 parties do intend to file cross motions, the plaintiff must file the opening brief for summary  
10 judgment at least 14 days before the dispositive motions filing deadline. The plaintiff's  
11 concurrently-filed notice of motion shall indicate the parties' intention to file cross motions and  
12 shall notice a hearing date at least 42 days from the date of filing. The briefing schedule will  
13 be as follows. Only four briefs shall be filed:

14 (1) Plaintiff's opening brief (25 pages maximum), along with any other documents  
15 required or permitted under Local Rule 260, shall be filed at least 14 days before the  
16 dispositive motions filing deadline;

17 (2) Defendant's opposition and cross motion for summary judgment (35 pages  
18 maximum) shall be filed at least 28 days before the hearing;

19 (3) Plaintiff's reply and opposition (20 pages maximum) shall be filed at least 14 days  
20 before the hearing;

21 (4) Defendant's reply (10 pages maximum) shall be filed at least 7 days before the  
22 hearing.

23 These are the only four briefs that may be filed, even if the parties move for summary judgment  
24 on more than one complaint (e.g., motions on a complaint and a counterclaim). The parties  
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1 must obtain permission from the Court to exceed the stated page limitations. The parties are  
2 reminded that they may not file a reply to a Response of the Statement of Undisputed Facts.  
3 Parties are advised to carefully read Local Rule 260, which permits an opposing party to file  
4 only (1) a Statement of Disputed Facts and (2) a Response to the Statement of Undisputed  
5 Facts (with the moving party's Statement of Undisputed Facts reproduced and then admitted  
6 or denied, with citations). If the parties do not comply with this procedure and schedule for  
7 filing cross motions for summary judgment, but nonetheless file cross motions, the Court will  
8 deny both motions without prejudice and may impose sanctions.

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10 DISCOVERY

11 All discovery shall be completed by April 26, 2019. In this context, "completed" means  
12 that all discovery shall have been conducted so that all depositions have been taken and any  
13 disputes relative to discovery shall have been resolved by appropriate order if necessary and,  
14 where discovery has been ordered, the order has been complied with.

15 DISCLOSURE OF EXPERT WITNESSES

16 The parties shall make expert witness disclosures under Fed. R. Civ. P. 26(a)(2) by  
17 March 1, 2019. Supplemental disclosure and disclosure of any rebuttal experts under  
18 Fed. R. Civ. P. 26(a)(2)(c) shall be made by March 15, 2019.

19 Failure of a party to comply with the disclosure schedule as set forth above in all likelihood  
20 will preclude that party from calling the expert witness at the time of trial absent a showing that  
21 the necessity for the witness could not have been reasonably anticipated at the time the  
22 disclosures were ordered and that the failure to make timely disclosure did not prejudice any  
23 other party. See Fed. R. Civ. P. 37(c).

24 All experts designated are to be fully prepared at the time of designation to render an  
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1 informed opinion, and give their reasons therefore, so that they will be able to give full and  
2 complete testimony at any deposition taken by the opposing parties. Experts will not be  
3 permitted to testify at the trial as to any information gathered or evaluated, or opinion formed,  
4 after deposition taken subsequent to designation.

5 JOINT MID-LITIGATION STATEMENTS

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

12 FINAL PRE-TRIAL CONFERENCE

13 The final pre-trial conference is set for September 6, 2019 at 10:00 a.m. In each  
14 instance an attorney who will try the case for a given party shall attend the final pretrial  
15 conference on behalf of that party; provided, however, that if by reason of illness or other  
16 unavoidable circumstance the trial attorney is unable to attend, the attorney who attends in place  
17 of the trial attorney shall have equal familiarity with the case and equal authorization to make  
18 commitments on behalf of the client. All pro se parties must attend the pre-trial conference.

19 Counsel for all parties and all pro se parties are to be fully prepared for trial at the time  
20 of the pre-trial conference, with no matters remaining to be accomplished except production of  
21 witnesses for oral testimony. The parties shall file with the court, no later than seven days prior  
22 to the final pre-trial conference, a joint pre-trial statement.

23 Also at the time of filing the Joint Pretrial Statement, counsel  
24 are requested to e-mail the Joint Pretrial Statement and any attachments in

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1 Word format to Judge Mendez's assistant, Jane Klingelhoets

2 at: [jklingelhoets@caed.uscourts.gov](mailto:jklingelhoets@caed.uscourts.gov).

3       Where the parties are unable to agree as to what legal or factual issues are properly before  
4 the court for trial, they should nevertheless list all issues asserted by any of the parties and  
5 indicate by appropriate footnotes the disputes concerning such issues. The provisions of Local  
6 Rule 281 shall, however, apply with respect to the matters to be included in the joint pre-trial  
7 statement. Failure to comply with Local Rule 281, as modified herein, may be grounds for  
8 sanctions.

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

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

2 TRIAL SETTING

3 Jury trial in this matter is set for October 21, 2019 at 9:00 a.m. The parties estimate  
4 a trial length of approximately 10 – 20 days.

5 SETTLEMENT CONFERENCE

6 No Settlement Conference is currently scheduled. If the parties wish to have a  
7 settlement conference, one will be scheduled at the final pretrial conference or at an earlier time  
8 upon request of the parties.

9 OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

10 This Status Order will become final without further Order of Court unless objection is  
11 lodged within seven (7) days of the date of the filing of this Order.

12 IT IS SO ORDERED.

13 Dated: April 20, 2018

14 /s/ John A. Mendez  
15 JOHN A. MENDEZ  
16 United States District Court Judge  
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