

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 LUCILLE WINSTON, et al.,
4 Plaintiffs,
5 v.
6 DEPARTMENT OF AGRICULTURE, et al.,
7 Defendants.
8

Case No. [14-cv-05417-MEJ](#)
ORDER VACATING CMC
CASE MANAGEMENT ORDER

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10 Pursuant to Federal Rule of Civil Procedure 16, the Court issues the following Case
11 Management Order. Failure to comply with this Order is cause for sanctions under Rule 16(f).
12 The February 18, 2016 Case Management Conference is VACATED. All questions should be
13 directed to Rose Maher, Courtroom Deputy, at (415) 522-4708.

14 **SUMMARY OF CASE MANAGEMENT DEADLINES**

15 Deadline to Seek Leave to Amend Pleadings	6/13/2016
16 Disclosure of Expert Witnesses	8/12/2016
17 Disclosure of Rebuttal Expert Witnesses	8/22/2016
18 Close of Discovery	9/6/2016
19 Deadline to File Dispositive Motions	10/6/2016
20 Hearing on Dispositive Motions	11/10/2016 at 10:00 a.m.
21 Exchange of Pretrial Disclosures	1/11/2017
22 Deadline to File Pretrial Conference Statement and Related Disclosures, Motions in Limine, 23 and Trial Briefs and Related Documents	1/26/2017
24 Deadline to File Motions in Limine Oppositions	2/2/2017
25 Pretrial Conference	2/16/2017 at 10:00 a.m.
26 Final Pretrial Conference	3/16/2017 at 10:00 a.m.
27 Bench Trial	3/27/2017 at 9:30 a.m. (Duration: 5 days)

1 limine to exclude the testimony by the deadline set forth below.

2 **G. Pretrial Motions:** All pretrial motions shall be filed in accordance with Civil Local Rule 7
3 and noticed for hearing on any available Thursday at 10:00 a.m., without contacting the Court.
4 All dispositive motions shall be filed, served, and noticed by October 06, 2016. The Court shall
5 hear dispositive motions on November 10, 2016 at 10:00 a.m. in Courtroom B, located on the 15th
6 Floor of the Federal Building, 450 Golden Gate Avenue, San Francisco, California.

7 All summary judgment motions shall comply with the following requirements for
8 statements of facts:

9 (1) Separate Statement of Facts: Any party filing a motion for
10 summary judgment must file a statement, separate from the motion
11 and memorandum of law, setting forth each material fact on which
12 the party relies in support of the motion. Each material fact in the
13 separate statement must be set forth in a separately numbered
14 paragraph and must refer to a specific admissible portion of the
15 record where the fact finds support (for example, affidavit,
16 deposition, discovery response, etc.). A failure to submit a separate
17 statement of facts in this form may constitute grounds for denial of
18 the motion.

19 (2) Controverting Statement of Facts: Any party opposing a motion
20 for summary judgment must file a statement, separate from that
21 party's memorandum of law, setting forth: (a) for each paragraph of
22 the moving party's separate statement of facts, a correspondingly
23 numbered paragraph indicating whether the party disputes the
24 statement of fact set forth in that paragraph and a reference to the
25 specific admissible portion of the record supporting the party's
26 position if the fact is disputed; and (b) any additional facts that
27 establish a genuine issue of material fact or otherwise preclude
28 judgment in favor of the moving party. Each additional fact must be
set forth in a separately numbered paragraph and must refer to a
specific admissible portion of the record where the fact finds
support.

(3) Reply Statement of Facts: If the party opposing summary
judgment sets forth additional facts, the moving party shall file a
statement, separate from the reply brief, with correspondingly
numbered paragraphs indicating whether the party admits or
disputes the statement of fact set forth in that paragraph and, if
disputed, a reference to the specific admissible portion of the record
supporting the party's position. Facts that are not already included
in the motion and/or opposition are not permitted.

(4) Alternative Procedure: As an alternative to filing a statement of
facts and controverting statement of facts, the movant and the party
opposing the motion may jointly file a stipulation signed by the
parties setting forth a statement of the stipulated facts and the
following statement: "The parties agree there is no genuine issue of

1 any material fact.” As to any stipulated facts, the parties so
2 stipulating may state that their stipulations are entered into only for
the purpose of the motion for summary judgment and are not
intended to be otherwise binding.

3 **H. Exchange and Filing of Pretrial Disclosures:** By January 11, 2017, lead counsel who will
4 try the case shall meet and confer with respect to the preparation and content of the joint pretrial
5 conference statement and shall exchange the papers described in Rule 26(a)(3). These papers
6 must be filed with the Court by January 26, 2017.

7 **I. Joint Pretrial Conference Statement:** By January 26, 2017, the parties shall file a joint
8 pretrial conference statement with the following information:

9 (1) Substance of the Action: A brief description of the substance of
10 claims and defenses which remain to be decided.

11 (2) Relief Prayed: A detailed statement of all the relief claimed,
12 particularly itemizing all elements of damages claimed as well as
witnesses, documents or other evidentiary material to be presented
concerning the amount of damages.

13 (3) Undisputed Facts: A plain and concise statement of all relevant
14 facts not reasonably disputable, as well as which facts parties will
stipulate for incorporation into the trial record without the necessity
of supporting testimony or exhibits.

15 (4) Disputed Factual Issues: A plain and concise statement of all
16 disputed factual issues which remain to be decided.

17 (5) Disputed Legal Issues: Without extended legal argument, a
18 concise statement of each disputed point of law concerning liability
or relief, citing supporting statutes and decisions.

19 (6) Agreed Statement: A statement assessing whether all or part of
20 the action may be presented upon an agreed statement of facts.

21 (7) Stipulations: A statement of stipulations requested or proposed
for pretrial or trial purposes.

22 (8) Amendments or Dismissals: A statement of requested or
23 proposed amendments to pleadings or dismissals of parties, claims,
or defenses.

24 (9) Estimated Time of Trial: An estimate of the number of hours
25 needed for the presentation of each party’s case.

26 (10) Bifurcation or Separate Trial of Issues: A statement of whether
bifurcation or a separate trial of specific issues is feasible and
27 desired.

28 (11) Settlement: A statement summarizing the status of the parties’
settlement negotiations and indicating whether further negotiations

are likely to be productive.

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2 **J. Witness list:** A witness list shall be provided as an appendix to the joint pretrial conference
3 statement. The following information should be included. For each party, a list of all witnesses to
4 be called for trial, including those appearing by deposition. For each witness, a statement of the
5 substance of his or her testimony and an estimate regarding the length of testimony (including
6 direct and cross-examination).

7 If the witness is an expert witness, the statement should clearly state the expert's theories
8 and conclusions and the bases therefor, which shall also specify to which disputed fact the
9 testimony relates, and an estimate of the time required for direct and cross examination. In
10 addition, the expert's curriculum vitae and report (if any) should be attached. If there are
11 objections to a live witness's testimony, whether in whole or in part, that objection should be
12 raised through a motion in limine.

13 No party shall be permitted to offer any witness that is not disclosed in its witness list,
14 except with leave of the Court for good cause shown.

15 **K. Exhibit list:** A joint list of all exhibits to be offered at trial shall be provided as an
16 appendix to the joint pretrial conference statement. Plaintiff(s) shall mark the exhibits
17 numerically; Defendant(s) shall mark the exhibits alphabetically. The list shall state each
18 proposed exhibit by its number or alphabetical letter, description and sponsoring witness. All
19 documents shall be authenticated prior to trial. The list shall include a joint exhibit list in tabular
20 form, with (a) a column that briefly describes the exhibit; (b) a column that describes for what
21 purpose the party will offer the exhibit and identifies its sponsoring witness; (c) a column that
22 states any objections to the exhibit; (d) a column that briefly responds to the objections; and (e) a
23 blank column for the Court's use. Before this list is filed, the parties shall meet and confer, in
24 person, to consider eliminating duplicate exhibits, and to make a good faith effort to stipulate to
25 admissibility. No party shall be permitted to offer any exhibit that is not disclosed in its exhibit
26 list

27 **L. Use of Discovery Responses:** Excerpts of interrogatory responses, responses to requests
28 for admission, and deposition testimony (with specific line references identified) that each party

1 intends to present at trial shall be included as an appendix to the joint pretrial conference
2 statement. If there are objections to the use of written responses, the parties should include a joint
3 memorandum that briefly states the objecting party's objection and the opposing party's response.
4 If there is an objection to the general subject matter of a deponent's testimony, the objection
5 should be made through a motion in limine. The Court expects the parties to meet and confer in
6 good faith in an attempt to resolve specific objections before any statements are filed.

7 **M. Motions in limine:** The parties are directed to meet and confer in person to resolve any
8 evidentiary disputes prior to filing motions in limine. Any motions in limine shall be filed by
9 January 26, 2017, with oppositions due by February 02, 2017. Each motion in limine should
10 address a single topic and contain no more than seven pages of briefing per side. Reply briefs are
11 not permitted.

12 **N. Trial Briefs:** Each party shall file a trial brief, not to exceed 15 pages absent Court order,
13 by January 26, 2017. The trial briefs shall: (1) summarize the party's theory of the case; (2)
14 identify key evidence; and (3) provide the applicable legal standard, pursuant to Ninth Circuit
15 authority, for all controlling issues of law, including foreseeable procedural and evidentiary issues.

16 **O. Voir Dire:** In a jury trial, the parties shall file a joint set of requested voir dire to be posed
17 by the Court, as well as any separate questions upon which counsel cannot agree, by January 26,
18 2017. These shall also be submitted to the Court on a portable storage device (such as a USB
19 thumb drive) in Microsoft Word format. Any question on which the parties cannot agree shall be
20 marked as "disputed" and included within the joint set. Counsel will be allowed brief follow-up
21 voir dire after the Court's questioning.

22 **P. Jury Instructions:** In a jury trial, the parties shall file a joint set of proposed jury
23 instructions by January 26, 2017. These shall also be submitted to the Court on a portable
24 storage device in Microsoft Word format. Jury instructions should conform to the Manual of
25 Model Civil Jury Instructions for the Ninth Circuit. The instructions shall be ordered in a logical
26 sequence, together with a table of contents. Any instruction on which the parties cannot agree
27 shall be marked as "disputed" and included within the jointly submitted instructions, in the place
28 where the party proposing the instruction believes it should be given. Argument for and against

1 each disputed instruction shall be included on a separate page directly following the disputed
2 instruction. At the close of Defendant's case in chief the Court shall hear oral argument on the
3 disputed jury instructions and will then render its rulings.

4 **Q. Proposed Verdict Forms:** In a jury trial, the parties shall file a joint proposed verdict form
5 by January 26, 2017. If the parties are unable to stipulate to a verdict form, then each party or side
6 shall submit a proposed verdict form. The parties shall also submit the forms to the Court on a
7 portable storage device.

8 **R. Proposed Findings of Fact and Conclusions of Law:** In a bench trial, each party shall
9 file proposed findings of fact and conclusions of law by January 26, 2017. The parties shall also
10 submit the proposed findings to the Court on a portable storage device.

11 **S. Pretrial Conferences:** The Court shall hold an initial pretrial conference on February 16,
12 2017 at 10:00 a.m., in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco,
13 California. Lead counsel who will try the case must attend the pretrial conference. The purpose
14 of the pretrial conference is for the Court to rule on any issues raised in the pretrial conference
15 statement, motions in limine, and to discuss the trial of the case. The Court shall hold a final
16 pretrial conference on March 16, 2017 at 10:00 a.m. in Courtroom B, to address any outstanding
17 trial issues.

18 **T. Trial:** The Court shall conduct a bench trial in this matter. The trial shall commence on
19 March 27, 2017 (Trial schedule: Monday through Friday, 9:30 a.m. to 3:30 p.m.), and last 5 days.
20 In a jury trial, jury selection begins at 9:30 a.m. on the first day of trial.

21 For any documents that will be shown to a witness but not admitted into evidence, counsel
22 shall bring the original plus three copies of the documents. The original document will be handed
23 to the Court during testimony and the copies will be given to the witness and opposing counsel
24 during examination.

25 The parties shall maintain their own exhibits during trial. Plaintiff(s) shall mark the
26 exhibits numerically; Defendant(s) shall mark the exhibits alphabetically. Exhibits must be
27 premarked with tags attached to the upper left-hand corner. Sample tags may be obtained from the
28 Courtroom Deputy and are attached hereto. If a photo or chart is being used as an exhibit, the

1 exhibit tag should be placed on the back side of the exhibit. The Court will only admit pre-marked
2 exhibits which were listed on the earlier filed exhibit list. On the day of trial, counsel shall bring
3 the original pre-marked exhibits plus two copies, one for opposing counsel and one (in binders
4 with appropriate label dividers) for the Court. The exhibit binders are to be given to the
5 Courtroom Deputy on the morning of the trial.

6 **U. Transcripts and Courtroom Technology:**

7 1) Any party requesting a daily transcript and/or real time reporting shall contact
8 Debra Campbell, Supervisor Court Reporting Services, at (415) 522-2079, at least 14 days in
9 advance of the trial date.

10 2) All parties are instructed to review the information regarding the use of courtroom
11 technology and electronic evidence presentation, which is provided on the Court's web site at
12 <http://cand.uscourts.gov/courtroomtech>, and to prepare accordingly. Questions and/or requests to
13 pre-test equipment should be sent to the courtroom deputy.

14 If any party will utilize their own video recording equipment or demonstrative devices, a
15 signed order will need to be obtained at least 14 days in advance of the trial or hearing date for the
16 items to clear security.

17 **IT IS SO ORDERED.**

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19 Dated: February 11, 2016

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22 MARIA-ELENA JAMES
23 United States Magistrate Judge
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