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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SUE THA LEI PAW, et al.,
12 Plaintiff,
13 v.
14 UNITED STATES OF AMERICA,
15 Defendant.

Case No.: 17-cv-00532-BTM-JLB

**ORDER: (1) GRANTING IN PART
JOINT MOTION TO AMEND
SCHEDULING ORDER, AND
(2) ISSUING AMENDED
SCHEDULING ORDER**

[ECF Nos. 29, 23]

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18 Before the Court is the parties' Joint Motion to Revise Scheduling Order. (ECF No.
19 29.) The parties request a continuation of all pretrial dates for a period of two to four
20 months because, *inter alia*, Defendant is not in receipt of financial, accounting, and
21 inventory records the parties represent are necessary for their experts to review prior to
22 issuing reports. (*Id.* at 2-3.) The Court finds that the lengthy extensions requested by the
23 parties are not warranted, but for good cause shown **GRANTS in part** the parties' Joint
24 Motion and amends the Scheduling Order (ECF No. 23) as follows:

25 1. All fact discovery shall be completed by all parties by **August 30, 2018**.
26 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil
27 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
28 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking

1 into account the times for service, notice and response as set forth in the Federal Rules of
2 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with**
3 **regard to all discovery disputes in compliance with Local Rule 26.1(a).** The Court
4 expects counsel to make every effort to resolve all disputes without court intervention
5 through the meet and confer process. If the parties reach an impasse on any discovery
6 issue, counsel shall file an appropriate motion within the time limit and procedures outlined
7 in the undersigned magistrate judge's chambers rules. **A failure to comply in this regard**
8 **will result in a waiver of a party's discovery issue. Absent an order of the court, no**
9 **stipulation continuing or altering this requirement will be recognized by the court.**

10 Discovery motions must be filed in the time and manner directed by Magistrate
11 Judge Burkhardt (*see* Judge Burkhardt's Civil Chambers Rules on Discovery Disputes
12 available on the Court's website). All discovery motions must be filed within 30 days of
13 the service of an objection, answer, or response which becomes the subject of dispute, or
14 the passage of a discovery due date without response or production, and only after counsel
15 (and any unrepresented parties) have met and conferred to resolve the dispute **and**
16 complied with Section IV.B. of Judge Burkhardt's Civil Chambers Rules.

17 2. The parties shall designate their respective experts in writing by **August 30,**
18 **2018.** The parties must identify any person who may be used at trial to present evidence
19 pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This requirement is not limited to
20 retained experts. The date for exchange of rebuttal experts shall be by **September 20,**
21 **2018.** The written designations shall include the name, address and telephone number of
22 the expert and a reasonable summary of the testimony the expert is expected to provide.
23 The list shall also include the normal rates the expert charges for deposition and trial
24 testimony.

25 3. By **August 30, 2018,** each party shall comply with the disclosure provisions
26 in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This disclosure
27 requirement applies to all persons retained or specially employed to provide expert
28 testimony, or whose duties as an employee of the party regularly involve the giving of

1 expert testimony. **Except as provided in the paragraph below, any party that fails to**
2 **make these disclosures shall not, absent substantial justification, be permitted to use**
3 **evidence or testimony not disclosed at any hearing or at the time of trial. In addition,**
4 **the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

5 4. Any party shall supplement its disclosure regarding contradictory or rebuttal
6 evidence under Fed. R. Civ. P. 26(a)(2)(D) by **September 20, 2018**.

7 5. All expert discovery shall be completed by all parties by **October 4, 2018**.
8 The parties shall comply with the same procedures set forth in the paragraph governing
9 fact discovery.

10 6. Failure to comply with this section or any other discovery order of the court
11 may result in the sanctions provided for in Fed. R. Civ. P. 37, including a prohibition on
12 the introduction of experts or other designated matters in evidence.

13 7. All other pretrial motions must be filed by **October 19, 2018**. Counsel for the
14 moving party must obtain a motion hearing date from the law clerk of the judge who will
15 hear the motion. The period of time between the date you request a motion date and the
16 hearing date may vary from one district judge to another. Please plan accordingly. Failure
17 to make a timely request for a motion date may result in the motion not being heard.
18 Motions in limine are to be filed as directed in the Local Rules, or as otherwise set by the
19 district judge.

20 8. A Mandatory Settlement Conference shall be conducted on **October 30, 2018**
21 **at 1:45 PM** in the chambers of **Magistrate Judge Jill L. Burkhardt**. Counsel or any party
22 representing himself or herself shall submit confidential settlement briefs directly to
23 chambers by **October 23, 2018**. All parties are ordered to read and to fully comply with
24 the Chamber Rules of the assigned magistrate judge.

25 The **confidential** settlement statements should be lodged by e-mail to
26 efile_Burkhardt@casd.uscourts.gov. Each party's settlement statement shall concisely set
27 forth the following: (1) the party's statement of the case; (2) the controlling legal issues;
28 (3) issues of liability and damages; (4) the party's settlement position, including the last

1 offer or demand made by that party; (5) a separate statement of the offer or demand the
2 party is prepared to make at the settlement conference; and (6) a **list of all attorney and**
3 **non-attorney conference attendees** for that side, including the name(s) and
4 title(s)/position(s) of the party/party representative(s) who will attend and have settlement
5 authority at the conference. If exhibits are attached and the total submission amounts to
6 more than 20 pages, a hard copy must also be delivered directly to Magistrate Judge
7 Burkhardt's chambers. **Settlement conference statements shall not be filed with the**
8 **Clerk of the Court. Settlement conference statements may be exchanged**
9 **confidentially with opposing counsel within the parties' discretion.**

10 Pursuant to Civil Local Rule 16.3, all party representatives and claims adjusters for
11 insured defendants with full and unlimited authority¹ to negotiate and enter into a binding
12 settlement, as well as the principal attorney(s) responsible for the litigation, must be present
13 and legally and factually prepared to discuss and resolve the case at the mandatory
14 settlement conference. In the case of an entity, an authorized representative of the entity
15 who is not retained outside counsel must be present and must have discretionary authority
16 to commit the entity to pay an amount up to the amount of the Plaintiff's prayer (excluding
17 punitive damages prayers). The purpose of this requirement is to have representatives
18 present who can settle the case during the course of the conference without consulting a
19 superior.

20 **Counsel for a United States government entity** may be excused from this
21 requirement so long as the government attorney who attends the MSC conference (1) has
22 primary responsibility for handling the case, and (2) may negotiate settlement offers which
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25 ¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized
26 to fully explore settlement options and to agree at that time to any settlement terms acceptable to the
27 parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648 (7th Cir. 1989). The person needs
28 to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-97 (8th Cir. 2001).

1 the attorney is willing to recommend to the government official having ultimate settlement
2 authority.

3 Failure to attend the conference or obtain proper excuse will be considered grounds
4 for sanctions.

5 9. If the trial will be a bench trial, Counsel shall file their Memoranda of
6 Contentions of Fact and Law and take any other action required by Local Rule 16.1(f)(2)
7 by **January 8, 2019**. Counsel do not need to file Memoranda of Contentions of Fact and
8 Law if the trial will be a jury trial.

9 10. Counsel shall comply with the pre-trial disclosure requirements of Fed. R.
10 Civ. P. 26(a)(3) by **January 8, 2019**. Failure to comply with these disclosure requirements
11 could result in evidence preclusion or other sanctions under Fed. R. Civ. P. 37.

12 11. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) by
13 **January 15, 2019**. The parties shall meet and confer and prepare a proposed pretrial order
14 containing the following:

15 1. A joint neutral statement to be read to the jury, not in excess of one
16 page, of the nature of the case and the claims and defenses.

17 2. A list of the causes of action to be tried, referenced to the Complaint
18 [and Counterclaim if applicable]. For each cause of action, the order shall
19 succinctly list the elements of the claim, damages and any defenses. A cause
20 of action in the Complaint [and/or Counterclaim] which is not listed shall be
21 dismissed with prejudice.

22 3(a). A list of each witness counsel actually expect to call at trial with a brief
23 statement, not exceeding four sentences, of the substance of the witnesses'
24 testimony.

25 3(b). A list of each expert witness counsel actually expect to call at trial with
26 a brief statement, not exceeding four sentences, of the substance of the
27 witnesses' testimony.

28 3(c). A list of additional witnesses, including experts, counsel do not expect
to call at this time but reserve the right to call at trial along with a brief
statement, not exceeding four sentences, of the substance of the witnesses'
testimony.

4(a). A list of all exhibits that counsel actually expect to offer at trial with a
one-sentence description of the exhibit.

4(b). A list of all other exhibits that counsel do not expect to offer at this time

1 but reserve the right to offer if necessary at trial with a one-sentence
2 description of the exhibit.

3 5. A statement of all facts to which the parties stipulate. This statement
4 shall be on a separate page and will be read to and provided to the jury. The
5 parties are directed to meet with the assigned magistrate judge to work out as
6 many stipulations of fact as possible.

7 6. A list of all deposition transcripts by page and line, or videotape
8 depositions by section, that will be offered at trial.

9 7. In addition to filing proposed jury instructions in accordance with Fed.
10 R. Civ. P. 51 and CivLR 51.1, the parties shall e-mail the proposed
11 instructions in Word or Wordperfect form to Chambers. If a party disagrees
12 with a particular instruction, the party shall submit an alternate instruction.

13 **The pretrial order requirements set forth in paragraphs 3(a)-(c), 4(a)-(b), and**
14 **6 above, extend to evidence that counsel anticipate may be used on cross-examination,**
15 **including impeachment evidence.**

16 The Court encourages the parties to consult with the assigned magistrate judge to
17 work out any problems in preparation of the proposed pretrial order. The court will
18 entertain any questions concerning the conduct of the trial at the pretrial conference.

19 12. Counsel for plaintiff will be responsible for preparing the pretrial order and
20 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **January 22,**
21 **2019**, plaintiff's counsel must provide opposing counsel with the proposed pretrial order
22 for review and approval. Opposing counsel must communicate promptly with plaintiff's
23 attorney concerning any objections to form or content of the pretrial order, and both parties
24 shall attempt promptly to resolve their differences, if any, concerning the order.

25 13. The Proposed Final Pretrial Conference Order, including objections to any
26 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
27 lodged with the assigned district judge by **January 29, 2019**, and shall be in the form
28 prescribed in and comply with Local Rule 16.1(f)(6).

14. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
Barry Ted Moskowitz on **February 5, 2019** at **3:30 PM**.

15. The parties must review the chambers' rules for the assigned district judge

1 and magistrate judge.

2 16. A post trial settlement conference before a magistrate judge may be held
3 within 30 days of verdict in the case.

4 17. The dates and times set forth herein will not be modified except for good cause
5 shown.

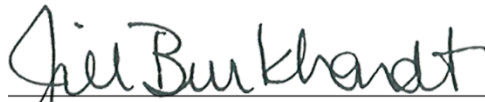
6 18. Briefs or memoranda in support of or in opposition to any pending motion
7 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
8 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
9 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
10 and a table of authorities cited.

11 19. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
12 case hereafter.

13 20. This Order does not modify any other date, deadline, or requirement set forth
14 in the Court's Scheduling Order (ECF No. 23).

15 **IT IS SO ORDERED.**

16 Dated: June 15, 2018

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19 Hon. Jill L. Burkhardt
20 United States Magistrate Judge