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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 HOWARD APPEL,

12 Plaintiff,

13 v.

14 ROBERT S. WOLF,

15 Defendant.

Case No.: 18-CV-814 TWR (BGS)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO CONTINUE
PRETRIAL CONFERENCE, TRIAL,
AND RELATED DATES**

(ECF No. 116)

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18 Presently before the Court is Defendant Robert S. Wolf's Motion to Continue the
19 Pretrial Conference, Trial, and Related Dates. (ECF No. 116.) Plaintiff Howard Appel
20 neither opposes nor joins in Defendant's request. (*See id.* at 1.) The Court **GRANTS IN**
21 **PART** and **DENIES IN PART** Defendant's Motion as follows.

22 The instant action has been pending since April 27, 2018. (*See* ECF No. 1.) After
23 the Parties completed interlocutory cross-appeals, (*see* ECF Nos. 31, 36, 39), the Honorable
24 Bernard G. Skomal issued a Scheduling Order regulating discovery and setting various
25 pretrial deadlines, including a Final Pretrial Conference before the Honorable M. James
26 Lorenz the on April 11, 2022, (*see* ECF No. 50). The Parties then sought two extensions
27 of the pretrial motions deadline, (*see* ECF Nos. 67, 70), which Judge Skomal granted, (*see*

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1 ECF Nos. 69, 71). In light of those extensions, Judge Skomal reset the Final Pretrial
2 Conference for May 23, 2022. (*See* ECF No. 76; *see also* ECF No. 87.)

3 The Parties filed two additional joint motions seeking extensions of the deadline to
4 file their pretrial motions, (*see* ECF Nos. 78, 82), which Judge Skomal also granted, (*see*
5 ECF Nos. 79, 88, 90). Accordingly, Judge Skomal continued the Final Pretrial Conference
6 until August 29, 2022. (*See* ECF No. 90.) In compliance with Judge Skomal’s Order, the
7 Parties filed their respective Cross-Motions for Summary Judgment in July 2022. (*See*
8 ECF Nos. 91–92.) Given the then-pending Cross-Motions, Judge Lorenz continued, (*see*
9 ECF No. 99), and then vacated, (*see* ECF No. 103), the Final Pretrial Conference.

10 After ruling on the Cross-Motions on January 31, 2023, (*see* ECF No. 104), Judge
11 Lorenz reset the Final Pretrial Conference for July 10, 2023, (*see* ECF No. 105). On
12 May 30, 2023, however, this action was transferred to the undersigned. (*See* ECF No. 113.)
13 At the Parties’ request, (*see* ECF No. 114), the Court again continued the Final Pretrial
14 Conference, (*see* ECF No. 115), setting the Final Pretrial Conference for Thursday,
15 August 17, 2023, at 3:00 p.m., and the trial for Monday, August 28, 2023, at 9:00 a.m. (*See*
16 *id.* at 1.) The Court also set corresponding deadlines for, among other things, motions *in*
17 *limine*, proposed jury instructions, proposed verdict forms, and proposed voir dire
18 questions. (*See id.* at 2.)

19 Now—after this action has been pending for over five years and the pretrial
20 conference has been continued numerous times—Defendant *again* seeks an extension of
21 the Final Pretrial Conference date, as well as the trial date and related deadlines. (*See*
22 *generally* ECF No. 116.) Although Defendant represents that “[c]ounsel have been
23 meeting and conferring to discuss available dates if the Court agrees to move the trial date,”
24 the Motion to Continue does not in fact propose any new and mutually agreeable dates for
25 trial or a Final Pretrial Conference. (*See id.* at 2.) Rather, Defendant makes the blanket
26 assertion that, “[d]ue to other pending trial dates, trial counsel for Defendant has conflicts
27 with the August 28 trial date.” (*See id.*) Defendant then lists four trial dates, two of which
28 appear to conflict with the dates set in the instant action. The first trial is from August 16

1 to 25, 2023, in the matter of *Nature’s Produce v. Chubb Agribusiness, et al.* (the “*Nature’s*
2 *Produce* action”), and the second is from August 25 to September 1, 2023, in the matter of
3 *Citizens of Humanity v. Clark, et al.* (the “*Citizens of Humanity* action”). (*See id.*)

4 Defendant did not provide the case numbers associated with these actions, but the
5 Court has independently identified the relevant case information. As for the *Nature’s*
6 *Produce* action, the Court has found such a case pending before the Honorable Stephanie
7 M. Bowick and Mark V. Mooney in Los Angeles County Superior Court. *Nature’s*
8 *Produce Co. v. Chubb Agribusiness, et al.*, No. 20STCV17267 (Cal. Sup. Ct. filed May 6,
9 2020). Although the case is set for trial on August 16, 2023, none of the attorneys
10 appearing on the Docket in that case are also appearing before this Court in the instant case.

11 Here, Defendant Wolf is represented by Douglas A. Pettit and Caitlin M. Jones of
12 Pettit, Kohn, Ingrassia & Lutz PC.¹ (*See* ECF No. 110.) As far as the Court can tell,
13 neither Pettit nor Jones has entered an appearance in the *Nature’s Produce* action. *See*
14 Docket, *Nature’s Produce* action. Indeed, it appears that Matthew Smith is the only
15 attorney from Pettit, Kohn, Ingrassia & Lutz PC who has made an appearance in the
16 *Nature’s Produce* action. *See id.* Thus, it does not appear that “trial counsel for Defendant”
17 in the instant action has a “pending trial date” from August 16 to 25, 2023, and good cause
18 does not exist to reset the Final Pretrial Conference. Consequently, the Court **DENIES IN**
19 **PART** Defendant’s Motion insofar as it seeks a continuance of the Final Pretrial
20 Conference and all other filing deadlines preceding that Conference.

21 As for the *Citizens of Humanity* action, the Court has confirmed that a case by that
22 name is now pending before the Honorable Kenneth J. Medal in the San Diego County
23 Superior Court and that Pettit is listed as counsel of record for Defendants Del Mar Law
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25 ¹ Nicholas A. Prukop is also listed on the Docket as counsel of record for Defendant. (*See generally*
26 Docket.) However, Prukop filed only one Joint Motion in this action, (*see generally* ECF No. 63), on
27 behalf of now-withdrawn defense counsel, Andrew A. Servais, (*see generally* ECF No. 86), in
28 contravention of Section II.f.1 of this District’s Electronic Case Filing Administrative Policies &
Procedures Manual. Because Prukop has not otherwise been involved in this action, it is unclear whether
he still represents—or, indeed, ever represented—Defendant Wolf.

1 Group, LLP; Coni Haas; and JL Sean Slattery. *See* Docket, *Citizens of Humanity, LLC v.*
 2 *Louis Clark, et al.*, No. 37-2018-6337-CU-NP-CTL (Cal. Sup. Ct. filed Feb. 2, 2018). The
 3 Court has also confirmed that the trial is in fact set for August 25 to September 1, 2023.
 4 Because there is a direct conflict between the scheduled trial dates in the *Citizens of*
 5 *Humanity* action and the August 28, 2023 trial date in the instant action, the Court finds
 6 good cause for a continuance. Accordingly, the Court **GRANTS IN PART** Defendant’s
 7 Motion insofar as it seeks a continuance of the trial date and the deadlines following the
 8 Final Pretrial Conference.

9 With regard to finding a new trial date, Defense counsel represents that they are in
 10 trial from September 26, 2023, to November 2, 2023, and that Defendant is unavailable
 11 from November 10 to 25, 2023. Additionally, Plaintiff is purportedly unavailable from
 12 September 25, 2023, to October 20, 2023, and from November 20 to 28, 2023. Although
 13 Defendants’ Motion to Continue also brings to the Court’s attention counsel’s planned
 14 vacation dates—including defense counsel’s planned vacation from September 5 to 19,
 15 2023—the Court concludes that the trial must go forward on September 5, 2023, given the
 16 Parties’ limited availability for the remainder of this calendar year as well as the age of this
 17 action, the number of past continuances, and the Court’s availability. The Court therefore
 18 **RESETS** the trial for September 5, 2023, at 9:00 a.m., in Courtroom 3A.

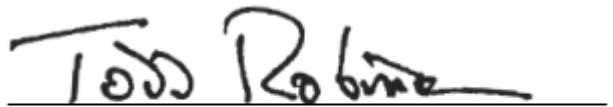
19 In light of the foregoing, the Court **AMENDS** its July 5, 2023 Scheduling Order
 20 (ECF No. 115) as follows:

Event	Deadline
File all motions <i>in limine</i> , including all trial-related <i>Daubert</i> motions, in a single, omnibus brief not to exceed twenty-five (25) pages.	July 20, 2023
1. File all oppositions to <i>motions in limine</i> , including all trial-related <i>Daubert</i> motions, in a single, omnibus brief not to exceed twenty-five (25) pages;	August 3, 2023

1 2 3 4 5	2. File and lodge in Word format with the E-file Email proposed jury instructions; 3. File and lodge in Word format with the E-file Email proposed verdict forms and any objections thereto; 4. File proposed <i>voir dire</i> questions; and 5. File any additional stipulations and agreements. ²	
6 7 8	1. File objections to proposed jury instructions and 2. File objections to deposition designations and/or counter-designations.	August 10, 2023
9 10	Final Pretrial Conference.	August 17, 2023 at 3:00 p.m. in Courtroom 3A
11 12 13	1. Provide exhibits to the Court, and 2. Exchange demonstrative exhibits.	August 29, 2023
14 15	Jury Trial.	September 5, 2023 at 9:00 a.m. in Courtroom 3A

IT IS SO ORDERED.

Dated: July 21, 2023


 Honorable Todd W. Robinson
 United States District Judge

² The Parties **SHALL COMPLY** with Sections VII.B.1–3 of the undersigned’s Standing Order for Civil Cases, which governs the preparation of proposed jury instructions, proposed *voir dire* questions, proposed verdict forms, and any stipulations.