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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

WEBSTER CAPITAL FINANCE, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MILT'S EAGLE, LLC, *et al.*, )  
 )  
 Defendants. )

Case No. 2:09-cv-01367-RLH-PAL

**ORDER**

The court conducted a hearing on Plaintiff's Motion to Amend Pretrial Order entered on October 15, 2010, to Add New Discovery Deadlines Consistent with the Trial Date (Dkt. #52). On March 8, 2011, Howard Levine appeared telephonically on behalf of the Plaintiff, and Robert Eaton appeared on behalf of the Defendants.

Although styled a Motion to Amend the Pretrial Order, the motion is actually directed to amending the Discovery Plan and Scheduling Order deadlines. The initial Discovery Plan and Scheduling Order (Dkt. #17) was entered November 13, 2009, and established a March 22, 2010, discovery cutoff. A number of dispositive and non-dispositive motions were filed after the expiration of the initial discovery cutoff. After decision of the dispositive motions, the court entered an Order (Dkt. #30) requiring the parties to file a Joint Pretrial Order by June 15, 2010. On June 15, 2010, Plaintiff requested a Hearing to set a Rule 16 Pretrial Conference to Review Scheduling Issues in Light of the District Judge's Ruling on the Motion for Summary Judgment and Pending Motion to Reconsider (Dkt. #31). Plaintiff unilaterally filed a proposed Pretrial Order October 12, 2010 (Dkt. #43). Additional motions were filed and under submission to the district judge who granted Plaintiff's Second Motion to Amend/Correct the Complaint in an Order (Dkt. #44) entered October 12, 2010. The district judge reviewed Plaintiff's proposed order and entered a pretrial order setting a bench trial for April 11,

1 2011, and referred the matter to the undersigned to conduct a settlement conference. The same day the  
2 Plaintiff filed the Amended Complaint (Dkt. #47), the district judge granted Plaintiff leave to file a  
3 Second Amended Complaint January 4, 2011.

4 Substitution of counsel have been allowed for both sides. A Motion to Strike Defendant's  
5 Answer to the Amended Complaint is currently pending, and the parties are clearly not ready for trial.

6 At the March 8, 2011 hearing, the court canvassed counsel with respect to the discovery that  
7 needs to be completed before trial, pointing out that the Discovery Plan and Scheduling Order deadlines  
8 had all expired. Counsel for Plaintiff indicated in his motion to strike that he seeks to strike the answer  
9 and 16 affirmative defenses filed by the Defendants while in default. If the motion to strike is denied,  
10 and/or the affirmative defenses are allowed, Plaintiff will require limited discovery concerning the basis  
11 of the affirmative defenses. Plaintiff intends to take the deposition of the individual signators to the  
12 guaranty agreement, and possibly one or two other witnesses. Counsel for Defendant had not yet  
13 formulated a plan for conducting discovery. At this point neither side anticipates retaining an expert  
14 witness. After hearing preliminary representations from counsel, the court directed counsel to conduct  
15 a Rule 26(f) conference within 14 days of the hearing, exchange initial disclosures and documents, and  
16 propound written discovery within 14 days.

17 Having reviewed and considered the matter,

18 **IT IS ORDERED that:**

- 19 1. The parties shall meet and confer and conduct a Rule 26(f) conference, exchange initial  
20 disclosures and documents, and propound written discovery no later than March 22,  
21 2011.
- 22 2. The parties will prepare a comprehensive Discovery Plan and Scheduling Order to  
23 complete the discovery each side deems necessary to prepare this case for trial.
- 24 3. While the Motion to Strike (Dkt. #64) is pending, Defendant need not respond to  
25 Plaintiff's written discovery requests regarding Defendant's affirmative defenses.
- 26 4. Defendants shall have 14 days from decision of the pending Motion to Strike (Dkt. #64)  
27 to respond to Plaintiff's written discovery requests with respect to any affirmative  
28 defense claims surviving the motion to strike.


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5. A status and discovery conference is set for April 26, 2011, at 9:00 a.m., in Courtroom 3B.

6. The parties shall have until April 22, 2011, to file a Joint Status Report and proposed Discovery Plan and Scheduling Order addressing all remaining discovery each side intends to conduct, with a schedule for completing discovery, filing dispositive motions, and a Joint Pretrial Order.

7. The April 11, 2011 bench trial, and April 6, 2011 calendar call, are **VACATED**. The parties' request for a future trial setting will be addressed at the status and discovery conference.

Dated this 22nd day of March, 2011.

  
\_\_\_\_\_  
Peggy A. Lee  
United States Magistrate Judge