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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IVAN PENA, et al.,

Plaintiffs,

v.

WILFREDO CID,

Defendant.

NO. CIV. S-09-1185 KJM CMK

STATUS (PRETRIAL SCHEDULING)
ORDER

_____ /
An initial scheduling conference was held in this case on August 30, 2012; Donald Kilmer appeared for plaintiffs; Anthony Hakl appeared for defendant. Having reviewed the parties' Joint Status Report filed on August 23, 2012, and discussed a schedule for the case with counsel at the hearing, the court makes the following orders:

I. SERVICE OF PROCESS

All named defendants have been served and no further service is permitted without leave of court, good cause having been shown.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

No further joinder of parties or amendments to pleadings is permitted without leave of court, good cause having been shown. *See* FED. R. CIV. P. 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

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1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 1331. Jurisdiction and venue are not
3 disputed.

4 IV. DISCOVERY

5 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) have been
6 completed. Any supplemental disclosures shall be completed within fourteen days. In this
7 context, “completed” means that all discovery shall have been conducted so that all depositions
8 have been taken and any disputes relative to discovery shall have been resolved by appropriate
9 order if necessary and, where discovery has been ordered, the order has been obeyed. All
10 motions to compel discovery must be noticed on the magistrate judge’s calendar in accordance
11 with the local rules of this court. While the assigned magistrate judge reviews proposed
12 discovery phase protective orders, requests to seal or redact are decided by Judge Mueller as
13 discussed in more detail below.

14 V. DISCLOSURE OF EXPERT WITNESSES

15 All counsel are to designate in writing, file with the court, and serve upon all
16 other parties the name, address, and area of expertise of each expert that they propose to tender
17 at trial not later than **March 8, 2013**. The designation shall be accompanied by a written report
18 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).
19 By **March 29, 2013**, any party who previously disclosed expert witnesses may submit a
20 supplemental list of expert witnesses who will express an opinion on a subject covered by an
21 expert designated by an adverse party, if the party supplementing an expert witness designation
22 has not previously retained an expert to testify on that subject. The supplemental designation
23 shall be accompanied by a written report, which shall also comply with the conditions stated
24 above.

25 Failure of a party to comply with the disclosure schedule as set forth above in all
26 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
27 witness not appearing on the designation will not be permitted to testify unless the party offering
28 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably

1 anticipated at the time the list was proffered; (b) that the court and opposing counsel were
2 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
3 available for deposition.

4 For purposes of this scheduling order, an “expert” is any person who may be used
5 at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence,
6 which include both “percipient experts” (persons who, because of their expertise, have rendered
7 expert opinions in the normal course of their work duties or observations pertinent to the issues
8 in the case) and “retained experts” (persons specifically designated by a party to be a testifying
9 expert for the purposes of litigation). A party shall identify whether a disclosed expert is
10 percipient, retained, or both. It will be assumed that a party designating a retained expert has
11 acquired the express permission of the witness to be so listed. Parties designating percipient
12 experts must state in the designation who is responsible for arranging the deposition of such
13 persons.

14 All experts designated are to be fully prepared at the time of designation to render
15 an informed opinion, and give the bases for their opinion, so that they will be able to give full
16 and complete testimony at any deposition taken by the opposing party. Experts will not be
17 permitted to testify at trial as to any information gathered or evaluated, or opinion formed, after
18 deposition taken subsequent to designation. All expert discovery shall be completed by **May 3,**
19 **2013.**

20 VI. MOTION HEARING SCHEDULE

21 The parties anticipate that the case will be resolved on cross-motions for summary
22 judgment.

23 All dispositive motions, except motions for continuances, temporary restraining
24 orders or other emergency applications, shall be heard no later than **June 28, 2013**. The parties
25 may obtain available hearing dates by calling Casey Schultz, the Courtroom Deputy, at (916)
26 930-4193.

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1 All purely legal issues are to be resolved by timely pretrial motions. Local Rule
2 230 governs the calendaring and procedures of civil motions; the following provisions also
3 apply:

- 4 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and
5 (b) When the last day for filing an opposition brief falls on a legal holiday, the
6 opposition brief shall be filed on the last court day immediately preceding
7 the legal holiday.

8 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to
9 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,
10 652-53 (9th Cir. 1994).

11 The court places a page limit of twenty (20) pages on all moving papers, twenty
12 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases
13 must be made through the courtroom deputy clerk at least fourteen (14) days prior to the filing of
14 the motion.

15 Prior to filing a motion in a case in which the parties are represented by counsel,
16 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the
17 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate
18 the defendant's contentions as to deficiencies in the complaint and in many instances the party
19 considering a motion should agree to any amendment that would cure a curable defect. Counsel
20 should discuss the issues sufficiently so that if a motion of any kind is filed, including for
21 summary judgment, the briefing is directed only to those substantive issues requiring resolution
22 by the court. Counsel should resolve minor procedural or other non-substantive matters during
23 the meet and confer. **A notice of motion shall contain a certification by counsel filing the
24 motion that meet and confer efforts have been exhausted, with a brief summary of meet
25 and confer efforts.**

26 The parties are reminded that a motion *in limine* is a pretrial procedural device
27 designed to address the admissibility of evidence. The court looks with disfavor upon
28 dispositional motions presented at the Final Pretrial Conference or at trial in the guise of motions

1 *in limine*. Although all motions *in limine* must be filed in conjunction with the joint pretrial
2 statement, the court will hear only those motions it has identified to counsel before the hearing
3 date.

4 The parties are cautioned that failure to raise a dispositive legal issue that could
5 have been tendered to the court by proper pretrial motion prior to the dispositive motion cut-off
6 date may constitute waiver of such issue.

7 VII. SEALING

8 No document will be sealed, nor shall a redacted document be filed, without the
9 prior approval of the court. If a document for which sealing or redaction is sought relates to the
10 record on a motion to be decided by Judge Mueller, the request to seal or redact should be
11 directed to her and not the assigned Magistrate Judge. All requests to seal or redact shall be
12 governed by Local Rules 141 (sealing) and 140 (redaction); protective orders covering the
13 discovery phase of litigation shall not govern the filing of sealed or redacted documents on the
14 public docket. The court will only consider requests to seal or redact filed by the proponent of
15 sealing or redaction. If a party plans to make a filing that includes material an opposing party
16 has identified as confidential and potentially subject to sealing, the filing party shall provide the
17 opposing party with sufficient notice in advance of filing to allow for the seeking of an order of
18 sealing or redaction from the court.

19 VIII. SETTLEMENT CONFERENCE

20 No settlement conference is currently scheduled. A settlement conference may be
21 set anytime at the parties' request. In the event that a settlement conference date or referral to
22 the Voluntary Dispute Resolution Program (VDRP) is requested, the parties shall file said
23 request jointly, in writing. The parties should advise the court whether they will stipulate to the
24 trial judge acting as settlement judge and waive disqualification by virtue thereof.

25 Counsel are instructed to have a principal with full settlement authority present at
26 any Settlement Conference or to be fully authorized to settle the matter on any terms. At least
27 seven (7) calendar days before the Settlement Conference, counsel for each party shall submit to
28 the chambers of the settlement judge a confidential Settlement Conference Statement. Such

1 statements are neither to be filed with the Clerk nor served on opposing counsel. Each party,
2 however, shall serve notice on all other parties that the statement has been submitted. If the
3 settlement judge is not the trial judge, the Settlement Conference Statement shall not be
4 disclosed to the trial judge.

5 IX. ADDITIONAL DATES

6 Any additional dates will be set at a further status conference if needed.

7 X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

8 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil
9 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court
10 upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not
11 constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or
12 counsel does not constitute good cause.

13 XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

14 This Status Order will become final without further order of the court unless
15 objections are filed within fourteen (14) *calendar* days of service of this Order.

16 IT IS SO ORDERED.

17 DATED: September 18, 2012.

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21 UNITED STATES DISTRICT JUDGE
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