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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL RICHARDSON,
Plaintiff,
v.
JEFFERSON SESSIONS and XAVIER
BECERRA,
Defendants.

No. 2:17-cv-01838 JAM AC (PS)
STATUS (PRETRIAL SCHEDULING)
ORDER

This case is before the undersigned pursuant to Local Rule 302(c)(21).

On May 16, 2018 this case was before the undersigned for a status (pretrial scheduling) conference. Plaintiff appeared pro se, and Gabrielle Downey Boutin appeared on behalf of the only remaining defendant, Attorney General Xavier Becerra. See ECF Nos. 17, 21. After hearing, and pursuant to the parties' joint status report, the court enters the following scheduling order:

SERVICE OF PROCESS

Service of process is undisputed. Defendant Attorney General Becerra filed an executed Wavier of Service of Summons on November 24, 2107. ECF No. 9.

JOINDER OF PARTIES/AMENDMENTS

Defendant has not yet filed an answer to the complaint. Amendment will be allowed as of

1 right or by leave of court in accordance with the Federal Rules of Civil Procedure and the Local
2 Rules of this court.

3 JURISDICTION/VENUE

4 Jurisdiction and venue are undisputed and are hereby found to be proper.

5 RESPONSE TO COMPLAINT

6 A response to plaintiff's complaint is due no later than November 28, 2018.

7 DISCOVERY

8 The parties represent that initial disclosures were completed by May 7, 2018.

9 All discovery shall be completed by April 4, 2019. The word "completed" means that all
10 discovery shall have been conducted so that all depositions have been taken and any disputes
11 relative to discovery shall have been resolved by appropriate order if necessary and, where
12 discovery has been ordered, the order has been complied with. Motions to compel discovery
13 must be noticed on the undersigned's calendar in accordance with the Local Rules and must be
14 heard not later than March 13, 2019.

15 EXPERT DISCLOSURE

16 The parties are to designate in writing, and serve upon all other parties, the names of all
17 experts they propose to tender at trial in accordance with the following schedule: initial expert
18 disclosures on or before January 31, 2019; rebuttal expert disclosures on or before February 20,
19 2019.

20 An expert witness not appearing on said lists will not be permitted to testify unless the
21 party offering the witness demonstrates: (a) that the necessity of the witness could not have been
22 reasonably anticipated at the time the lists were exchanged; (b) the court and opposing counsel
23 were promptly notified upon discovery of the witness; and (c) that the witness was promptly
24 proffered for deposition. Failure to provide the information required along with the expert
25 designation may lead to preclusion of the expert's testimony or other appropriate sanctions.

26 For the purposes of this scheduling order, experts are defined as "percipient" and
27 "Rule 26" experts. Both types of experts shall be listed. Percipient experts are persons who,
28 because of their expertise, have rendered expert opinions in the normal course of their work

1 duties or observations pertinent to the issues in the case. Another term for their opinions are
2 “historical opinions.” Percipient experts are experts who, unless also designated as Rule 26
3 experts, are limited to testifying to their historical opinions and the reasons for them. That is,
4 they may be asked to testify about their opinions given in the past and the whys and wherefores
5 concerning the development of those opinions. However, they may not be asked to render a
6 current opinion for the purposes of the litigation.

7 Rule 26 experts, who may be percipient experts as well, shall be specifically designated
8 by a party to be a testifying expert for the purposes of the litigation. The Rule 26 expert may
9 express opinions formed for the purposes of the litigation. A party designating a Rule 26 expert
10 will be assumed to have acquired the express permission of the witness to be so listed.

11 The parties shall comply with the information disclosure provisions of Federal Rule of
12 Civil Procedure 26(a)(2) for any expert, who is in whole or in part designated as a Rule 26 expert.
13 This information is due at the time of designation. Failure to supply the required information may
14 result in the Rule 26 expert being stricken. All Rule 26 experts are to be fully prepared to render
15 an informed opinion at the time of designation so that they may fully participate in any deposition
16 taken by the opposing party. Rule 26 experts will not be permitted to testify at trial as to any
17 information gathered or evaluated, or opinion formed, which should have been reasonably
18 available at the time of designation. The court will closely scrutinize for discovery abuse
19 deposition opinions which differ markedly in nature and/or in bases from those expressed in the
20 mandatory information disclosure.

21 JOINT MID-LITIGATION STATEMENTS

22 Not later than fourteen (14) days prior to the close of discovery, the parties shall file with
23 the court a brief joint statement summarizing all law and motion practice heard by the court as of
24 the date of the filing of the statement, whether the court has disposed of the motion at the time the
25 statement is filed and served, and the likelihood that any further motions will be noticed prior to
26 the close of law and motion. The filing of this statement shall not relieve the parties or counsel of
27 their obligation to timely notice all appropriate motions as set forth herein.

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1 MOTION HEARING SCHEDULES

2 Defendant anticipates filing a motion for summary judgment.

3 All law and motion, except as to discovery, shall be completed by May 3, 2019. The word
4 “completed” in this context means that all law and motion matters must be heard by the above
5 date. Counsel and pro se parties (collectively, “counsel”), are cautioned to refer to the Local
6 Rules regarding the requirements for noticing such motions on the court’s regularly scheduled
7 law and motion calendar. Available hearing dates may be obtained by calling Valerie Callen, the
8 Courtroom Deputy, at (916) 930-4199.

9 Local Rule 230 governs the calendaring and procedures of civil motions with the
10 following additions:

11 (a) The opposition and reply must be filed by 4:30 p.m. on the day due; and

12 (b) When the last day for filing an opposition or reply brief falls on a legal holiday, the
13 opposition or reply brief shall be filed on the last court day immediately preceding the legal
14 holiday. Failure to comply with Local Rule 230(c), as modified by this order, may be deemed
15 consent to the motion and the court may dispose of the motion summarily. Brydges v. Lewis, 18
16 F.3d 651, 652-53 (9th Cir. 1994) (per curiam).

17 All purely legal issues are to be resolved by timely pretrial motion. The parties should
18 keep in mind that the purpose of law and motion is to narrow and refine the legal issues raised by
19 the case, and to dispose of by pretrial motion those issues that are susceptible to resolution
20 without trial. To accomplish that purpose, the parties need to identify and fully research the
21 issues presented by the case, and then examine those issues in light of the evidence gleaned
22 through discovery. If it appears to counsel after examining the legal issues and facts that an issue
23 can be resolved by pretrial motion, counsel are to file the appropriate motion by the law and
24 motion cutoff set forth above. The parties are cautioned that failure to raise a dispositive legal
25 issue that could have been tendered to the court by proper pretrial motion prior to the dispositive
26 motion cut-off date may constitute waiver of such issue.

27 Counsel are reminded that motions in limine are procedural devices designed to address
28 the admissibility of evidence. Counsel are cautioned that the court will look with disfavor upon

1 substantive motions presented in the guise of motions in limine at the time of trial.

2 FINAL PRETRIAL CONFERENCE

3 The final pretrial conference is set before District Judge John A. Mendez on July 12,
4 2019, at 11:00 a.m., in Courtroom No. 6, 14th Floor. In each instance an attorney who will try
5 the case for a given party shall attend the final pretrial conference on behalf of that party;
6 provided, however, that if by reason of illness or other unavoidable circumstance the trial attorney
7 is unable to attend, the attorney who attends in place of the trial attorney shall have equal
8 familiarity with the case and equal authorization to make commitments on behalf of the client.
9 All pro se parties must attend the pre-trial conference.

10 Counsel for all parties and all pro se parties are to be fully prepared for trial at the time of
11 the Final Pretrial Conference, with no matters remaining to be accomplished except production of
12 witnesses for oral testimony. The parties shall file a joint pretrial conference statement not later
13 than July 5, 2019, at 4:30 p.m.

14 **At the time of filing the Joint Pretrial Statement, counsel are requested to e-mail the**
15 **Joint Pretrial Statement and any attachments in Word format to Judge Mendez's**
16 **assistant, Jane Klingelhoets at: jklingelhoets.uscourts.gov.**

17 Where the parties are unable to agree as to what legal or factual issues are properly before
18 the court for trial, they should nevertheless list all issues asserted by any of the parties and
19 indicate by appropriate footnotes the disputes concerning such issues. The provisions of Local
20 Rule 281 shall, however, apply with respect to the matters to be included in the joint pre-trial
21 statement. Failure to comply with Local Rule 281, as modified herein, may be grounds for
22 sanctions.

23 The parties are reminded that pursuant to Local Rule 281(b)(10) and (11) they are
24 required to list in the final pre-trial statement all witnesses and exhibits they propose to offer at
25 trial, no matter for what purpose. These lists shall not be contained in the body of the final pre-
26 trial statement itself, but shall be attached as separate documents so that the court may attach
27 them as an addendum to the final pre-trial order. The final pre-trial order will contain a stringent
28 standard for the offering at trial of witnesses and exhibits not listed in the final pre-trial order, and

1 the parties are cautioned that the standard will be strictly applied. On the other hand, the listing
2 of exhibits or witnesses that a party does not intend to offer will be viewed as an abuse of the
3 court's processes.

4 The parties are also reminded that pursuant to Rule 16, Fed. R. Civ. P., it will be their duty
5 at the final pre-trial conference to aid the court in: (a) formulation and simplification of issues and
6 the elimination of frivolous claims or defenses; (b) settling of facts which should properly be
7 admitted; and (c) the avoidance of unnecessary proof and cumulative evidence. Counsel must
8 cooperatively prepare the joint pre-trial statement and participate in good faith at the final pre-
9 trial conference with these aims in mind. A failure to do so may result in the imposition of
10 sanctions which may include monetary sanctions, orders precluding proof, elimination of claims
11 or defenses, or such other sanctions as the court deems appropriate.

12 TRIAL SETTING

13 A jury trial is set to commence before District Judge John A. Mendez on September 16,
14 2019, at 9:00 a.m., in Courtroom No. 6, 14th Floor.

15 The parties anticipate that the trial will take 5 days.

16 SETTLEMENT CONFERENCE/MAGISTRATE JUDGE AS SETTLEMENT JUDGE

17 The parties do not wish to participate in a settlement conference and none will be
18 scheduled at this time.

19 SUMMARY OF ORDER

20 THE COURT SUMMARIZES THE SCHEDULING ORDER AS FOLLOWS:

21 1. An early Settlement Conference will be set by Minute Order, if the schedules of
22 the parties and the court can accommodate it.

23 2. A response to plaintiff's complaint is due no later than November 28, 2018.

24 3. All discovery shall be completed by April 4, 2019. Motions to compel must be
25 heard not later than March 13, 2019.

26 4. Initial expert disclosures shall be made on or before January 31, 2019; rebuttal
27 expert disclosures shall be made on or before February 20, 2019.

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1 5. All law and motion, except as to discovery, shall be completed as described herein
2 on or before May 3, 2019.

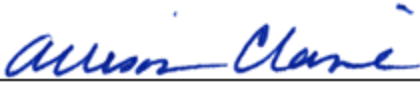
3 6. The final pretrial conference is set before District Judge John A. Mendez on July
4 12, 2019, at 11:00 a.m., in Courtroom No. 6, 14th Floor. Pretrial statements shall be filed in
5 accordance with Local Rules 281 and 282, and the requirements set forth herein.

6 7. A jury trial is set to commence before District Judge John A. Mendez on
7 September 16, 2019, at 9:00 a.m., in Courtroom No. 6, 14th Floor.

8 8. Failure to comply with the terms of this order may result in the imposition of
9 monetary and all other sanctions within the power of the court, including dismissal or an order of
10 judgment.

11 IT IS SO ORDERED.

12 DATED: October 31, 2018

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE

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