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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

No. 1:11-CV-02137-AWI-SKO

JEFF SYLVESTER, ET AL. ,

Plaintiff(s),

v.

KAMALA D. HARRIS, ET AL.,

Defendant(s).

**ORDER SETTING MANDATORY
SCHEDULING CONFERENCE**

DATE: May 15, 2012

TIME: 09:30 AM

CTRM: #7 (6th Floor)

**SHEILA K. OBERTO
U.S. MAGISTRATE JUDGE**

Rule 16, Fed.R.Civ.P., requires the Court to enter a Scheduling Conference Order within 120 days of the date of the Complaint being served upon the defendant. Therefore, it is ordered that you appear for a formal Scheduling Conference before United States Magistrate Judge Sheila K. Oberto, in Courtroom 7 at the United States Courthouse, 2500 Tulare Street, Fresno, CA 93721.

The Court is unable to conduct a scheduling conference until the defendant(s) has/have been served with the summons and complaint. Accordingly, plaintiff(s) shall diligently pursue service of summons and complaint and dismiss those defendants against whom plaintiff(s) will not pursue claims. Plaintiff(s) shall promptly file proofs of

1 of service of the summons and complaint so the Court has a record of
2 service. Counsel are referred to Fed.R.Civ.P., Rule 4, regarding
3 the requirement of timely service of the complaint. Failure to timely
4 serve summons and complaint may result in the imposition of sanctions,
5 including dismissal of unserved defendants.

6 Due to the mandates of Rule 16, this Order may be served upon
7 counsel for the plaintiff(s) before appearances of defendant(s) are
8 due. It is the obligation of counsel for the plaintiff(s) to serve
9 a copy of this Order on the defendant(s), or, if identified, on
10 their counsel, **promptly** upon receipt of this Order, and to file an
11 appropriate proof of such service with the Court, in compliance
12 with Rule 135(a) of the Local Rules of Practice for the Eastern
13 District of California.

14 Attendance at the Scheduling Conference is **mandatory** upon each
15 party not represented by counsel or by retained counsel. Only
16 counsel who are thoroughly familiar with the facts and the law of
17 the instant case, and who have full authority to bind his or her
18 client, shall appear. Trial counsel should participate in this
19 Scheduling Conference whenever possible. It may be necessary for
20 counsel to spend as much as 45 minutes in this Conference.

21 A Joint Scheduling Report, carefully prepared and executed by
22 all counsel/pro se parties, shall be electronically filed in
23 CM/ECF, one (1) full week prior to the Scheduling Conference, and
24 shall be e-mailed, in WordPerfect or Word format, to
25 **skoorders@caed.uscourts.gov**.

26 For reference purposes, the Court requires that counsels'
27 Joint Scheduling Report indicate the date, time, and courtroom of

1 the Scheduling Conference. This information is to be placed

2 opposite the caption on the first page of the Report.

3 Among other things, counsel will be expected to discuss the
4 possibility of settlement. Counsel are to thoroughly discuss
5 settlement with each other before undertaking the preparation of
6 the Joint Scheduling Report and engaging in extensive discovery.
7 However, even if settlement negotiations are progressing, counsel
8 are expected to comply with the requirements of this Order unless
9 otherwise excused by the Court. If the case is settled, please
10 **promptly** inform the Court, and counsels' presence, as well as the
11 Joint Scheduling Report, will not be required.

12 **Counsel may request that their attendance be by telephonic**
13 **conference.** If two or more parties wish to appear telephonically,
14 counsel shall decide which will be responsible for making prior
15 arrangements for the conference call and shall initiate the call at
16 the above-designated time. After all parties are on the line, the
17 call should then be placed to Judge Oberto's chambers at (559) 499-
18 5790. Additionally, counsel are directed to indicate on the
19 face page of their Joint Scheduling Report that the conference
20 will be telephonic.

21 At least twenty (20) days prior to the Mandatory Scheduling
22 Conference, trial counsel for all parties shall conduct and
23 conclude a conference at a time and place arranged by counsel for
24 the plaintiff(s). This conference preferably should be a personal
25 conference between all counsel but, due to the distances involved
26 in this District, a telephonic conference call involving all
27 counsel/pro se parties is permissible. The Joint Scheduling Report

1 shall respond to the following items by corresponding numbered

2 paragraphs:

3 **Form and Contents of the Joint Scheduling Report**

4 1. Summary of the factual and legal contentions set forth in
5 the pleadings of each party, including the relief sought by any
6 party presently before the Court.

7 2. Any proposed amendment to the pleadings presently on file
8 shall be filed by its proponent contemporaneously with the Scheduling
9 Conference Report. If the matter cannot be resolved at the Scheduling
10 Conference, the matter will be set as a Motion to Amend in accordance
11 with the Rules of Practice of the Eastern District of California.

12 3. A proposed deadline for amendments to pleadings.

13 4. A summary detailing the uncontested and contested facts.

14 5. A summary of the legal issues as to which there is no
15 dispute, e.g., jurisdiction, venue, applicable federal or state
16 law, etc., as well as a summary of the disputed legal issues.

17 6. The status of all matters which are presently set before
18 the Court, e.g., hearing all motions, etc.

19 7. A complete and detailed discovery plan addressing the
20 following:

21 (a) A date for the exchange of initial disclosures
22 required by Fed.R.Civ.P. 26(a)(1), or a statement that
23 disclosures have already been exchanged;

24 (b) A firm cut-off date for non-expert discovery;

25 (c) A firm date(s) for disclosure of expert witnesses as
26 required by Fed.R.Civ.P. 26(a)(2);

27 (d) A firm cut-off date for expert witness discovery;

(e) Any proposed changes in the limits on discovery imposed by Fed.R.Civ.P. 26(b); 30(a)(2)(A), (B) or (C); 30(d); or 33(a);

(f) Whether the parties anticipate the need for a protective order relating to the discovery of information relating to a trade secret or other confidential research, development, or commercial information;

(g) Any issues or proposals relating to the timing, sequencing, phasing or scheduling of discovery;

(h) Whether the parties anticipate the need to take discovery outside the United States and, if so, a description of the proposed discovery;

(i) Whether any party anticipates video and/or sound recording of depositions;

(j) A proposed date for a Mid-Discovery Status Report and Conference;

8. Discovery relating to Electronic, Digital and/or Magnetic data.

Prior to a Fed.R.Civ.P. 26(f) conference, counsel should carefully investigate their client's information management system so that they are knowledgeable as to its operation, including how information is stored and how it can be retrieved. Likewise, counsel shall reasonably review the client's computer files to ascertain the contents thereof; including archival and legacy data (outdated formats or media), and disclose in initial discovery (self-executing routine discovery) the computer based evidence which may be used to support claims or defenses.

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2 computer-based information shall notify the opposing party
3 immediately, but no later than the date set for the Fed.R.Civ.P.
4 26(f) conference, and of identify as clearly as possible the
5 categories of information which may be sought currently. This
6 does not foreclose an application to amend for items which later
7 may be sought.

8 (B) Duty to Meet and Confer. The parties shall meet and
9 confer regarding the following matters during the Fed.R.Civ.P.
10 26(f) conference:

11 (i) Computer-based information (in general).

12 Counsel shall attempt to agree on steps the parties will take to
13 accusations of spoliation;

14 (ii) E-mail information . Counsel shall attempt to
15 agree as to the scope of e-mail discovery and attempt to agree upon
16 an e-mail search protocol. This should include an agreement
17 regarding inadvertent production of privileged e-mail messages.

18 (iii) Deleted information. Counsel shall confer and
19 attempt to agree whether or not restoration of deleted information
20 may be necessary, the extent to which restoration of deleted
21 information is needed, and who will bear the costs of restoration; and,

22 (iv) Back-up data Counsel shall attempt to agree whether or
23 not back-up data may be necessary, the extent to which backup data is
24 needed and who will bear the cost of obtaining back-up data.

25 The Joint Scheduling Report Shall summarize the parties
26 conference relating to discovery of electronic data.

27 9. Dates agreed to by all counsel for:

- 1 (a) Filing non-dispositive¹ and dispositive² pre-trial
2 motions with the understanding that motions (except
3 motions in *limine* or other trial motions) will not be
4 entertained after the agreed upon date. (No later than
5 10 weeks prior to the proposed Pre-Trial Conference date.)
6 (b) Pre-Trial Conference date. (No later than 45 days
7 prior to the proposed trial date.)
8 (c) Trial date.

9 All of these dates should be considered firm dates.

10 Dates should be set to allow the court to decide any matters under
11 submission before the Pre-Trial Conference is set.

12 10. At the conference referred to above, counsel are
13 encouraged to discuss settlement, and the Court will expect a
14 statement in the Joint Scheduling Report as to the possibility of
15 settlement. Counsel shall indicate when they feel a settlement
16 conference is desired, e.g., before further discovery, after
17 discovery, after pre-trial motions, etc.

18 11. A statement as to whether the case is a jury or non-jury
19 case. If the parties disagree as to whether a jury trial has been
20 timely demanded or whether one is available on some or all of the
21 claims, the statement shall include a summary of each party's
22 position.

23 12. An estimate of the number of trial days required. When
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26 ¹Motions to compel discovery, amend, remand, etc.

27 ²Motions for summary adjudication or to dismiss, strike, etc.

1 counsel cannot agree, each party shall give his or her best estimate.

2 In estimating the number of trial days counsel should keep in mind
3 that this court is normally able to devote the entire day to trial.

4 13. Because the District Judges' dockets are extremely
5 crowded dockets the parties should consider and address the issue
6 of whether they are willing to consent to the jurisdiction of a
7 U.S. Magistrate Judge pursuant to 28 U.S.C. section 636(c). All
8 non-dispositive motions are routinely heard by the Magistrate Judge
9 whether or not the parties consent.

10 14. Whether either party requests bifurcation or phasing of
11 trial, or any other suggestion for shortening or expediting
12 discovery, pre-trial motions or trial.

13 15. Whether this matter is related to any matter pending in
14 this court or any other court, including any bankruptcy court.

15 16. Joint Scheduling Reports are to be e-mailed, in
16 WordPerfect or Word format, to skoorders@caed.uscourts.gov.

17 SHOULD COUNSEL OR A PARTY APPEARING *PRO SE* FAIL TO APPEAR AT
18 THE MANDATORY SCHEDULING CONFERENCE, OR FAIL TO COMPLY WITH THE
19 DIRECTIONS AS SET FORTH ABOVE, AN EX PARTE HEARING MAY BE HELD AND
20 JUDGMENT OF DISMISSAL, DEFAULT, OR OTHER APPROPRIATE JUDGMENT MAY
21 BE ENTERED, INCLUDING SANCTIONS AND CONTEMPT OF COURT.

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23 UNITED STATES MAGISTRATE JUDGE

24 /s/ SHEILA K. OBERTO
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