

MAY 25 2000

COURT
CLERK
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

US880C

Plaintiff(s),

v.

Ima Schragar
Defendant(s)

Case No. CV 99-987-GAF

SCHEDULING AND CASE
MANAGEMENT ORDER

SEE LAST PAGE FOR PRETRIAL
AND TRIAL DATES

The purpose of this Order is to enable the parties and their counsel to know well in advance the schedule to which they will be expected to adhere. SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES. Ordinarily the dates set forth on the last page are determined after consultation with the parties at the Local Rule 6 Mandatory Status Conference, and this Order is distributed to them at that time. Accordingly, the dates and requirements are firm. The Court is very unlikely to grant continuances, even if stipulated by the parties, unless the parties establish good cause through a concrete showing. **Because this order, in some respects modifies the applicable Local Rule of Civil Procedure, counsel are advised to read it carefully to avoid default on the obligations established herein. Counsel are advised to pay particular attention to the requirements of the Court in respect to the filing of motions for summary judgment and documents to be submitted at the pre-trial conference and trial.**

ENTERED ON ICMS

5/26/00

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1 **I. DISCOVERY CUTOFF**

2 All discovery shall be completed by the discovery cutoff on the last page. **THIS**
3 **IS NOT THE DATE BY WHICH DISCOVERY REQUESTS MUST BE SERVED; IT IS THE**
4 **DATE BY WHICH ALL DISCOVERY IS TO BE COMPLETED.**

5 Any motion challenging the adequacy of responses to discovery must be filed
6 timely, served and calendared sufficiently in advance of the discovery cutoff date to
7 permit the responses to be obtained before that date, if the motion is granted. The
8 Court requires compliance with Local Rule 7.15 in the preparation and filing of discovery
9 motions. Except in the case of an extreme emergency which was not created by the
10 lawyer briefing the motion, discovery motions may not be heard on ex parte
11 application.

12 In an effort to provide further guidance to the parties, the Court notes the
13 following:

14 1. Depositions. All depositions shall be scheduled to commence
15 sufficiently in advance of the discovery cutoff date to permit their completion and
16 to permit the deposing party enough time to bring any discovery motions
17 concerning the deposition prior to the cutoff date.

18 2. Written Discovery. All interrogatories, requests for production of
19 documents, and requests for admissions shall be served sufficiently in advance
20 of the discovery cutoff date to permit the discovering party enough time to
21 challenge (via motion practice) responses deemed to be deficient.

22 3. Discovery Motions. Whenever possible, the Court expects the parties
23 to resolve discovery problems among themselves in a courteous, reasonable and
24 professional manner. If they do so, resort to the Court for guidance in discovery
25 is seldom necessary. The Magistrate Judge assigned to this case will rule on
26 discovery motions.

27 4. Expert Discovery. Expert discovery is to be concluded by the discovery
28 cutoff date. Accordingly, the disclosure of expert witnesses in full compliance

1 with Rule 26(a)(2), Fed.R.Civ.P. is ordered no later than seventy (70) days before
2 the discovery cutoff. Counter-designations are to be made pursuant to Federal
3 Rules of Civil Procedure §26(a)(2)(C).

4 II. MOTIONS AND MOTION CUTOFF DATE

5 A. GENERAL PROVISIONS

6 All law and motion matters, except for motions in limine, must be set for hearing
7 (not filing) by the motion cutoff date specified on the last page.

8 The parties must adhere to the requirements of the Local Rules. *See* Local Rules
9 7.4 (pre-filing conference and notice of motion), 7.5 (motion papers and evidence), 7.6
10 (response to motion), 7.7 (reply by moving party), and 7.8 (time limits on continuances).
11 If any party does not oppose a motion, that party shall submit a written statement that
12 it does not oppose the motion in accordance with Local Rule 7.6. The parties should
13 note that failure to meet the time limits set forth in Local Rule 7 may be deemed consent
14 to the granting of the motion. Local Rule 7.9. The Court will not decide late-filed
15 motions.

16 To insure that the Court receives oppositions and replies in a timely fashion,
17 courtesy copies ***conformed to reflect that they have been filed***, should be deposited
18 in the drop box in the back entrance way to the chambers of Courtroom 740.

19 Issues left undetermined after the passage of the motion cutoff date should be
20 listed as issues for trial in the pre-trial conference order. As an exception to the above,
21 motions in limine dealing with evidentiary matters may be heard pursuant to the
22 schedule attached hereto; however, the Court will not hear or resolve summary
23 judgment motions disguised as motions in limine. In addition, delay which interferes
24 with preparation by the Court and its staff may cause imposition of sanctions under
25 Local Rule 27.1.

26 Ex parte practice is strongly discouraged. *See* Mission Power Eng. Co. v.
27 Continental Casualty Co., 883 F.Supp. 488 (C.D. Calif. 1995). The Court will require strict
28 adherence to proper ex parte procedures for any ex parte application filed with the

1 Court. Id., at 492; See Local Rule 7.18.

2 **B. APPLICATIONS AND STIPULATIONS TO EXTEND TIME**

3 Applications to extend the time to file any required document or to continue any
4 pretrial or trial date must set forth

5 (i) the existing due date or hearing date;

6 (ii) specific, concrete reasons supporting good cause for granting the extension.

7 In this regard, a statement that an extension "will promote settlement" is insufficient.

8 The requesting party or parties must indicate the status of ongoing negotiations: Have
9 written proposals been exchanged? Is counsel in the process of reviewing a draft
10 settlement agreement? Has a mediator been selected?

11 (iii) whether there have been prior requests for extensions, and whether these
12 were granted or denied by the Court.

13 **C. SUMMARY JUDGMENT MOTIONS**

14 As caseloads increase, the Court is seeing a corresponding increase in the
15 filing of motions for summary judgment. These motions frequently do not comply with
16 the requirements of the Local Rules in one or more respects, and there are ambiguities
17 in the Local Rules regarding the preparation of the Separate Statement of Undisputed
18 Facts and related materials. As a result the Court is receiving documents in a wide
19 variety of formats, some that are not in compliance and some that may technically
20 comply with the literal language of the rule, but which are confusing, difficult to
21 decipher and interfere with the Court's ability to address these motions in an efficient
22 and expeditious manner. To increase the Court's efficiency, and to assist counsel in
23 structuring and focusing these motions, the Court is issuing the following order
24 regarding the filing motions for summary judgment in this Court. The Court will require
25 strict adherence to these requirements.

26 **1. Separate Statement Of Undisputed Facts and Statement of Genuine Issues**

27 The Separate Statement of Undisputed Facts is to be prepared in a two column
28 format. The left hand column should set forth the allegedly undisputed fact. The right

1 hand column should set forth the evidence that supports the factual statement. The fact
2 statements should be set forth in sequentially numbered paragraphs. Each paragraph
3 should contain a narrowly focused statement of fact. The Court has observed cases
4 where an allegedly undisputed fact was set forth in three pages of text. This is
5 unacceptable. Each numbered paragraph should address a single subject in as concise
6 a manner as possible.

7 The opposing party's statement of genuine issues must be in two columns and
8 track the movant's separate statement exactly as prepared. The document must be in
9 two columns; the left hand column must restate the allegedly undisputed fact, and the
10 right hand column must indicate either undisputed, or disputed. The opposing party
11 may dispute all or only a portion of the statement, but if disputing only a portion, must
12 clearly indicate what part is being disputed. Where the opposing party is disputing the
13 fact in whole or part, the opposing party must, in the right hand column, label and
14 restate the moving party's evidence in support of the fact, followed by the opposing
15 party's evidence controverting the fact. Where the opposing party is disputing the fact
16 on the basis of an evidentiary objection, the party must cite to the evidence alleged to
17 be objectionable and state the ground of the objection and nothing more. **No argument**
18 **should be set forth in this document.**

19 The opposing party may submit additional material facts that bear on or relate
20 to the issues raised by the movant, which shall follow the format described above for
21 the moving party's separate statement. These additional facts shall follow the movant's
22 facts, shall continue in sequentially numbered paragraphs (i.e., if movant's last
23 statement of fact was set forth in paragraph 30, then the first new fact will be set forth
24 in paragraph 31), and shall set forth in the right hand column the evidence that supports
25 that statement.

26 The moving party, in its reply, shall respond to the additional facts in the same
27 manner and format that the opposition party is required adhere to in responding to the
28 statement of undisputed facts, as described above.

1 2. Supporting Evidence

2 No party should submit any evidence other than the specific items of evidence
3 or testimony necessary to support or controvert a proposed statement of undisputed
4 fact. Thus, for example, the entire transcript of a deposition, entire sets of interrogatory
5 responses, and documents that do not specifically support or controvert material in the
6 separate statements, should not be submitted in support or opposition to a motion for
7 summary judgment. Any such material will not be considered.

8 Evidence submitted in support or opposition to a motion should be submitted
9 either by way of stipulation or as exhibits to declarations sufficient to authenticate the
10 proffered evidence, and should not be attached to the Memorandum of Points and
11 Authorities. The Court will accept counsel's authentication of deposition transcript, of
12 written discovery responses, and of the receipt of documents in discovery if the fact
13 that the document was in the opponent's possession is of independent significance.

14 Documentary evidence as to which there is no stipulation regarding foundation must
15 be accompanied by the testimony, either by declaration or properly authenticated
16 deposition transcript, of a witness who can establish its authenticity.

17 3. Objections to Evidence

18 If a party disputes a fact based in whole or in part on an evidentiary objection,
19 the ground of the objection, as indicated above, should be stated in the separate
20 statement but not argued in that document. Evidentiary objections are to be addressed
21 in a separate memorandum to be filed with the opposition or reply brief of the party.
22 This memorandum should be organized **to track the paragraph numbers of the**
23 **separate statement in sequence.** It should identify the specific item of evidence to
24 which objection is made, the ground of the objection, and a very brief argument with
25 citation to authority as to why the objection is well taken. The following is an example
26 of the format contemplated by the Court:

27 Separate Statement Paragraph 1: Objection to the supporting deposition
28 transcript of Jane Smith at 60:1-10 on the grounds that the statement constitutes

1 inadmissible hearsay and no exception is applicable. To the extent it is offered
2 to prove her state of mind, it is irrelevant since her state of mind is not in issue.
3 Fed. R. Evid. 801, 802.

4 **N.B: DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE**
5 **OPPONENT'S STATEMENTS OF UNDISPUTED FACT: THESE WILL BE DISREGARDED**
6 **AND OVERRULED.**

7 4. The Memorandum of Points and Authorities

8 The movant's memorandum of points and authorities should be in the usual form
9 required under Local Rule 7 and should contain a narrative statement of facts as to
10 those aspects of the case that are before the Court. All facts should be supported with
11 citations to the paragraph number in the Separate Statement that supports the factual
12 assertion and not to the underlying evidence.

13 Unless the case involves some unusual twist on Rule 56, the motion need only
14 contain a brief statement of the Rule 56 standard; the Court is familiar with the Rule and
15 with its interpretation under Celotex and its progeny. If at all possible, the argument
16 should be organized to focus on the pertinent elements of the cause(s) of action or
17 defense(s) in issue, with the purpose of showing the existence or non-existence of a
18 genuine issue of material fact for trial on that element of the claim or defense.

19 Likewise, the opposition memorandum of points and authorities should be in the
20 usual form required by Local Rule 7, and where the opposition memorandum sets forth
21 facts, the memorandum should cite to paragraphs in the separate statement if they are
22 not in dispute, to the evidence that contravenes the fact where the fact is in dispute, or,
23 if the fact is contravened by an additional fact in the statement of genuine issues, the
24 citation should be to such fact by paragraph number.

25 5. Timing

26 In virtually every case, the Court expects that the moving party will provide
27 more than the minimum twenty-one (21) day notice for such motions. The moving party
28 should deliver to chambers a copy of a diskette, in WordPerfect format (7.0 or earlier

versions), containing the Statement of Uncontroverted Facts and Conclusions of Law.

[NOTE: Parties need not wait until the motion cutoff to bring motions for summary judgment or partial summary judgment. Early completion of non-expert discovery and filing of motions for summary judgment may eliminate or reduce need for expensive expert depositions which are normally conducted in the last stages of discovery.]

D. ORAL ARGUMENT

If the Court concludes that a motion can be resolved without argument, the Court will notify the parties in advance. If there is a hearing, tentative rulings will normally be available in the courtroom approximately one-half hour before the call of the calendar. The parties are expected to be familiar with the tentative ruling at the time of argument.

E. MOTIONS IN LIMINE

The parties must file motions in limine addressing the admissibility of evidence in accordance with Local Rule 7.4 by the date specified on the last page. The parties shall file their opposing and reply papers in accordance with Local Rules 7.6 and 7.7 respectively.

III. PRE-TRIAL CONFERENCE AND LOCAL RULE 9 FILINGS

A. GENERAL PROVISIONS

The Pre-Trial Conference ("PTC") will be held at 2:30 P.M. on the date specified, unless the Court expressly waived a PTC at the Status Conference. (In the rare cases where the Court waives a PTC, the parties must follow Local Rule 9.11.) If adjustments in the Court's calendar to accommodate congestion become necessary, the Court may re-calendar the PTC instead of the trial date. Therefore, the parties should assume that if the PTC goes forward, the trial will go forward without continuance, although some brief period of trailing may prove necessary.

The lead trial attorney on behalf of each party shall attend both the PTC and all meetings of the parties in preparation of the PTC, unless excused for good cause shown

1 in advance of the PTC.

2 A continuance of the PTC at the parties' request or by stipulation is highly
 3 unlikely. Specifically, failure to complete discovery is not a ground for continuance.
 4 In the unlikely event that the Court agrees to continue the PTC, the trial date is likely to
 5 be delayed as a result. If a change in the trial date is necessitated or likely because of
 6 the Court's calendar or otherwise, modifications of that date will be discussed at the
 7 PTC.

8 At the PTC, the parties should be prepared to discuss means of streamlining the
 9 trial, including, but not limited to: bifurcation; presentation of foundational and non-
 10 critical testimony and direct testimony by deposition excerpts; narrative summaries
 11 and/or stipulations as to the content of testimony; presentation of testimony on direct
 12 examination by affidavit or by declaration subject to cross-examination; and
 13 qualification of experts by admitted resumes. The Court will also discuss settlement.

14 **B. FORM OF PRE-TRIAL CONFERENCE ORDER ("PTCO")**

15 The proposed PTCO shall be lodged fourteen (14) calendar days before the PTC.
 16 Adherence to this time requirement is necessary for in-chambers preparation of the
 17 matter. The form of the proposed PTCO shall comply with Appendix A to the Local
 18 Rules and the following:

19 1. Place in "ALL CAPS" and in **bold** the separately numbered headings for
 20 each category in the PTCO (e.g., "**1. THE PARTIES**" or "**7. CLAIMS AND DEFENSES**
 21 **OF THE PARTIES**".)

22 2. Include a Table of Contents at the beginning.

23 3. In specifying the surviving pleadings under Section 1, please state which
 24 claims or counterclaims have been dismissed or abandoned. *E.g.* "Plaintiff's second
 25 cause of action for breach of fiduciary duty has been dismissed." Also, in multiple party
 26 cases where not all claims or counterclaims will be prosecuted against all remaining
 27 parties on the other side, please specify to which party each claim or counterclaim is
 28 directed.

1 4. In drafting Sections 5 and 6 of the PTCO, the Court expects that the parties
2 will attempt to agree on and set forth as many non-contested facts as possible. The
3 Court will usually read the uncontested facts to the jury at the start of the trial. A
4 carefully drafted and comprehensively stated stipulation of facts will reduce the length
5 of trial and increase jury understanding of the case.

6 5. *In specifying the parties' claims and defenses under Section 7, each party*
7 *shall closely follow the examples set forth in Appendix A of the Local Rules at pages*
8 *77-80.* As those examples demonstrate, the parties should attempt to state issues in
9 ultimate fact form, not in the form of evidentiary fact issues, which outline the elements
10 of the claims and defenses. The purpose of this section is to focus and clarify the issues
11 to be presented at trial. No argument is to be included in this section.

12 6. The Court may well submit fact issues to the jury in the form of findings
13 on a special verdict. The issues of fact should track the elements of a claim or defense
14 on which the jury will be required to make findings.

15 **C. RULE 9 FILINGS; MEMORANDA; WITNESS LISTS; EXHIBIT LISTS**

16 The parties must comply fully with the requirements of Local Rule 9. They shall
17 file carefully prepared Memoranda of Contentions of Fact and Law (which may also
18 serve as the trial brief), along with their respective Witness Lists and Exhibit Lists, all in
19 accordance with Local Rules 9.5, 9.6 and 9.7. See the last page for dates.

20 **D. TRIAL WITNESS TIME ESTIMATE FORM**

21 At the pre-trial conference the parties will be given a Joint Trial Witness Time
22 Estimate Form, which they will be required to fill in and give to the Court on the first day
23 of trial.

24 **E. JURY INSTRUCTIONS, VERDICT FORMS, SPECIAL INTERROGATORIES**

25 1. Fourteen (14) days before the Rule 9 meeting, the parties shall exchange
26 proposed jury instructions, verdict forms and special interrogatories. Seven (7) days
27 before the meeting, counsel shall exchange written objections, if any, to proposed jury
28 instructions, verdicts and special interrogatories. At the Rule 9 meeting, the parties

1 shall confer with the objective of submitting one set of agreed upon substantive
 2 instructions, verdict forms and, if necessary, special interrogatories. "Substantive jury
 3 instructions" means all instructions relating to the elements of all claims and defenses
 4 in the case. The Court would appreciate the parties delivering to chambers a copy of
 5 these filings on disk in WordPerfect 7.0 format at the time the documents are filed.

6 2. If the parties cannot agree upon one complete set of substantive
 7 instructions, verdict forms and/or special interrogatories, they shall file two documents
 8 with the Court: a joint document reflecting the agreed upon instructions, verdict forms,
 9 and a second document in the form of a joint statement regarding the disputed
 10 instructions, verdicts and interrogatories in the following format for each instruction,
 11 verdict or interrogatory in issue:

12 (a) A separate page containing the text of the disputed language with an
 13 identification of the party proposing it;

14 (b) Following the instruction, the opposing party's statement of objections
 15 to the instruction along with legal authority in support of the argument
 16 (not to exceed one page) and proposed alternative language where
 17 appropriate;

18 (c) The proposing party's response to the objection with legal authority
 19 supporting the proposed language, not to exceed one page.

20 Both the agreed on set, and the joint statement re disputed instructions are to be
 21 filed with the Pre-Trial Conference Order and other Rule 9 documents fourteen (14) days
 22 before the Pre-Trial Conference.

23 3. All proposed jury instructions shall be in the format specified by Local Rule
 24 13.2.2. The parties need not submit a separate copy of instructions without citations
 25 to authority.

26 4. A table of contents shall be included with all jury instructions submitted
 27 to the Court. The table of contents shall set forth the following:

28 (a) The number of the instruction;

- (b) A brief title of the instruction;
- (c) The source of the instruction; and
- (d) The page number of the instruction.

For example:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page Number</u>
1	Burden of Proof	9 th Cir. 12.2	5

5. The Court directs counsel to use the instructions from the *Manual of Model Jury Instructions for the Ninth Circuit* (West 1997) where applicable. Where California law is to be applied and the above instructions are not applicable, the Court prefers counsel to use *California Civil Jury Instructions - Civil* (BAJI). If neither of these sources is applicable, counsel are directed to use the instructions in Devitt, Blackmar and Wolff, *Federal Jury Practice and Instructions*.

6. Modifications of instructions from the foregoing sources (or any other form instructions) must specifically state the modification made to the original form instruction and the authority supporting the modification.

F. JOINT STATEMENT OF THE CASE AND REQUESTS FOR VOIR DIRE

At the Pre-Trial Conference, the parties shall lodge their proposed voir dire questions and their joint statement of the case which the Court shall read to all prospective jurors prior to the commencement of voir dire. The statement should be not longer than two or three paragraphs.

The Court conducts voir dire of all prospective jurors. The parties need not submit requests for standard voir dire questions, such as education, current occupation, marital status, prior jury service, etc., but should include only proposed questions specifically tailored to the parties and issues of the case.

G. FINDINGS OF FACT AND CONCLUSIONS OF LAW

For a non-jury trial, the parties shall lodge their proposed findings of fact and conclusions of law in accordance with Local Rule 13.5 not later than one week before trial. The court would appreciate the parties delivering to chambers a copy of these

1 findings on disk in WordPerfect 7.0 format. Please see the Court's Civil Trial Order.

2 **IV. SETTLEMENT**

3 Local Rule 23.3 provides that the Settlement Conference shall be concluded not
4 later than 45 days before the Pretrial Conference. This Court requires a slightly different
5 approach. The Settlement Conference shall take place not later than three weeks before
6 the Pre-Trial Conference, which is after discovery is closed and motions have been
7 heard. The Court expects that completion of all discovery and dispositive motions will
8 help the parties assess their positions before they complete the costly pre-trial process
9 under Local Rule 9. But sometimes parties find it more difficult to settle after they
10 incurred the cost of all discovery and motion practice. The Court therefore strongly
11 encourages counsel and the parties to pursue settlement earlier. In any event, as
12 indicated in the Schedule of Pretrial Dates attached hereto, the parties must file a Status
13 Report re Settlement at the time that they lodge the Proposed Pretrial Conference
14 Order, indicating whether they have conducted the Local Rule 23 Settlement
15 Conference and/or what additional steps are being taken to achieve settlement.

16 This Court will not conduct settlement conferences in non-jury cases which he
17 is to try. In jury cases, the Court will conduct a settlement conference at the parties'
18 joint request if three conditions exist:

- 19 1. The parties are satisfied that the fact issues in the case will be tried to a jury.
- 20 2. All significant pre-trial rulings which the Court must make have been made.
- 21 3. The parties desire the Court to conduct the conference, understanding that if
22 settlement fails, the Court will preside over trial of the case.

23 If the parties are inclined to select this Court to conduct the Mandatory
24 Settlement Conference, the parties should consult the Court's Standing Order re
25 Settlement Conference so that they fully understand the Court's requirements for the
26 settlement conference. That order will govern the settlement conference procedures
27 before this Court, but may also serve as a useful reference for settlement conferences
28 conducted pursuant to the other available procedures. Copies of that and all other

1 standard orders of this Court are available through the Courtroom Deputy Clerk or on
2 the Central District of California website, at "www.cacd.uscourts.gov".

3 **V. CONCLUSION**

4 The Court thanks the parties and their counsel for their anticipated cooperation
5 in carrying out these requirements.

6 IT IS SO ORDERED.

7
8 DATED: 5-25-00



GARY ALLEN FEESS
United States District Judge

JUDGE GARY ALLEN FEESS **SCHEDULE OF TRIAL AND PRETRIAL DATES¹**

Matter	Time	Weeks before trial ²	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (jury) (court) Estimated length: ____ days	9:00 a.m.				10/10/2000
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions* [LR 13.3]		-1			10/2/2000
[Court trial] File Findings of Fact and Conclusions of Law [LR.13.5]; Hearing on Motions in Limine		-1			
Pretrial Conference [LR 9]; Motions in Limine to be filed; Proposed Voir Dire Qs Lodged and Agreed-to Statement of Case [LR 13.2.1, 12.4.1]*	2:30 p.m.	-4			9/14/2000
Lodge Pretrial Conf. Order [LR 9.8.1]*; File Memo of Contentions of Fact and Law [LR 9.5]; Exhibit List [LR 9.7]; Witness List [LR 9.6]; File Status Report re Settlement; File Agreed Upon Set of Jury Instructions, Verdict Forms and Special Interrogatories; File Joint Statement re Disputed Instructions, Verdicts, etc.		-6			8/28/2000
Last date to conduct Settlement Conference [LR 23.3]*		-8			8/18/2000
Last day for hearing motions [LR 7.4]	9:30 a.m.	-9			8/7/2000
Discovery cut-off		-10			7/28/2000

¹ Review the Court's "Order re Mandatory Status Conference" to be sure of the meaning of these terms.

² These calculations are based on the Monday before the Tuesday trial date.

* Modifies applicable Local Rule or Federal Rule of Civil Procedure.