

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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OSCAR LUNA, et al.,) Case No. 1:16-cv-00568-DAD-JLT
Plaintiffs,) Bakersfield, California
vs.) Tuesday, September 13, 2016
COUNTY OF KERN, et al.,) 9:36 A.M.
Defendants.) Hearing re: initial scheduling
conference.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JENNIFER L. THURSTON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 BAKERSFIELD, CALIFORNIA, TUESDAY, SEPTEMBER 13, 2016, 9:36 A.M.

2

3 THE COURT: Good morning. This is Judge Thurston.
4 We're on the record of in the case of Luna, et al. v. County of
5 Kern, et al., Case No. 1:16-cv-00568-DAD-JLT.

6 Who is on the line for the plaintiff?

7 MS. HULETT: Denise Hulett.

8 THE COURT: All right. And for the defendants?

9 MR. SKINNELL: Chris Skinnell, Your Honor.

10 MS. LEONI: And Marguerite Leoni, Your Honor.

11 THE COURT: All right. We're on calendar for the
12 scheduling conference. I have reviewed your joint report. I
13 have looked at the dates you proposed. I think I can make a
14 lot of them work, but not all of them. So I am going to go
15 through the dates that I'm going to assign for your case.

16 If you have any problems with any of the dates as I
17 give them to you let me know today so that we can work on them.
18 Judge Drozd does not like his case schedules to be modified, so
19 if we can try to pick a schedule that's going to work for you
20 best today, that would work best for all of us.

21 First, your initial disclosures will be made on
22 October 4th, 2016 or at least no later than that date. Your
23 pleading amendment deadline, so any motion to amend or any
24 stipulation to amend would be filed by January 20, 2017.

25 Actually one question I did have, I did notice in

1 your report that you are intending to run your expert and non-
2 expert discovery simultaneously. Ms. Hulett, was that your
3 intention?

4 MS. HULETT: Yes, Your Honor.

5 THE COURT: Mr. Skinnell or Ms. Leoni, do you also
6 agree with that?

7 MR. SKINNELL: Yes, Your Honor.

8 THE COURT: All right. So your non-expert discovery
9 cutoff and expert discovery cutoff would be February 10, 2017.
10 That will require your -- well that does raise one other
11 question. You are asking for the deadline to be in February,
12 but -- no, okay. That's fine.

13 So plaintiff will make their expert disclosure on
14 November 14, 2016, and defendants will make their expert
15 disclosure by December 14, 2016. And then the plaintiff will
16 disclose any rebuttal experts by January 13 of 2017.

17 Your non-dispositive motion filing deadline -- let's
18 see -- that would be, looks like you have proposed February
19 20th. That's a holiday. Does that make any difference whether
20 we set it on the holiday or the Friday before? Anyone?

21 MS. LEONI: No, not me.

22 MR. SKINNELL: Yeah. I think with e-filing --

23 THE COURT: All right. So we'll go ahead then and
24 set that on -- all right. That'll be on February 20th. You
25 could always file it whether we are here or not, so we'll leave

1 it on that date.

2 Your hearing then would be no later than March 27.
3 This is if it relates to expert discovery, which I anticipate
4 it would, if you wish to file a non-dispositive motion that
5 implicates something else -- for example, there was some
6 suggestion about maybe motions related to striking experts;
7 something like that that is non-dispositive but is substantive
8 beyond discovery issues, that would be -- need to be set before
9 Judge Drozd. You would need to contact his courtroom deputy
10 for dates in that event.

11 Your dispositive motion filing deadline I was going
12 to set on March 24th. I could set that earlier or I can set
13 that a little bit later. Mr. Skinnell and Ms. Leoni, do you
14 think you'll need to have any determinations on non-dispositive
15 motions before you file a dispositive motion?

16 MR. SKINNELL: Well yeah. I think probably that
17 would be useful. I'm sorry. I think I got a little bit mixed
18 up. You mentioned a March 27th date, but that was for
19 something other than what we proposed here. That was for the
20 hearing deadline --

21 THE COURT: Correct.

22 MR. SKINNELL: -- on the non-dispositive motions?

23 THE COURT: Right.

24 MS. LEONI: And so we -- and we had that for filing
25 oppositions. So it actually moves everything forward, right?

1 THE COURT: Right. The dates that you proposed, it
2 gives you -- for a non-dispositive motion, I just I'm not sure
3 why you felt that you would need so much time to oppose it. So
4 I've set a non-dispositive motion filing deadline on February
5 20th and deadline to hear it about a month later on March 27th,
6 which is just a typical motion schedule.

7 MR. SKINNELL: Yeah. All right.

8 THE COURT: Is there some reason why you felt like
9 you needed an --

10 MR. SKINNELL: That's -- no.

11 THE COURT: Okay.

12 MR. SKINNELL: No, I think that's fine. That's fine.

13 THE COURT: And then the dispositive motion filing
14 deadline -- and the other reason too, on your dispositive
15 motions, for example, Judge Drozd does not allow more than four
16 weeks from time of filing to the hearing. So if it turns out
17 that you get to that point and you feel like you need more
18 time, you will have to ask Judge Drozd to continue the hearing
19 date because he wants them set four weeks --

20 MS. LEONI: I think maybe the --

21 THE COURT: Uh-huh.

22 MS. LEONI: I think maybe the reason we had so much
23 time is it looks like we're doing non-dispositive motions and
24 dispositive simultaneously. And I think that we had shoved the
25 oppositions to 3/27 because right after filing non-dispositive

1 we needed to start working on dispositive motions. And I think
2 that might have been the rationale why we spaced it the way we
3 did.

4 THE COURT: Okay. So now we're going to separate
5 those out. So as Mr. Skinnell has indicated, we'll have
6 rulings on your non-dispositive motion before the dispositive
7 motion would have to be filed. I'm going to set your deadline
8 for filing your dispositive motion, looks like probably April
9 7. How does that sound?

10 MR. SKINNELL: That's fine, Your Honor.

11 THE COURT: All right. April 7, 2017. That will
12 give you a hearing date -- it's actually going to be a little
13 bit later because Judge Drozd hears these motions only twice a
14 month on the first and third Tuesday, which means you're going
15 to have until May 16 for hearing.

16 MS. LEONI: What was that date, Your Honor?

17 THE COURT: May 16. That'll be your hearing date for
18 your dispositive motions and Judge Drozd does hear -- generally
19 does hear these motions.

20 Your pretrial conference then is going to be it looks
21 like June 3rd. That would be at 3:30.

22 MS. HULETT: I'm sorry, Your Honor. This is Denise.
23 I didn't hear the date for the pretrial conference.

24 THE COURT: June 3rd.

25 MS. HULETT: Okay. Thank you.

1 THE COURT: Uh-huh. That'll give you a trial date
2 August 29. That's going to be tight for you. I know you
3 wanted to have the matter resolved before September. Is that
4 going to work? Ms. Hulett?

5 MS. HULETT: It is going to be tight.

6 THE COURT: We can shorten up some of these
7 deadlines. It looks like to me though either we're going to
8 have to go back and do your non-dispositive and dispositive
9 motions simultaneously or we'll have to shorten up your
10 discovery deadlines.

11 MR. SKINNELL: Your Honor, I think we -- from our
12 perspective, we could make the August 29 date work
13 understanding that we'll have to move quickly on the remedial
14 side if things don't go our way at trial. But --

15 THE COURT: Okay.

16 MR. SKINNELL: -- I think we can do that if the need
17 arises.

18 THE COURT: All right. Ms. Hulett, is that okay with
19 you then?

20 MS. HULETT: Yeah. It is going to be awfully tight.
21 All right. With the understanding that we could move quickly
22 on remedies, sure.

23 THE COURT: Well I also do want to point --

24 MS. LEONI: Your Honor, I believe --

25 THE COURT: Go ahead.

1 MS. LEONI: I believe the filing deadlines in a
2 remedial plan would open at the beginning of December --

3 THE COURT: Okay.

4 MS. LEONI: -- and they're all --

5 MR. SKINNELL: Actually it's even closer to the end.

6 MS. LEONI: Excuse me, Chris?

7 MR. SKINNELL: It's more like the end of December
8 even.

9 MS. LEONI: Right. But we also need to have time for
10 the registrar to make line changes if those are warranted. But
11 I think we can get it done under this schedule.

12 THE COURT: We could -- I mean really, we're probably
13 only talking about a week or two if you wanted to shorten up
14 your discovery, move it all back a couple weeks.

15 MS. LEONI: I think we can make this work.

16 THE COURT: Okay. The other issue I did notice, of
17 course, is that the parties have discussed in your statement
18 the issue of bifurcation. I know the defendants want to
19 consider -- or want the Court to consider the Jingles issue
20 first. That issue is something you'll need to bring up with
21 Judge Drozd either in your pretrial statement or in a motion
22 for bifurcation brought before that time.

23 If you decide to bring a motion for bifurcation on
24 that topic, that is the substantive issue that I was referring
25 to, that would be one you would need to set in front of Judge

1 Drozd, and as a reminder, he does hear law and motion matters
2 only on the first and third Tuesdays of the month. So you'll
3 want to plan that if that's your intention.

4 Is there -- what is the intention relating to
5 settlement conference? Mr. Skinnell and Ms. Leoni?

6 MR. SKINNELL: Yeah. Your Honor, I don't think at
7 this point we are in a position to commit to that. Our
8 client's a public entity and we would need to meet with them
9 and get authority to do that.

10 THE COURT: I'm not --

11 MR. SKINNELL: I won't rule it out, but at the moment
12 I don't know that we're in a position to agree to that.

13 THE COURT: Agree to setting one?

14 MS. LEONI: Your Honor, and part of that is just that
15 we -- in part, that is, we just received Judge Drozd's order on
16 the motion to dismiss and we haven't had time -- we can only
17 sit down with the client, you know, a couple times a month, if
18 at that and we just haven't had time to do that yet.

19 THE COURT: All right. I think I wasn't clear. I
20 wasn't suggesting that you should be in a posture at this time
21 to discuss settlement. I'm just talking about when we should
22 set your settlement conference. Judge Drozd does require you
23 to have one. So I'm really only talking about when would be a
24 good time to do that. He will not allow you to go to trial or
25 even -- he wants it before your pretrial conference. So you

1 must do it.

2 I suppose the only other alternative is if you decide
3 to engage in mediation on private resources, but at this time I
4 am obligated to set a settlement conference for you. It sounds
5 like probably would make most sense to do it after expert
6 discovery because, even though you're going to have to put out
7 those costs, you definitely are going to need to know what the
8 other experts are saying.

9 MS. LEONI: That was my thought, Your Honor.

10 THE COURT: So probably what we can do is maybe set
11 it sometime, I don't know, maybe in March of 2017. How's that
12 sound?

13 MS. HULETT: Yeah. That --

14 MS. LEONI: I'm wondering if we can do it even in
15 February, Your Honor, but we go into motion practice.

16 THE COURT: We could do February. The other issue
17 too of course is we can set it after dispositive motion if the
18 defendants feel that they are intending to make a run at an MSJ
19 in this case.

20 MR. SKINNELL: That might actually make the most
21 sense, Your Honor.

22 THE COURT: Okay. We will be pressed for time
23 because we only have a few weeks between your hearing on your
24 dispositive motion and the settlement conference -- I mean, I'm
25 sorry, the pretrial conference.

1 MS. HULETT: Your Honor, this is Denise Hulett. I
2 really do think before we expend extraordinary amounts of time
3 on dispositive motions that we should take a run at settlement
4 prior to that. So early March, late -- well, not -- our
5 deadline for those motions, for the non-dispositive motions.
6 Our discovery cutoff is December -- I mean February 10th, so
7 either sometime toward the end of February or early March I
8 think makes the most sense.

9 THE COURT: All right. We can always set it then and
10 if it turns out you get to that point and you feel like maybe
11 from the defense standpoint you're not really ready to talk
12 about it, or you are so optimistic about your planned
13 dispositive motion that you don't think that your client would
14 be inclined to settle at that time, I would entertain you
15 filing a stipulation to continue it.

16 The only thing I will not entertain is your
17 stipulation to vacate it. So assuming you haven't made other
18 type of efforts to settle the case in a formal setting, so by
19 mediation or some other private resolution.

20 So let's look at those dates then. If we did
21 something maybe -- I could do it either the week of February
22 13th, I could do it maybe March 1st or 2nd.

23 MR. SKINNELL: I think that would be a good time,
24 Your Honor.

25 THE COURT: Or the 3rd. The 3rd is a Friday. March

1 1st and 2nd, Wednesday, Thursday. Any preference on day of the
2 week?

3 MR. SKINNELL: No, Your Honor.

4 THE COURT: All right.

5 MS. HULETT: No.

6 THE COURT: Okay. So why don't we just go ahead then
7 and set it on March 1st. Is there a preference as to whether
8 it's morning or afternoon?

9 MS. HULETT: No, Your Honor.

10 THE COURT: Mr. Skinnell, Ms. Leoni, I forget, where
11 are you traveling from?

12 MS. LEONI: Yeah. You know, Your Honor, we kind of
13 need to get down there from the Bay Area.

14 THE COURT: Okay.

15 MS. LEONI: So afternoon if this works for Denise.
16 Afternoon would be kind of a better setting time for us.

17 THE COURT: Okay.

18 MS. HULETT: That's fine. I have no preference
19 really.

20 THE COURT: All right. We'll set it on March 1st at
21 1:30. At this time that would be set before me. If you have a
22 request or any preference that it be heard by someone who's not
23 already assigned to this case just let me know. I need about
24 60 days notice to have a magistrate judge -- some other
25 magistrate judge prepared to hear that case. But at this time,

1 unless I hear differently, it will be set before me. That will
2 occur in Bakersfield.

3 All right. Anything else that we can take care of
4 today? For the plaintiff?

5 MS. HULETT: No, Your Honor.

6 THE COURT: All right. Mr. Skinnell or Ms. Leoni,
7 for the defendants?

8 MR. SKINNELL: I don't think so, Your Honor.

9 THE COURT: All right. Then thank you. I'll go
10 ahead and issue this order later today.

11 MS. HULETT: Thank you very much, Your Honor.

12 THE COURT: Thank you.

13 MR. SKINNELL: Thank you, Your Honor.

14 MS. LEONI: Thank you, Your Honor.

15 (Whereupon the hearing in the above-entitled matter was
16 adjourned at 9:50 a.m.)

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18 CERTIFICATE

19 I certify that the foregoing is a correct transcript from
20 the electronic sound recording of the proceedings in the above-
21 entitled matter.

22

23 /s/ Jennifer Barris September 24, 2016

24 Jennifer Barris, Transcriber

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