

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN PENA, ET AL. ,

NO. 2:09-CV-01185-KJM -CKD

Plaintiff,

ORDER SETTING STATUS (PRETRIAL
SCHEDULING) CONFERENCE

vs.

WILFREDO CID ,

Defendant(s).

This action has been assigned to the Honorable Kimberly J. Mueller. As provided by
Rule 16 of the Federal Rules of Civil Procedure and Local Rule 240, IT IS HEREBY ORDERED
THAT:

1. A Status (Pretrial Scheduling) Conference is set for **October 19, 2011 at 10:00 AM**
before Judge Mueller in Courtroom Three. All parties to the action shall appear in person at the
Status Conference through lead counsel or on their own behalf if acting without counsel.
Requests for continuance of status conferences are not favored and will not be granted in the
absence of a true emergency and, in any event, will not be entertained unless made in writing at
least FIVE (5) DAYS prior to the scheduled conference.

2. Plaintiff(s) shall complete service of process on all parties within ninety (90) days of the
date of the filing of the complaint, to allow the court to comply with Federal Rule of Civil
Procedure 16(b).

1 3. Concurrently with the service of process, or as soon thereafter as possible, plaintiff(s)
2 shall serve upon each of the parties named in the complaint, and upon all parties subsequently
3 joined, a copy of this order, and shall file with the Clerk of the Court a certificate reflecting such
4 service. Any party who impleads a third-party defendant shall serve upon that party a copy of
5 this order and shall file with the Clerk of the Court a certificate reflecting such service.

6 4. In the event this action was originally filed in a state court and was thereafter removed
7 to this court, the removing party or parties shall, immediately following such removal, serve
8 upon each of the other parties named in the complaint, and upon all parties subsequently joined, a
9 copy of this order and shall file with the Clerk of the Court a certificate reflecting such service.

10 5. At least twenty-one (21) calendar days before the Status Conference is held, parties
11 shall confer as contemplated by Federal Rule of Civil Procedure 26 and Local Rule 240(b). The
12 parties shall submit, at least seven (7) days prior to the Status Conference, a Joint Status Report
13 that includes the Rule 26(f) discovery plan, with all named parties participating in the preparation
14 and completion of the report. The status report shall address the following matters:

- 15 (a) a brief summary of the claims and legal theories under which recovery is
16 sought or liability is denied;
- 17 (b) status of service upon all defendants and cross-defendants;
- 18 (c) possible joinder of additional parties;
- 19 (d) contemplated amendments to the pleadings, including to simplify or clarify
20 the issues and eliminate previous claims and defenses;
- 21 (e) the statutory bases for jurisdiction and venue;
- 22 (f) anticipated discovery and the scheduling of discovery, including:
 - 23 (1) what changes, if any, should be made in the timing, form, or
24 requirement for disclosures under Rule 26(a), including a statement
25 as to when disclosures under Rule 26(a)(1) were made or will be made,
26 and whether further discovery conferences should be held;
 - 27 (2) the subjects on which discovery may be needed, when discovery
should be completed, and whether discovery should be conducted
in phases;
 - (3) what changes, if any, should be made in the limitations on discovery
imposed under the Civil Rules and what other limitations, if any,
should be imposed;

- (4) the timing of the disclosure of expert witnesses and information required by Rule 26(a)(2); and
- (5) proposed dates for discovery cut-off.
- (g) contemplated dispositive or other motions and a proposed date by which all non-discovery motions shall be heard;
- (h) methods that can be used from the outset to avoid unnecessary proof and cumulative evidence, and anticipated limitations or restrictions on the use of testimony under Federal Rule of Evidence 702;
- (i) a proposed date for final pretrial conference;
- (j) a proposed date for trial, estimated number of days of trial, and whether any party has demanded a jury;
- (k) appropriateness of special procedures such as reference to a special master or agreement to try the matter before the assigned magistrate judge pursuant to 28 U.S.C. 636(c);
- (l) proposed modification of standard pretrial procedures because of the simplicity or complexity of the case;
- (m) whether the case is related to any other case pending in this district, including the bankruptcy court of this district;
- (n) optimal timing and method for settlement discussions, including whether a court-convened settlement conference should be scheduled, whether in the case of a jury trial the parties will stipulate to the trial judge acting as a settlement judge, and the parties' positions with respect to Voluntary Dispute Resolution (VDRP) as required by Local Rule 271(d); and
- (o) any other matters that may be conducive to the just and expeditious disposition of the case.

6. The Court, upon review of the joint status report and following the status conference, will issue a scheduling order governing the future course of the litigation. Counsel are directed to read that order carefully once it is issued. Requests to modify or vacate any date set forth in the order will not be favored and will not be granted absent good cause.

7. In the extraordinary event the parties are not able to file a joint status report, each party must file an individual status report and attach a declaration setting forth, in detail, the extraordinary circumstances that prevented the parties from filing a joint status report.

////

8. Any briefs or other papers that a party needs to file prior to the issuance of the scheduling order shall be filed in accordance with Local Rule 230(b). The court places a page limit of twenty (20) pages on all such moving papers. Opposition papers shall be filed in accordance with Local Rule 230(c). The court places a page limit of twenty (20) pages on oppositions, and a page limit of ten (10) pages for replies. Requests for page limit increases are disfavored, but if made must be filed with the court at least fourteen (14) days prior to the filing of the motion. Any party that does not oppose the granting of a motion shall file a statement of non-opposition in accordance with Local Rule 230(c). The failure to file an opposition or statement of non-opposition in accordance with Local Rule 230(c) may be deemed consent to the granting of the motion and the court may exercise its discretion to dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651, 652–53 (9th Cir. 1994).

9. Any non-governmental corporate party to an action in this court shall file a statement identifying all its parent corporations and listing any publicly held company that owns (10%) or more of the party's stock. Plaintiff(s) shall file the statement not later than fourteen (14) days after filing the complaint, and defendant(s) shall file the statement with the initial pleading(s) filed in the court. The parties shall supplement the statement within a reasonable time of any change in the information required by this paragraph.

10. Counsel are reminded of their continuing duty as provided by Local Rule 160 to immediately notify the courtroom deputy and chambers of any settlement or other disposition of the case. See also Local Rule 272.

Dated: August 25, 2011

/s/ Casey Schultz

Casey Schultz

Courtroom Deputy

Tel (916) 930-4193

Fax (916) 491-3922

e-mail: cschultz@caed.uscourts.gov

Proposed orders to kjmorders@caed.uscourts.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NO. 2:09-CV-01185-KJM -CKD

IVAN PENA, ET AL. ,

Plaintiff,

STANDING ORDER

vs.

WILFREDO CID ,

Defendant(s).

READ THIS ORDER CAREFULLY. IT PROVIDES GENERAL PROCEDURES CONTROLLING THIS CASE AND MAY DIFFER IN SOME RESPECTS FROM THE LOCAL RULES.

ADDITIONAL CALENDAR-RELATED INFORMATION IS AVAILABLE ON THE COURT CALENDAR PAGE FOR JUDGE MUELLER, BY CLICKING ON THE SHADED BOX IN THE UPPER RIGHT CORNER - "MORE CALENDARING INFORMATION."

This action has been assigned to Judge Kimberly J. Mueller. Both the court and the attorneys bear responsibility for the progress of litigation in the federal courts. To secure the just, speedy, and inexpensive determination of every action, Fed. R. Civ. P. 1, all counsel are ordered to familiarize themselves with the Federal Rules of Civil Procedure and Local Rules of the Eastern District of California.

IT IS HEREBY ORDERED:

1. DISCOVERY

(A) All discovery matters are referred to the assigned United States Magistrate Judge, who will hear all discovery disputes. (The Magistrate Judge's initials follow the Judge's initials next to the case number.) All discovery documents must include the words "DISCOVERY MATTER" in the caption to ensure proper routing. Counsel are directed to contact the Magistrate Judge's Courtroom Deputy Clerk to schedule matters for hearing. Please do not direct courtesy copies of these documents to this court.

The decision of the Magistrate Judge shall be final, subject to modification by the district court only where it has been shown that the Magistrate Judge's order is clearly erroneous or contrary to law. Any party may file and serve a motion for review and reconsideration before this court. See Local Rule 303(c). The moving party must file and serve the motion within fourteen (14) days of service of a written ruling or within fourteen (14) days of an oral ruling that the Magistrate Judge states will not be followed by a written ruling. The motion must specify which portions of the ruling are clearly erroneous or contrary to law and support the contention with points and authorities.

(B) Unless there is a likelihood that upon motion by a party the court would order that any or all discovery is premature, it is advisable for counsel to begin to conduct discovery actively before the Initial Scheduling Conference. At the very least, the parties shall comply fully with the letter and spirit of Federal Rule of Civil Procedure 26(a) and obtain and produce most of what would be produced in the early stage of discovery. At the Scheduling Conference the court will impose tight deadlines for the completion of discovery.

2. ELECTRONIC FILING

The United States District Court for the Eastern District of California requires electronic filing of documents in all new and pending civil cases in which parties are represented by counsel. A party proceeding without counsel may request authorization to file electronically.

1 Information about the court's Electronic Case Filing system ("ECF") is available on the court's
2 website at www.caed.uscourts.gov. See also Local Rule 133.

3 All manually filed documents (those documents excused from the electronic filing
4 requirements by the Local Rules) shall be served as otherwise required by the Federal Rules of
5 Civil Procedure or Local Rule 133.

6 3. COURTESY COPIES

7 Counsel are ordered to deliver clearly marked courtesy copies of all electronically
8 filed documents that exceed twenty-five (25) pages, and conformed courtesy copies of all
9 manually filed documents, to the clerk's office by either personally delivering them or sending
10 them by guaranteed overnight delivery. See Local Rule 133(f). If a courtesy copy is sent by
11 guaranteed overnight delivery, the sender shall notify the delivery service that the signature of the
12 recipient is not required.

13 4. MOTIONS

14 (A) Time For Filing And Hearing Motions: Motions shall be filed in
15 accordance with Local Rule 230 and this order.

16 This court hears motions on designated Wednesdays, **commencing at 10:00 a.m.**
17 **No supplemental brief shall be filed without prior leave of court.**

18 Prior to filing a motion in a case where the parties are represented by counsel,
19 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the
20 contemplated motion and any potential resolution. Plaintiff's counsel should carefully
21 evaluate the defendant's contentions as to deficiencies in the complaint and in many instances the
22 party considering a motion should agree to any amendment that would cure a curable defect.
23 Counsel should discuss the issues sufficiently so that if a motion is still necessary, the briefing is
24 directed to those substantive issues requiring resolution by the court. Counsel should solve
25 minor procedural or other non-substantive matters during the meet and confer.

26 /////

(B) Length And Format Of Motion Papers: Memoranda of Points and

Authorities in support of or in opposition to motions shall not exceed twenty (20) pages. Replies shall not exceed ten (10) pages. Only in rare instances and for good cause shown will the court grant an application to extend these page limitations.

If Times Roman font is used, the size must be no less than 12; if Courier is used, the size must be no less than 10. Footnotes shall be in typeface no more than one size smaller than text size and shall be used sparingly.

Pagination of exhibits: Multi-page exhibits shall be internally paginated, with the pagination for each exhibit beginning with the number one; references to those exhibits shall refer to the exhibit designation and page number, i.e., Ex. A at 7; Ex. B at 1, etc.

(C) Citations: Counsel are reminded that the basic purpose of a legal citation is to allow the reader to locate a cited source accurately and efficiently. Citations to case law shall identify the case being cited, and the specific page being referenced. Certain kinds of authority are considered more useful, or authoritative, than others. If more than one authority is cited in support of a proposition, these supporting authorities are to be listed such that the more authoritative ones appear first. Statutory references should identify, with specificity, which sections and subsections are being referenced (e.g., 42 U.S.C. § 1983). Statutory references that do not indicate specifically which section and subsection are being referred to (e.g., 18 U.S.C. § 2511, et seq.) are to be avoided. Citations to treatises, manuals, and other materials should similarly include the volume and the section being referenced.

5. PROPOSED ORDERS

Each party filing or opposing a motion or seeking the determination of any matter shall serve and lodge a Proposed Order setting forth the relief or action sought and a brief statement of the rationale for the decision with appropriate citations. The proposing party shall also submit a copy of the Proposed Order in either WordPerfect (strongly preferred) or Microsoft Word format via email to: kjmorders@caed.uscourts.gov.

6. EX PARTE APPLICATIONS GENERALLY

Ex parte applications are not heard, but are submitted by the court unless otherwise notified. The filer is required to contact the courtroom deputy and the opposing party prior to the filing of the ex parte application in order to advise that such request is being made. In addition, the document(s) must indicate whether or not an opposition will be filed. The filer shall include an affidavit indicating a satisfactory explanation for the following: (1) the need for the issuance of such an order, (2) the failure of the filer to obtain a stipulation for the issuance of such an order from other counsel or parties in the action, and (3) why such request cannot be noticed on the court's motion calendar as provided by Local Rule 230.

7. TROs AND INJUNCTIONS

Parties seeking emergency or provisional relief shall comply with Federal Rule of Civil Procedure 65 and Local Rule 230. The court will not rule on any application for such relief for at least twenty-four (24) hours after the party subject to the requested order has been served; such party may file opposing or responding papers in the interim. The parties shall lodge a courtesy copy with chambers of all papers relating to TROs and injunctions, conformed to reflect that it has been filed.

8. APPLICATIONS OR STIPULATIONS TO EXTEND THE TIME TO FILE ANY REQUIRED DOCUMENT OR TO CONTINUE ANY PRETRIAL OR TRIAL DATE

No stipulations extending scheduling requirements or modifying applicable rules are effective until and unless the court approves them. Both applications and stipulations must be filed well in advance of the date due and set forth:

(A) the existing due date or hearing date as well as the discovery cutoff date, the last date for hearing motions, the pre-trial conference date and the trial date;

(B) specific, concrete reasons supporting good cause for granting the extension. In this regard, a statement that an extension "will promote settlement" is insufficient. The requesting party or parties must indicate the status of ongoing negotiations, i.e., have

1 written proposals been exchanged? Is counsel in the process of reviewing a draft settlement

2 agreement? Has a mediator been selected?; and

3 (C) whether there have been prior requests for extensions, and whether these
4 were granted or denied by the court.

5 9. CASES REMOVED FROM STATE COURT

6 All documents filed in state court, including documents appended to the
7 complaint, answers and motions, must be refiled in this court as a supplement to the Notice of
8 Removal, if not already included. See 28 U.S.C. § 1447(a), (b). If the defendant has not yet
9 responded, the answer or responsive pleading filed in this court must comply with the Federal
10 Rules of Civil Procedure and the Local Rules of the Eastern District. If a motion was pending in
11 state court before the case was removed, it must be re-noticed in accordance with Local Rule 230.

12 10. SEALING

13 No document will be sealed without the prior approval of the court. Any party
14 requesting sealing shall file a request to seal as provided by Local Rule 141. See also Local Rule
15 140 (regarding redaction).

16 11. COMMUNICATIONS WITH CHAMBERS

17 Counsel shall not attempt to contact the court or its chambers staff by telephone
18 or by any other ex parte means, although counsel may contact the Courtroom Deputy with
19 appropriate inquiries. To facilitate communication with the Courtroom Deputy, counsel should
20 list their facsimile transmission numbers along with their telephone numbers and e-mail addresses
21 on the papers.

22 /////

23 /////

24 /////

25 /////

26 /////

12. NOTICE OF THIS ORDER

Counsel for plaintiff shall immediately serve this order on all parties, including any new parties to the action, unless this case came to the court by noticed removal, in which case defendant shall serve this order on all other parties.

IT IS SO ORDERED.

Dated: August 25, 2011

/s/ Kimberly J. Mueller
KIMBERLY J. MUELLER
U.S. District Judge

NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE

TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case despositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent to pursuant to 28 U.S.C. § 636(c) the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at www.caed.uscourts.gov for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk
501 I Street, Room 4–200
Sacramento, CA 95814

Office of the Clerk
2500 Tulare Street , Suite 1501
Fresno, CA 93721

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IVAN PENA, ET AL. ,
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. **2:09-CV-01185-KJM -CKD**

WILFREDO CID ,
Defendant(s)/Respondents(s).

IMPORTANT

**IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF
A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE
SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.**



**CONSENT TO JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: _____

Signature: _____

Print Name: _____

() Plaintiff/Petitioner () Defendant/Respondent

() Counsel for * _____



**DECLINE OF JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: _____

Signature: _____

Print Name: _____

() Plaintiff/Petitioner () Defendant/Respondent

() Counsel for * _____

**If representing more than one party, counsel must indicate name of each party responding.*

NOTICE OF AVAILABILITY
VOLUNTARY DISPUTE RESOLUTION

Pursuant to the findings and directives of Congress in 28 U.S.C. §§ 651 *et seq.*, and in recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full formal litigation, Local Rule 271 governs the referral of certain actions to the Voluntary Dispute Resolution Program ("VDRP") at the election of parties. Plaintiff or removing party is to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than fourteen (14) days after receiving notice from the Court. After filing of the original complaint or removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

It is the Court's intention that the VDRP shall allow the participants to take advantage of a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be determined by the Neutral and the parties.

PLEASE TAKE NOTICE that pursuant to Local Rule 271, *this Local Rule applies to* all civil actions pending before any District Judge or Magistrate Judge in the District except that actions in the following categories are exempt from presumptive inclusion: (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing *pro se*, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances. The fact that a case falls in a category that is exempt from the presumptive applicability of this Local Rule neither (1) precludes the parties to such a case from agreeing to participate in an Alternative Dispute Resolution ("ADR") process, nor (2) deprives the Court of authority to compel participation in an appropriate ADR proceeding.

Parties may elect Voluntary Dispute Resolution with the Court indicating that all parties to the action agree to submit the action to VDRP pursuant to Local Rule 271. Actions may not be assigned to VDRP over the objection of a party. (Copy of sample stipulation attached hereto.) **At the time of filing, a copy of the stipulation shall be provided to the VDRP Administrator designated below:**

Sacramento Cases

Voluntary Dispute Resolution
Program Administrator
United States District Court
501 "I" Street , Suite 4–200
Sacramento, CA 95814
(916) 930–4280

Fresno Cases

Voluntary Dispute Resolution
Program Administrator
United States District Court
2500 Tulare Street , Suite 1501
Fresno, CA 93721
(559) 499–5600

Attorney Identification
(include State Bar number)

Attorney(s) for:

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

IVAN PENA, ET AL.,
Plaintiff(s)

NO. ~~2:09-CV-01185-KJM-CKD~~

v.

WILFREDO CID,
Defendant(s)

STIPULATION TO ELECT
REFERRAL OF ACTION TO VOLUNTARY
DISPUTE RESOLUTION PROGRAM (VDRP)
PURSUANT TO LOCAL RULE 271

Pursuant to Local Rule 271, the parties hereby agree to submit the above-entitled action to
the Voluntary Dispute Resolution Program.

DATED: _____

Name:
Attorney(s) for Plaintiff(s)

Name:
Attorney(s) for Defendant(s)