

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IVAN PENA, et al.,

Plaintiffs,

v.

WILFREDO CID,

Defendant.

NO. CIV. S-09-1185 KJM CMK

STATUS (PRETRIAL SCHEDULING)  
ORDER

An initial scheduling conference was held in this case on August 30, 2012; Donald Kilmer appeared for plaintiffs; Anthony Hakl appeared for defendant. Having reviewed the parties' Joint Status Report filed on August 23, 2012, and discussed a schedule for the case with counsel at the hearing, the court makes the following orders:

I. SERVICE OF PROCESS

All named defendants have been served and no further service is permitted without leave of court, good cause having been shown.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

No further joinder of parties or amendments to pleadings is permitted without leave of court, good cause having been shown. *See* FED. R. CIV. P. 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

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1 III. JURISDICTION/VENUE

2 Jurisdiction is predicated upon 28 U.S.C. § 1331. Jurisdiction and venue are not  
3 disputed.

4 IV. DISCOVERY

5 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) have been  
6 completed. Any supplemental disclosures shall be completed within fourteen days. In this  
7 context, “completed” means that all discovery shall have been conducted so that all depositions  
8 have been taken and any disputes relative to discovery shall have been resolved by appropriate  
9 order if necessary and, where discovery has been ordered, the order has been obeyed. All  
10 motions to compel discovery must be noticed on the magistrate judge’s calendar in accordance  
11 with the local rules of this court. While the assigned magistrate judge reviews proposed  
12 discovery phase protective orders, requests to seal or redact are decided by Judge Mueller as  
13 discussed in more detail below.

14 V. DISCLOSURE OF EXPERT WITNESSES

15 All counsel are to designate in writing, file with the court, and serve upon all  
16 other parties the name, address, and area of expertise of each expert that they propose to tender  
17 at trial not later than **March 8, 2013**. The designation shall be accompanied by a written report  
18 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).  
19 By **March 29, 2013**, any party who previously disclosed expert witnesses may submit a  
20 supplemental list of expert witnesses who will express an opinion on a subject covered by an  
21 expert designated by an adverse party, if the party supplementing an expert witness designation  
22 has not previously retained an expert to testify on that subject. The supplemental designation  
23 shall be accompanied by a written report, which shall also comply with the conditions stated  
24 above.

25 Failure of a party to comply with the disclosure schedule as set forth above in all  
26 likelihood will preclude that party from calling the expert witness at the time of trial. An expert  
27 witness not appearing on the designation will not be permitted to testify unless the party offering  
28 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably

1 anticipated at the time the list was proffered; (b) that the court and opposing counsel were  
2 promptly notified upon discovery of the witness; and (c) that the witness was promptly made  
3 available for deposition.

4 For purposes of this scheduling order, an “expert” is any person who may be used  
5 at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence,  
6 which include both “percipient experts” (persons who, because of their expertise, have rendered  
7 expert opinions in the normal course of their work duties or observations pertinent to the issues  
8 in the case) and “retained experts” (persons specifically designated by a party to be a testifying  
9 expert for the purposes of litigation). A party shall identify whether a disclosed expert is  
10 percipient, retained, or both. It will be assumed that a party designating a retained expert has  
11 acquired the express permission of the witness to be so listed. Parties designating percipient  
12 experts must state in the designation who is responsible for arranging the deposition of such  
13 persons.

14 All experts designated are to be fully prepared at the time of designation to render  
15 an informed opinion, and give the bases for their opinion, so that they will be able to give full  
16 and complete testimony at any deposition taken by the opposing party. Experts will not be  
17 permitted to testify at trial as to any information gathered or evaluated, or opinion formed, after  
18 deposition taken subsequent to designation. All expert discovery shall be completed by **May 3,**  
19 **2013.**

20 **VI. MOTION HEARING SCHEDULE**

21 The parties anticipate that the case will be resolved on cross-motions for summary  
22 judgment.

23 All dispositive motions, except motions for continuances, temporary restraining  
24 orders or other emergency applications, shall be heard no later than **June 28, 2013**. The parties  
25 may obtain available hearing dates by calling Casey Schultz, the Courtroom Deputy, at (916)  
26 930-4193.

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1 All purely legal issues are to be resolved by timely pretrial motions. Local Rule  
2 230 governs the calendaring and procedures of civil motions; the following provisions also  
3 apply:

4 (a) The opposition and reply must be filed by 4:00 p.m. on the day due; and

5 (b) When the last day for filing an opposition brief falls on a legal holiday, the  
6 opposition brief shall be filed on the last court day immediately preceding  
7 the legal holiday.

8 Failure to comply with Local Rule 230(c), as modified by this order, may be deemed consent to  
9 the motion and the court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651,  
10 652-53 (9th Cir. 1994).

11 The court places a page limit of twenty (20) pages on all moving papers, twenty  
12 (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases  
13 must be made through the courtroom deputy clerk at least fourteen (14) days prior to the filing of  
14 the motion.

15 Prior to filing a motion in a case in which the parties are represented by counsel,  
16 counsel shall engage in a pre-filing meet and confer to discuss thoroughly the substance of the  
17 contemplated motion and any potential resolution. Plaintiff's counsel should carefully evaluate  
18 the defendant's contentions as to deficiencies in the complaint and in many instances the party  
19 considering a motion should agree to any amendment that would cure a curable defect. Counsel  
20 should discuss the issues sufficiently so that if a motion of any kind is filed, including for  
21 summary judgment, the briefing is directed only to those substantive issues requiring resolution  
22 by the court. Counsel should resolve minor procedural or other non-substantive matters during  
23 the meet and confer. **A notice of motion shall contain a certification by counsel filing the**  
24 **motion that meet and confer efforts have been exhausted, with a brief summary of meet**  
25 **and confer efforts.**

26 The parties are reminded that a motion *in limine* is a pretrial procedural device  
27 designed to address the admissibility of evidence. The court looks with disfavor upon  
28 dispositional motions presented at the Final Pretrial Conference or at trial in the guise of motions

1 *in limine*. Although all motions *in limine* must be filed in conjunction with the joint pretrial  
2 statement, the court will hear only those motions it has identified to counsel before the hearing  
3 date.

4 The parties are cautioned that failure to raise a dispositive legal issue that could  
5 have been tendered to the court by proper pretrial motion prior to the dispositive motion cut-off  
6 date may constitute waiver of such issue.

7 VII. SEALING

8 No document will be sealed, nor shall a redacted document be filed, without the  
9 prior approval of the court. If a document for which sealing or redaction is sought relates to the  
10 record on a motion to be decided by Judge Mueller, the request to seal or redact should be  
11 directed to her and not the assigned Magistrate Judge. All requests to seal or redact shall be  
12 governed by Local Rules 141 (sealing) and 140 (redaction); protective orders covering the  
13 discovery phase of litigation shall not govern the filing of sealed or redacted documents on the  
14 public docket. The court will only consider requests to seal or redact filed by the proponent of  
15 sealing or redaction. If a party plans to make a filing that includes material an opposing party  
16 has identified as confidential and potentially subject to sealing, the filing party shall provide the  
17 opposing party with sufficient notice in advance of filing to allow for the seeking of an order of  
18 sealing or redaction from the court.

19 VIII. SETTLEMENT CONFERENCE

20 No settlement conference is currently scheduled. A settlement conference may be  
21 set anytime at the parties' request. In the event that a settlement conference date or referral to  
22 the Voluntary Dispute Resolution Program (VDRP) is requested, the parties shall file said  
23 request jointly, in writing. The parties should advise the court whether they will stipulate to the  
24 trial judge acting as settlement judge and waive disqualification by virtue thereof.

25 Counsel are instructed to have a principal with full settlement authority present at  
26 any Settlement Conference or to be fully authorized to settle the matter on any terms. At least  
27 seven (7) calendar days before the Settlement Conference, counsel for each party shall submit to  
28 the chambers of the settlement judge a confidential Settlement Conference Statement. Such

statements are neither to be filed with the Clerk nor served on opposing counsel. Each party, however, shall serve notice on all other parties that the statement has been submitted. If the settlement judge is not the trial judge, the Settlement Conference Statement shall not be disclosed to the trial judge.

IX. ADDITIONAL DATES

Any additional dates will be set at a further status conference if needed.

X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER

The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court upon a showing of good cause. Agreement by the parties pursuant to stipulation alone does not constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or counsel does not constitute good cause.

XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

This Status Order will become final without further order of the court unless objections are filed within fourteen (14) *calendar* days of service of this Order.

IT IS SO ORDERED.

DATED: September 18, 2012.

  
UNITED STATES DISTRICT JUDGE