

**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

shall respond to the following items by corresponding numbered

paragraphs:

Form and Contents of the Joint Scheduling Report

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

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

3. A proposed deadline for amendments to pleadings.

4. A summary detailing the uncontested and contested facts.

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

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

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

(a) A date for the exchange of initial disclosures

required by Fed.R.Civ.P. 26(a)(1), or a statement that

disclosures have already been exchanged;

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

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

(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.

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

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

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

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

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

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

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

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

9. Dates agreed to by all counsel for:

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

All of these dates should be considered firm dates.

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

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

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

12. An estimate of the number of trial days required. When

¹Motions to compel discovery, amend, remand, etc.

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

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

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

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

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

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

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

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

UNITED STATES MAGISTRATE JUDGE

/s/ SHEILA K. OBERTO

**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 non jury 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 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

JEFF SYLVESTER, ET AL. ,
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. **1:11-CV-02137-AWI-SKO**

KAMALA D. HARRIS, ET AL. ,
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**

JEFF SYLVESTER, ET AL.,
Plaintiff(s)

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

v.

KAMALA D. HARRIS, ET AL.,
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)