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

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SECURE INVESTMENT SERVICES, INC.; )  
AMERICAN FINANCIAL SERVICES, INC.; )  
LYNDON GROUP, INC.; KIMBERLY )  
SNOWDEN; LINDA NEUHAUS, in her )  
capacity as the administrator and )  
personal representative of the )  
estate of Donald Neuhaus, )  
 )  
Defendants. )

2:07-cv-01724-GEB-CMK  
STATUS (PRETRIAL  
SCHEDULING) ORDER

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MICHAEL J. QUILLING, )  
 )  
Receiver, )  
 )  
v. )  
 )  
BAZZLE JOHN WILSON, )  
 )  
Claimant. )

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1 The status (pretrial scheduling) conference scheduled for  
2 June 9, 2009, is vacated since the parties' Joint Status Report  
3 ("JSR") indicates that the following Order should issue.<sup>1</sup>

4 SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

5 No further service, joinder of parties or amendments to  
6 pleadings is permitted, except with leave of Court, good cause having  
7 been shown.

8 DISCOVERY

9 All discovery shall be completed by January 9, 2009. In  
10 this context, "completed" means that all discovery shall have been  
11 conducted so that all depositions have been taken and any disputes  
12 relative to discovery shall have been resolved by appropriate orders,  
13 if necessary, and, where discovery has been ordered, the order has  
14 been complied with or, alternatively, the time allowed for such  
15 compliance shall have expired.<sup>2</sup>

16 Each party shall comply with Federal Rule of Civil Procedure  
17 26(a)(2)'s initial expert witness disclosure and report requirements  
18 on or before October 10, 2008, and with any rebuttal expert disclosure  
19 authorized under the Rule on or before November 10, 2008.

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23 <sup>1</sup> A scheduling conference need not be held in every action.  
24 Fed. R. Civ. P. 16(b); 1993 Advisory Committee Notes to Fed. R. Civ. P.  
25 16(b) ("[W]hile a scheduling order is mandated, a scheduling conference  
26 is not.").

27 <sup>2</sup> The parties are advised that the Magistrate Judges in the  
28 Eastern District are responsible for resolving discovery disputes. See  
Local Rule 72-302(c)(1). Accordingly, counsel shall direct all  
discovery-related matters to the Magistrate Judge assigned to this case.  
A party conducting discovery near the discovery "completion" date runs  
the risk of losing the opportunity to have a judge resolve discovery  
motions pursuant to the Local Rules.

MOTION HEARING SCHEDULE

The last hearing date for motions shall be March 9, 2009, at 9:00 a.m.<sup>3</sup>

Motions shall be filed in accordance with Local Rule 78-230(b). Opposition papers shall be filed in accordance with Local Rule 78-230(c). Failure to comply with this local rule may be deemed consent to the motion and the Court may dispose of the motion summarily. Brydges v. Lewis, 18 F.3d 651, 652-53 (9th Cir. 1994). Further, failure to timely oppose a summary judgment motion may result in the granting of that motion if the movant shifts the burden to the nonmovant to demonstrate a genuine issue of material fact remains for trial. Cf. Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995).

Absent highly unusual circumstances, reconsideration of a motion is appropriate only where:

- (1) The Court is presented with newly discovered evidence that could not reasonably have been discovered prior to the filing of the party's motion or opposition papers;
  - (2) The Court committed clear error or the initial decision was manifestly unjust; or
  - (3) There is an intervening change in controlling law.
- A motion for reconsideration based on newly discovered evidence shall set forth, in detail, the reason why said evidence could not reasonably have been discovered prior to the filing of the party's motion or opposition papers. Motions for reconsideration shall comply with Local Rule 78-230(k) in all other respects.

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<sup>3</sup> This time deadline does not apply to motions for continuances, temporary restraining orders, emergency applications, or motions under Rule 16(e) of the Federal Rules of Civil Procedure.

1 The parties are cautioned that an untimely motion  
2 characterized as a motion in limine may be summarily denied. A motion  
3 in limine addresses the admissibility of evidence.

4 FINAL PRETRIAL CONFERENCE

5 The final pretrial conference is set for May 11, 2009, at  
6 2:30 p.m. The parties are cautioned that the lead attorney who WILL  
7 TRY THE CASE for each party shall attend the final pretrial  
8 conference. In addition, all persons representing themselves and  
9 appearing in propria persona must attend the pretrial conference.

10 The parties are warned that non-trialworthy issues could be  
11 eliminated sua sponte "[i]f the pretrial conference discloses that no  
12 material facts are in dispute and that the undisputed facts entitle  
13 one of the parties to judgment as a matter of law." Portsmouth Square  
14 v. S'holders Protective Comm., 770 F.2d 866, 869 (9th Cir. 1985).

15 The parties shall file a JOINT pretrial statement no later  
16 than seven (7) calendar days prior to the final pretrial conference.<sup>4</sup>  
17 The joint pretrial statement shall specify the issues for trial and  
18 shall estimate the length of the trial.<sup>5</sup> The Court uses the parties'  
19 joint pretrial statement to prepare its final pretrial order and could  
20 issue the final pretrial order without holding the scheduled final  
21 pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th

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23 <sup>4</sup> The failure of one or more of the parties to participate in  
24 the preparation of any joint document required to be filed in this case  
25 does not excuse the other parties from their obligation to timely file  
26 the document in accordance with this Order. In the event a party fails  
27 to participate as ordered, the party or parties timely submitting the  
28 document shall include a declaration explaining why they were unable to  
obtain the cooperation of the other party.

<sup>5</sup> **The joint pretrial statement shall also state how much time  
each party desires for voir dire, opening statements, and closing  
arguments.**

1 Cir. 1999) ("There is no requirement that the court hold a pretrial  
2 conference."). The final pretrial order supersedes the pleadings and  
3 controls the facts and issues which may be presented at trial. Issues  
4 asserted in pleadings which are not preserved for trial in the final  
5 pretrial order cannot be raised at trial. Hotel Emp., et al. Health  
6 Tr. v. Elks Lodge 1450, 827 F.2d 1324, 1329 (9th Cir. 1987) ("Issues  
7 not preserved in the pretrial order are eliminated from the action.");  
8 Valley Ranch Dev. Co. v. F.D.I.C., 960 F.2d 550, 554 (5th Cir. 1992)  
9 (indicating that an issue omitted from the pretrial order is waived,  
10 even if it appeared in the pleading); cf. Raney v. Dist. of Columbia,  
11 892 F. Supp. 283 (D.D.C. 1995) (refusing to modify the pretrial order  
12 to allow assertion of a previously-pled statute of limitations  
13 defense); Olympia Co. v. Celotex Corp., 597 F. Supp. 285, 289 (E.D.  
14 La. 1984) (indicating that "[a]ny factual contention, legal  
15 contention, any claim for relief or defense in whole or in part, or  
16 affirmative matter not set forth in [the pretrial statement] shall be  
17 deemed . . . withdrawn, notwithstanding the contentions of any  
18 pleadings or other papers previously filed [in the action]").

19 If possible, at the time of filing the joint pretrial  
20 statement counsel shall also email it in a format compatible with  
21 WordPerfect to: geborders@caed.uscourts.gov.

22 TRIAL SETTING

23 Trial is set for August 18, 2009, commencing at 9:00 a.m.

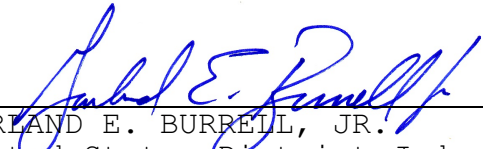
24 MISCELLANEOUS

25 The parties are reminded that pursuant to Federal Rule of  
26 Civil Procedure 16(b), the Status (Pretrial Scheduling) Order **shall**  
27 **not be modified except by leave of Court upon a showing of good cause.**  
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1 Counsel are cautioned that a mere stipulation by itself to change  
2 dates does not constitute good cause.

3 IT IS SO ORDERED.

4 Dated: June 5, 2008

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8 GARLAND E. BURRELL, JR.  
9 United States District Judge  
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