

FILED

AUG - 8 2000

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHARISSE SHUMATE, et al.,

NO. CIV. S-95-0619 WBS JFM

Plaintiffs,

v.

ORDER

PETE WILSON, et al.,

Defendants.

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By this court's February 3, 2000 order, plaintiffs were afforded six months time within which to either petition to restore this matter to the trial calendar or stipulate to dismissal. On the final day provided, July 31, 2000, the plaintiff class moved for "Partial Restoration to the Trial Docket, Reopening of Discovery and Other Relief."¹ The plaintiff sub-class filed a related motion for a "Continuance of Time to Determine Whether to Request Restoration to the Trial Docket and for Reopening of Discovery."

¹ Plaintiffs' motion is deceptively captioned in that they seek only to reopen discovery, and do not seek, partially or otherwise, to restore this matter to the trial docket.

1 Plaintiffs' requests are denied. Discovery is not
2 needed to develop a basis to justify rescinding the settlement
3 agreement insofar as the court has already indicated that it will
4 rescind the agreement. Further, discovery closed over three
5 years ago. Consequently, reopening discovery requires amending
6 the Pretrial Order and the Status (Pretrial Scheduling) Order.
7 Plaintiffs have not made the requisite showing, and the court
8 therefore exercises its discretion to deny their motion. See
9 Fed. R. Civ. P. 16(b) & (e). Finally, this case has been pending
10 since 1995. Considering that cases should be brought to trial
11 within three years, this court is already subject to criticism
12 for having allowed this case to remain pending for over five
13 years. See 28 U.S.C. § 476 (requiring the reporting of all civil
14 cases pending over three years).


15 IT IS THEREFORE ORDERED that:

- 16 (1) The plaintiff class' motion to reopen discovery is DENIED.
17 (2) The plaintiff sub-class' motion for a "Continuance of Time
18 to Determine Whether to Request Restoration to the Trial
19 Docket and for Reopening of Discovery" is DENIED.²
20 (3) Pursuant to this court's Order of February 3, 2000, the
21 settlement agreement is hereby VACATED AND SET ASIDE, and
22 the matter is set for trial on October 17, 2000, at 9:00
23 a.m. The Pretrial Order entered on June 3, 1997, remains in
24 effect.

25
26 ² The plaintiff sub-class alternatively requests that the
27 court confirm the settlement agreement as to the sub-class and
28 enter dismissal as to the sub-class. If the plaintiff sub-class
and defendants stipulate to that effect, the court will sign said
stipulation. Otherwise, the plaintiff sub-class may file a
motion.

1 (4) Within ten days from the file-stamped date of this order,
2 defendants shall notify the court as to whether, in light of
3 this order, defendants intend to modify their pending Motion
4 for Restoration of Attorneys' Fees.

5 DATED: August 7, 2000

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7 WILLIAM B. SHUBB
8 UNITED STATES DISTRICT JUDGE
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United States District Court
for the
Eastern District of California
August 8, 2000

* * CERTIFICATE OF SERVICE * *

2:95-cv-00619

Shumate

v.

Wilson

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on August 8, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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