

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**JOHN EAKIN,**

**Plaintiff,**

**v.**

**AMERICAN BATTLE MONUMENTS  
COMMISSION, et al.**

**Defendants.**

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**SA-12-CA-1002 FB (HJB)**

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**JOINT MOTION TO RESET SCHEDULING ORDER DEADLINES**

Both the Plaintiff and the Defendant in this action request that the scheduling order deadlines be reset until after the filing of the amended complaint.

1. The Court ordered the plaintiff to file an amended complaint no later than 60 days after dismissing the suit and granting leave to amend. (Docket No. 34 filed August 5, 2013). The parties calculate the 60th day to be October 3, 2013. No amended complaint has yet been filed as of today's date, September 6, 2013.

2. On August 19, 2013, the parties received a scheduling order (Docket No. 36) asking the parties to provide a proposed scheduling order by September 9, 2013 per F.R.C.P. Rule 16(b). Although the parties wish to comply, the absence of an amended complaint precludes full observance of the deadlines.

3. Local Rule CV-16(c) provides that not later than 60 days after any appearance of any defendant, the parties shall submit a proposed scheduling order to the court and that the parties first shall confer as required by F.R.C.P. Rule 26(f).

4. The plaintiff has not yet designated any and all defendants via an amended complaint which means the Rule 26 conference will be premature and may not include all the parties.

5. Furthermore, the Rule 26 conference requires at Section (f)(2) that the parties confer on the "nature and basis of the claims and defenses". Without the amended complaint, the full extent of the claims and any defenses thereto will not be available for discussion at the conference.

WHEREFORE, based on the above, the parties pray that the scheduling order be delayed until after the filing and service of the amended complaint.

Respectfully Submitted,

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Attorney for Defendants

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**Defendants.**

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**ORDER ON JOINT MOTION TO RESET SCHEDULING ORDER DEADLINES**

The Court considers the foregoing Motion and GRANTS the same. The Scheduling

Order shall be delayed until after the filing and service of the amended complaint.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2013

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Henry J. Bemporad  
United States Magistrate Judge