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

MARK LAWLEY,

Plaintiff,

v.

**CALIFORNIA DEPARTMENT OF
DEVELOPMENTAL SERVICES and
DOES 1-100, inclusive,**

Defendant.

1:12-cv-01617-LJO-BAM

**STIPULATION FOR MODIFICATION
OF PRE-TRIAL SCHEDULING ORDER**

Based on the Stipulation of the parties (Doc. 17), and for good cause shown, the Court modifies the Scheduling Order as follows:

1. The non-expert discovery cutoff is continued to February 14, 2014;
2. The expert discovery cutoff is continued to March 21, 2014;
3. The deadline to file non-dispositive motions is March 28, 2014;
4. All non-dispositive motions shall be set for hearing on or before April 25, 2014;
5. The deadline to file dispositive motions is May 1, 2014;
6. All dispositive motions shall be set for hearing on or before June 12, 2014;
7. A settlement conference is set for September 18, 2013, at 10:00 AM, in Courtroom 8, before United States Magistrate Judge Barbara A. McAuliffe;

1 8. A pre-trial conference is set for August 6, 2014, at 8:15 AM, in Courtroom 4, before
2 United States District Judge Lawrence J. O'Neill;

3 9. A ten-to-fourteen day jury trial is set for September 16, 2014, at 8:30 AM, in
4 Courtroom 4, before United States District Judge Lawrence J. O'Neill.

5 Pursuant to 28 U.S.C. § 636(c), the parties have not consented to conduct all further
6 proceedings in this case, including trial, before the Honorable Barbara A. McAuliffe, United
7 States Magistrate Judge.

8 District Court Judges of the Fresno Division of the Eastern District of California now have
9 the heaviest caseload in the nation. As a result, each District Judge schedules multiple trials to
10 begin on each available trial date. Civil cases will "trail" and begin as soon as a courtroom is
11 cleared. The law requires that the Court give any criminal trial priority over civil trials or any
12 other matter. A civil trial set to begin while a criminal trial is proceeding will trail the completion
13 of the criminal trial.

14 The Court can not give advance notice of which cases will trail or for how long because
15 the Court does not know which cases actually will go to trial or precisely how long each will last.
16 Once your trial date arrives, counsel, parties and witnesses must remain on 24 hour stand-by until
17 a court opens. Since continuance to a date certain will simply postpone, but not solve, the
18 problem, continuances of any civil trial under these circumstances will no longer be entertained,
19 absent a specific and stated finding of good cause. The Court will use its best efforts to mitigate
20 the effect of the foregoing and to resolve all cases in a timely manner.

21 One alternative is for the parties to consent to a United States Magistrate Judge
22 conducting all proceedings, including trial and entry of final judgment, pursuant to § 28 U.S.C.
23 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The Eastern District Magistrate
24 Judges, all experienced former trial lawyers, use the same jury pool and same court facilities as
25 United States District Court Judges. Since Magistrate Judges do not conduct felony trials, they
26 have greater flexibility and schedule *firm trial dates*. Judgment entered by a United States
27 Magistrate Judge is appealable directly to the United States Court of Appeal for the Ninth Circuit.
28 (While there are scheduling benefits to consenting to Magistrate Judge jurisdiction, substantive

1 rulings and decisions will not be affected by whether a party chooses to consent or not.)

2 As another response to its large caseload, the Fresno Division of the Eastern District of
3 California is assigning cases, whenever possible, to Article III District Court Judges from around
4 the nation as Visiting Judges. Pursuant to the Local Rules, Appendix A, such reassignments will
5 be random, and the parties will receive no advance notice before their case is reassigned to an
6 Article III District Court Judge from outside of the Eastern District of California.

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8 IT IS SO ORDERED.

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Dated: August 2, 2013

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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