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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA  
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9 ROBERT FELIX, et al.,

10 Plaintiffs,

11 v.

12 DEPARTMENT OF  
13 DEVELOPMENTAL SERVICES, et  
al.,

14 Defendants.

15 **Case No. 1:13-cv-00561 LJO SKO**

16 **SCHEDULING ORDER (Fed. R. Civ. P 16)**

17 Initial Disclosures: October 15, 2013

18 Expert Disclosure: September 25, 2014

19 Rebuttal Disclosures October 9, 2014

20 Discovery Deadlines:

21 Non Expert: August 21, 2014

22 Expert: November 18, 2014

23 Non-Dispositive Motion Deadlines:

24 Filing: December 31, 2014

25 Dispositive Motion Deadlines:

26 Filing: December 31, 2014

27 Settlement Conference:

28 September 25, 2014,, at 10:00 a.m.

Courtroom 7

Pre-Trial Conference:

May 7, 2015, at 8:30 p.m.

Courtroom 4

Trial: June 23, 2015, at 8:30 a.m.

Courtroom 4

(10-15 Trial Days)

1        This Court conducted a scheduling conference on September 13, 2013. Counsel Dean  
2        Gordon, Esq., and Kevin Schwin, Esq., appeared on behalf of Plaintiff. Counsel Mary Horst,  
3        Esq., appeared on behalf of Defendant. Pursuant to F.R.Civ.P. 16(b), this Court sets a schedule  
4        for this action.

5        **1.        Important Information about Scheduling and Trailing**

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

12       Without the ability to definitively predict which cases will actually go to trial or precisely  
13       how long each will last, the Court cannot provide advance notice of which cases will trail or for  
14       how long. Once the trial date arrives, counsel, parties and witnesses must remain on 24-hour  
15       standby until a court is available. Since continuance to a date certain will simply postpone, but  
16       not solve, the problem, continuances of any civil trial under these circumstances will no longer be  
17       entertained, absent a specific and stated finding of good cause.

18       The parties are also informed that in response to its large caseload, the Fresno Division of  
19       the Eastern District of California is assigning cases, whenever possible, to Article III District  
20       Court Judges from around the nation as Visiting Judges. Pursuant to the Local Rules, Appendix  
21       A, such reassessments will be random, and the parties will receive no advance notice before their  
22       case is reassigned to an Article III District Court Judge from outside of the Eastern District of  
23       California.

24       The parties are reminded that they may ***consent to a United States Magistrate Judge*** to  
25       conduct all proceedings, including trial and entry of final judgment, pursuant to 28 U.S.C. §  
26       636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The Eastern District Magistrate  
27       Judges, all experienced former trial lawyers, use the same jury pool and same court facilities as  
28       United States District Court Judges. Since Magistrate Judges do not conduct felony trials, they

1 have greater flexibility and can schedule ***firm trial dates***. Judgment entered by a United States  
2 Magistrate Judge is appealable directly to the United States Court of Appeals for the Ninth  
3 Circuit<sup>1</sup>.

4 **2. Current Status of Consent to the Magistrate Judge Jurisdiction**

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 Sheila K. Oberto, U.S. Magistrate  
7 Judge.

8 **3. Amendment to the Parties' Pleadings**

9 The parties do not anticipate any amendments to the pleadings at this time. Any motions  
10 or stipulations requesting leave to amend the pleadings must be filed by no later than November  
11 15, 2013. The parties are advised that filing motions and/or stipulations requesting leave to  
12 amend the pleadings by November 15, 2013 does not reflect on the propriety of the amendment or  
13 imply good cause to modify the existing schedule, if necessary. All proposed amendments must  
14 (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any  
15 modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
16 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not  
17 (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or  
18 (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

19 **4. F.R.Civ.P. 26(a)(1) Initial Disclosures**

20 Initial disclosures shall be completed on or before October 15, 2013.

21 **5. Discovery Cutoffs and Limits**

22 The parties are ordered to complete all discovery pertaining to non-experts on or before  
23 August 21, 2014 and all discovery pertaining to experts on or before November 18, 2014.

24 The parties agreed that they will be allowed 35 interrogatories, including sub-parts, per  
25 party, and 35 requests for admission, including sub-part, per party. (Doc. 22, 16, section (e).)<sup>2</sup>

26 <sup>1</sup> While there are scheduling benefits to consenting to Magistrate Judge jurisdiction, substantive rulings and decisions  
27 will not be affected whether or not a party chooses to consent.

28 <sup>2</sup> Although the parties agreed that there would be no limit on the number of document requests, this does not  
represent a change from the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 34.

1 The parties also agreed that the time to depose each individual deponent would be 7 hours of on-  
2 the-record time. (Doc. 22, 16, section (e)(i). The parties' agreement is approved and is  
3 incorporated by reference into this order.

4 The parties are directed to disclose all expert witnesses, in writing, on or before  
5 September 25, 2014, and to disclose all rebuttal experts on or before October 9, 2014. The  
6 written designation of retained and non-retained experts shall **be made pursuant to Fed. R. Civ.**  
7 **P. Rule 26(a)(2), (A), (B) and (C) and shall include all information required thereunder.**  
8 Failure to designate experts in compliance with this order may result in the Court excluding the  
9 testimony or other evidence offered through such experts that are not disclosed pursuant to this  
10 order.

11 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to  
12 experts and their opinions. Experts must be fully prepared to be examined on all subjects and  
13 opinions included in the designation. Failure to comply will result in the imposition of sanctions,  
14 which may include striking the expert designation and preclusion of expert testimony.

15 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
16 disclosures and responses to discovery requests will be strictly enforced.

17 **6. Pre-Trial Motion Schedule**

18 a. Non-Dispositive Pre-Trial Motions

19 Unless prior leave of the Court is obtained, all moving and opposition briefs or legal  
20 memorandum in civil cases before Judge Oberto shall not exceed twenty-five (25) pages. Reply  
21 briefs by the moving party shall not exceed ten (10) pages. These page limitations do not include  
22 exhibits. Briefs that exceed this page limitation, or that are sought to be filed without leave, may  
23 not be considered by the Court.

24 All non-dispositive pre-trial motions, including any discovery motions, shall be filed by  
25 no later than 4:00 p.m. on December 31, 2014 and heard on or before February 11, 2015. Non-  
26 dispositive motions are heard on Wednesdays at 9:30 a.m., before the Honorable Sheila K.  
27 Oberto, United States Magistrate Judge in Courtroom 7. In scheduling such motions, the parties  
28 shall comply with Local Rule 230. **Counsel must comply with Local Rule 251 with respect to**

1      **discovery disputes or the motion will be denied without prejudice and dropped from**  
2      **calendar.** The Magistrate Judge may grant applications for an order shortening time pursuant to  
3      Local Rule 144(e). However, if counsel does not obtain an order shortening time, the notice of  
4      motion *must* comply with Local Rule 251. In addition to filing a joint statement electronically, a  
5      copy of the joint statement shall also be sent to Judge Oberto's chambers by email to  
6      SKOorders@caed.uscourts.gov.

7              Counsel may request to appear and argue non-dispositive motions by telephone, provided  
8      a written request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than  
9      five (5) court days before the noticed hearing date and such request is granted. In the event that  
10     more than one counsel requests to appear by telephone, then it shall be the obligation of the  
11     moving part(ies) to arrange and originate a conference call to the court. Prior to filing a non-  
12     dispositive motion the parties are ORDERED to meet, in person or by telephone, and confer to  
13     discuss the issues to be raised in the motion.

14              b.      Dispositive Pre-Trial Motions

15              All dispositive pre-trial motions shall be filed no later than December 31, 2014 and heard  
16      no later than March 18, 2015, in Courtroom 4 before the Honorable Lawrence J. O'Neill, United  
17      States District Judge. In scheduling such motions, counsel shall comply with **Fed.R.Civ.P 56**  
18      and **Local Rules 230 and 260.**

19              **Motions for Summary Judgment or Summary Adjudication:** Prior to filing a motion  
20      for summary judgment or motion for summary adjudication the parties are ORDERED to meet  
21      and confer, in person or by telephone, to discuss the issues to be raised in the motion.

22              The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment  
23      where a question of fact exists, 2) determine whether the respondent agrees that the motion has  
24      merit in whole or in part, 3) discuss whether issues can be resolved without the necessity for  
25      briefing, 4) narrow the issues for review by the court, 5) explore the possibility of settlement  
26      before the parties incur the expense of briefing a summary judgment motion, and 6) arrive at a  
27      joint statement of undisputed facts.

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The moving party shall initiate the meeting and provide a draft of the joint statement of undisputed facts. **In addition to complying with the requirements of Local Rule 260 the moving party shall file a joint statement of undisputed facts.**

In the notice of motion, the moving party shall certify that the parties have met and conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.

## 7. Pre-Trial Conference Date

The pretrial conference is set for May 7, 2015, at 8:15 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United States District Judge.

The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2)**. The parties are further directed to submit a digital copy of their pretrial statement in Word format, directly to Judge O'Neill's chambers by email at [LJOorders@caed.uscourts.gov](mailto:LJOorders@caed.uscourts.gov).

The parties' attention of counsel is directed to **Rules 281 and 282 of the Local Rules of Practice** for the Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to explain the nature of the case to the jury during voir dire.

At the pretrial conference, the Court will set deadlines, among others, to file motions in limine, final witness lists, exhibits, jury instructions, objections, and other trial documents.

**8. Trial Date**

Trial is set for June 23, 2015, at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United States District Court Judge.

- a. This is a jury trial.
- b. Counsel's estimate of trial time: (10-15 days).
- c. Counsel's attention is directed to Rule 285 of the Local Rules of the United States District Court for the Eastern District of California, for preparation of trial briefs..

## 9. Settlement Conference

A Settlement Conference is scheduled for September 25, 2014, at 10:00 a.m. in

1 Courtroom 7 before the Honorable Judge Sheila K. Oberto, U.S. Magistrate Judge. Unless  
2 otherwise permitted in advance by the Court, **the attorneys who will try the case** shall appear at  
3 the Settlement Conference **with the parties** and the person or persons having **full authority** to  
4 negotiate and settle the case **on any terms**<sup>3</sup> at the conference.

5 At least five (5) court days prior to the Settlement Conference the parties shall submit,  
6 directly to Judge Sheila K. Oberto chambers by e-mail to skoorders@caed.uscourts.gov, a  
7 ***Confidential Settlement Conference Statement***. The statement **should not be filed** with the  
8 Clerk of the Court **or served on any other party**, however, the parties are **required to file** their  
9 Notice of submission of Confidential Settlement Conference Statement (See Local Rule 270(d)).  
10 Each statement shall be clearly marked "CONFIDENTIAL" with the date and time of the  
11 Settlement Conference indicated prominently thereon. The parties are urged to request the return  
12 of their statement if a settlement is not achieved, and if such a request is not made, the Court will  
13 dispose of the statement.

14 The Confidential Settlement Conference Statement shall include the following:

- 15 a. A brief statement of the facts of the case,
- 16 b. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
17 which the claims are founded, a forthright evaluation of the parties' likelihood of  
18 prevailing on the claims and defenses, and a description of the major issues in  
19 dispute,
- 20 c. A summary of the proceedings to date,
- 21 d. An estimate of the cost and time to be expended for further discovery, pretrial and  
22 trial,
- 23 e. The relief sought, and
- 24 f. The party's position on settlement, **including present demands and offers and a**

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26 <sup>3</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are  
27 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by  
28 a person or persons who occupy high executive positions in the party organization and who will be directly involved  
in the process of approval of any settlement offers or agreements. To the extent possible, the representative shall  
have the authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's  
most recent demand.

history of past settlement discussions, offers and demands.

This Court will vacate the settlement conference if the Court finds the settlement conference will be neither productive nor meaningful in resolving all or part of this case. As far in advance of the settlement conference as possible, a party shall inform the Court and other parties that it believes the case is not in a settlement posture so the Court may vacate or reset the settlement conference. Otherwise the parties shall proceed with the settlement conference in good faith to attempt to resolve all or part of this case.

**10. Requests for Bifurcation, Appointment of Special Master, or Other Techniques to Shorten Trial**

Not applicable at this time.

## **11. Related Matters Pending**

There are no pending related matters.

## 12. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow the Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

### 13. Effect of this Order

This order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

**The dates set in this Order are considered to be firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines contained herein will not be considered unless they are**

1      accompanied by affidavits or declarations, and where appropriate, attached exhibits, which  
2      establish good cause for granting the relief requested.

3      The failure to comply with this order may result in the imposition of sanctions.

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5      IT IS SO ORDERED.

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7      Dated: September 16, 2013

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9      /s/ Sheila K. Oberto  
10     UNITED STATES MAGISTRATE JUDGE

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