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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALLEN TATE, et al.,)	1: 14-CV-00159 - LJO - JLT
)	
Plaintiffs,	)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
)	
v.	)	Pleading Amendment Deadline: 8/15/2014
	)	Discovery Deadlines:
COUNTY OF KERN, et al.,	)	Initial Disclosures: 5/30/2014
	)	Non-Expert:
Defendants.	)	Related to Individual Liability/Damages:
	)	10/3/14
	)	Related to Monell: 3/27/15
	)	Expert: 5/29/2015
	)	Mid-Discovery Status Conference:
	)	12/9/2014 at 9:30 a.m.
)	
	)	Non-Dispositive Motion Deadlines:
	)	Filing: 6/12/2015
	)	Hearing: 7/10/2015
)	
	)	Dispositive Motion Deadlines:
	)	Filing: 10/17/2014
	)	Hearing: 12/3/2014
)	
	)	Settlement Conference:
	)	9/29/14, 9:30 a.m.
	)	510 19th Street, Bakersfield, CA
)	
	)	Pre-Trial Conference:
	)	8/19/2015 at 8:30 a.m.
	)	Courtroom 4
)	
	)	Trial: 10/20/2015 at 8:30 a.m.
	)	Courtroom 4
	)	Jury trial: 7 days

1 **I. Date of Scheduling Conference**

2 May 22, 2014.

3 **II. Appearances of Counsel**

4 Robert Powell appeared on behalf of Plaintiffs.

5 Marshal Fontes appeared on behalf of Defendant.

6 **III. Magistrate Judge Consent:**

7 **Notice of Congested Docket and Court Policy of Trailing**

8 Due to the District Judges' heavy caseload, the newly adopted policy of the Fresno Division of
9 the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set
10 before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older
11 civil case set on the same date until a courtroom becomes available. The trial date will not be reset to a
12 continued date.

13 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
14 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
15 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
16 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
17 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
18 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

19 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
20 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
21 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance
22 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
23 District of California.

24 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
25 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
26 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
27 whether they will consent to the jurisdiction of the Magistrate Judge.

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1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or
3 motion to amend, no later than **August 15, 2014**.

4 **V. Discovery Plan and Cut-Off Date**

5 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
6 on or before **May 30, 2014**.

7 The parties agree and the Court **ORDERS** that the discovery will occur in phases as follows:

- 8 1. Discovery related to liability of the individuals and damages SHALL be completed no
9 later than **October 3, 2014**;
- 10 2. Discovery related to Monell, SHALL begin the day after the Court issues its ruling on
11 any dispositive motions. If no dispositive motion will be filed¹, this discovery SHALL
12 begin on **October 3, 2014** and be completed no later than **March 27, 2015**.
- 13 3. If a dispositive motion will be filed, no discovery will occur between **October 3, 2014**
14 and the day the ruling on the dispositive motions is issued.

15 The parties are ordered to complete all discovery, pertaining to experts, on or before **May 29,**
16 **2015**.

17 The parties are directed to disclose all expert witnesses, in writing, on or before **April 10, 2015,**
18 and to disclose all rebuttal experts on or before **May 1, 2015**. The written designation of retained and
19 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
20 **shall include all information required thereunder**. Failure to designate experts in compliance with
21 this order may result in the Court excluding the testimony or other evidence offered through such
22 experts that are not disclosed pursuant to this order.

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

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¹ The parties are obligated to meet and confer at least 21 days before the filing of a dispositive motion (see headnote VI. below) so they will know before October 3, 2014 whether such a motion will be filed.

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

3 A mid-discovery status conference is scheduled for **December 9, 2014**, at 9:30 a.m., before the
4 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
5 California, 93301. A Joint Mid-Discovery Status Conference Report, carefully prepared and executed
6 by all counsel, shall be electronically filed in CM/ECF, one full week prior to the Conference, and shall
7 be e-mailed, in Word format, to JLTorders@caed.uscourts.gov. The joint statement SHALL outline the
8 discovery that has been completed and that which needs to be completed as well as any impediments to
9 completing the discovery within the deadlines set forth in this order. Counsel may appear via
10 CourtCall, providing a written request to so appear is made to the Magistrate Judge's Courtroom Clerk
11 no later than five court days before the noticed hearing date.

12 **VI. Pre-Trial Motion Schedule**

13 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
14 than **June 12, 2015**, and heard on or before **July 10, 2015**. Non-dispositive motions are heard before
15 the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
16 Bakersfield, California.

17 No written discovery motions shall be filed without the prior approval of the assigned
18 Magistrate Judge. A party with a discovery dispute must first confer with the opposing party in a good
19 faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the
20 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate
21 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to the
22 court. To schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk,
23 Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with**
24 **Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice**
25 **and dropped from calendar.**

26 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening
27 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the
28 notice of motion must comply with Local Rule 251.

1 Counsel may appear and argue non-dispositive motions via CourtCall, providing a written
2 request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than five court days
3 before the noticed hearing date.

4 All dispositive pre-trial motions shall be filed no later than **October 17, 2014**, and heard no
5 later than **December 3, 2014**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill,
6 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**
7 **Civ. P. 56 and Local Rules 230 and 260.**

8 **VII. Motions for Summary Judgment or Summary Adjudication**

9 Prior to filing a motion for summary judgment or motion for summary adjudication the parties
10 are **ORDERED** to meet, in person or by telephone, and confer to discuss the issues to be raised in the
11 motion **at least 21 days before** the filing of the motion.

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

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

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

22 **VIII. Pre-Trial Conference Date**

23 **August 19, 2015**, at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

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

27 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
28 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.

1 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
2 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
3 Court to explain the nature of the case to the jury during voir dire.

4 **IX. Trial Date**

5 **October 20, 2015**, at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill,
6 United States District Court Judge.

- 7 A. This is a jury trial.
8 B. Counsels' Estimate of Trial Time: 7 days.
9 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
10 California, Rule 285.

11 **X. Settlement Conference**

12 A Settlement Conference is scheduled for **September 29, 2014** at 9:30 a.m., at 510 19th Street,
13 Bakersfield, California. The settlement conference will be conducted by Magistrate Judge Thurston. **If**
14 **any party prefers that the settlement conference be conducted by a judicial officer who is not**
15 **normally assigned to this matter, that party is directed to notify the Court no later than 60 days**
16 **in advance of the scheduled settlement conference** to allow sufficient time for another judicial officer
17 to be assigned to handle the conference.

18 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
19 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
20 to negotiate and settle the case **on any terms**² at the conference. Consideration of settlement is a
21 serious matter that requires preparation prior to the settlement conference. Set forth below are the
22 procedures the Court will employ, absent good cause, in conducting the conference.

23 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
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26 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements
27 are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
28 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.

1 fax or e-mail, a written itemization of damages and a meaningful³ settlement demand which includes a
2 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
3 settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or
4 with a meaningful counteroffer and which includes a brief explanation of why such a settlement is
5 appropriate.

6 If settlement is not achieved, each party **SHALL** attach copies of the party's settlement offers to
7 their Confidential Settlement Conference Statement, as described below. Copies of these documents
8 shall not be filed on the court docket.

9 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

10 At least five court days prior to the Settlement Conference, the parties shall submit, directly to
11 Judge Thurston's chambers by e-mail to JLTorders@caed.uscourts.gov, a Confidential Settlement
12 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
13 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
14 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
15 Settlement Conference indicated prominently thereon.

16 The Confidential Settlement Conference Statement shall include the following:

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

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27 ³ "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
28 party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party. If,
however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this should
trigger a recognition the case is not in a settlement posture and the parties should confer about continuing or vacating the
settlement conference via stipulation.

1 **XI. Request for Bifurcation, Appointment of Special Master, or other**
2 **Techniques to Shorten Trial**

3 Not applicable at this time.

4 **XII. Related Matters Pending**

5 There are no pending related matters.

6 **XIII. Compliance with Federal Procedure**

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

13 **XIV. Effect of this Order**

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

19 **The dates set in this Order are considered to be firm and will not be modified absent a**
20 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
21 **extending the deadlines contained herein will not be considered unless they are accompanied by**
22 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
23 **for granting the relief requested.**

24 Failure to comply with this order may result in the imposition of sanctions.

25
26 IT IS SO ORDERED.

27 Dated: May 22, 2014

28 /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE