

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

TAMMY MCLEAN,) 1: 15-CV-00971 - DAD - JLT
Plaintiff,)
v.) SCHEDULING ORDER (Fed. R. Civ. P. 16)
RUDESINDO FERNANDEZ, et al.,)
Defendants.) Pleading Amendment Deadline: 2/1/2016
) Discovery Deadlines:
) Initial Disclosures: 12/11/2015
) Non-Expert: 7/29/2016
) Expert: 7/29/2016
) Mid-Discovery Status Conference:
) 3/31/2016 at 9:00 a.m.

Non-Dispositive Motion Deadlines:
Filing: 9/2/2016
Hearing: 9/30/2016

Dispositive Motion Deadlines:
Filing: 10/11/2016
Hearing: 11/22/2016

Settlement Conference:
8/12/2016 9:30 a.m.
510 19th Street, Bakersfield, CA

Pre-Trial Conference:
1/18/2017 at 8:30 a.m.
Courtroom 5

Trial: 3/14/2017 at 8:30 a.m.
Courtroom 5
Court trial: 1-2 days

1 **I. Date of Scheduling Conference**

2 December 4, 2015.

3 **II. Appearances of Counsel**

4 Joseph Werner appeared on behalf of Plaintiff.

5 Jeffrey Lodge appeared on behalf of the Government.

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 **February 1, 2016**.

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

5 **Plaintiff SHALL seek entry of default or request dismissal as to any defendant who has**
6 **failed to appear within 30 days. Also Plaintiff SHALL file proof of service of the summons and**
7 **complaint on "All Persons Unknown Claiming Any Legal or Equitable Right, Title, Estate, Lien,**
8 **or Interest in the Property Described in the Complaint Adverse to Plaintiffs' Title Thereto" or**
9 **dismiss these defendants within 30 days.**

10 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
11 on or before **December 11, 2015**.

12 The parties are ordered to complete all discovery, pertaining to non-experts and experts, no later
13 than **July 29, 2016**.

14 Plaintiff is directed to disclose all expert witnesses, in writing, on or before **May 6, 2016**, and
15 Defendants are directed to disclose all expert witness no later than **June 3, 2016**. Plaintiff shall
16 disclose any rebuttal experts no later than **July 1, 2016**. The written designation of retained and non-
17 retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall**
18 **include all information required thereunder**. Failure to designate experts in compliance with this
19 order may result in the Court excluding the testimony or other evidence offered through such experts
20 that are not disclosed pursuant to this order.

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

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

27 A mid-discovery status conference is scheduled for **March 31, 2016** at 9:00 a.m. before the
28 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,

1 California, 93301. A Joint Mid-Discovery Status Conference Report, carefully prepared and executed
2 by all counsel, shall be electronically filed in CM/ECF, one full week prior to the Conference, and shall
3 be e-mailed, in Word format, to JLTorders@caed.uscourts.gov. The joint statement SHALL outline the
4 discovery that has been completed and that which needs to be completed as well as any impediments to
5 completing the discovery within the deadlines set forth in this order. Counsel may appear via
6 CourtCall, providing a written request to so appear is made to the Magistrate Judge's Courtroom Clerk
7 no later than five court days before the noticed hearing date.

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

9 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
10 than **September 2, 2016**, and heard on or before **September 30, 2016**. Non-dispositive motions are
11 heard before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States
12 Courthouse in Bakersfield, California.

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

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

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

28 All dispositive pre-trial motions shall be filed no later than **October 11, 2016**, and heard no

1 later than **November 22, 2016**, in Courtroom 5 at 8:30 a.m. before the Honorable Dale A. Drozd,
2 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**
3 **Civ. P. 56 and Local Rules 230 and 260.**

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

5 **At least 21 days before** filing a motion for summary judgment or motion for summary
6 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
7 to be raised in the motion.

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

14 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
15 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
16 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
17 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
18 statement of undisputed facts.

19 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
20 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
21 **comply may result in the motion being stricken.**

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

23 **January 18, 2017**, at 8:30 a.m. in Courtroom 5 before Judge Drozd.

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 Drozd's chambers, by email at DAD orders@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 **March 14, 2017**, at 8:30 a.m. in Courtroom 5 before the Honorable Dale A. Drozd, United
6 States District Court Judge.

7 A. This is a Court trial.
8 B. Counsels' Estimate of Trial Time: 1-2 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 9:30 a.m. **August 12, 2016** 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 **regularly assigned to this case, that party is directed to notify the Court no later than 60 days in**
16 **advance of the scheduled settlement conference** to allow sufficient time for another judicial officer to
17 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**¹ 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 twenty-one days before** the settlement conference, Plaintiff SHALL submit to
24
25

26 ¹ 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 Defendant via fax or e-mail, a written itemization of damages and a meaningful² settlement demand
2 which includes a brief explanation of why such a settlement is appropriate. Thereafter, **no later than**
3 **fourteen days before** the settlement conference, Defendant SHALL respond, via fax or e-mail, with an
4 acceptance of the offer or with a meaningful counteroffer, which includes a brief explanation of why
5 such a settlement is appropriate.

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

CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

10 **At least five court days before** 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.

27 ² "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.

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

3 || Not applicable at this time.

XII. Related Matters Pending

5 There are no pending related matters.

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 both the Federal
11 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

XIV. Effect of this Order

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

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

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

IT IS SO ORDERED.

Dated: **December 4, 2015**

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