

1 **I. Date of Scheduling Conference**

2 February 23, 2016.

3 **II. Appearances of Counsel**

4 Andrea Marcus appeared on behalf of Plaintiff.

5 Darren Bogie, appeared on behalf of Defendants.

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 **November 1, 2016**.

4 **V. Administrative Record**

5 Plaintiff **SHALL** file the administrative record no later than **April 25, 2016**. Plaintiff need not
6 provide a courtesy paper copy but **SHALL** provide a searchable electronic copy to the chambers of
7 Judge O'Neill. Objections to the record **SHALL** be filed no later than **May 10, 2016**.

8 If there is a dispute over the contents of the administrative record, the objecting party **SHALL**
9 confer with the opposing party in a good faith effort to resolve the issues in dispute. If that good faith
10 effort is unsuccessful, the objecting party **SHALL** promptly seek a telephonic hearing with all involved
11 parties and the Magistrate Judge. It is the obligation of the objecting party to arrange and originate the
12 conference call to the Court. To schedule this telephonic hearing, the parties are ordered to contact
13 Courtroom Deputy Clerk, Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov.

14 **VI. Discovery**

15 The parties disagree whether discovery should be allowed. They agree to brief the issue. The
16 briefs filed at this time also may seek augmentation of the record.

17 Plaintiff's brief seeking discovery and/or motion to augment the record **SHALL** be filed **no**
18 **later than May 25, 2016**. The brief **SHALL** set forth with precision the discovery sought and why
19 discovery of this sort should be permitted. It must be supported by pertinent legal authority.

20 Defendant's brief opposing discovery and/or motion to augment the record **SHALL** be filed **no**
21 **later than June 24, 2016**. Plaintiff's optional reply/opposition to motion to augment the record, if any,
22 **SHALL** be filed **no later than July 5, 2016**.

23 **VII. Pre-Trial Motion Schedule**

24 **A. Non-dispositive motions**

25 All non-dispositive pre-trial motions, including any motions to augment the record², shall be
26 filed no later than **November 7, 2016**, and heard on or before **December 5, 2016**. Non-dispositive
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² The parties may file their motion to augment the record either along with the briefing related to whether discovery should be allowed or by the dates set forth here.

1 motions are heard before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the
2 United States Courthouse in Bakersfield, California.

3 No written motions shall be filed without the prior approval of the assigned Magistrate Judge.
4 A party with a discovery dispute must first confer with the opposing party in a good faith effort to
5 resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party
6 promptly shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be
7 the obligation of the moving party to arrange and originate the conference call to the court. To
8 schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk, Susan Hall
9 at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule**
10 **251 with respect to discovery disputes or the motion will be denied without prejudice and**
11 **dropped from calendar.**

12 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening
13 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the
14 notice of motion must comply with Local Rule 251. Counsel may appear and argue non-dispositive
15 motions via CourtCall.

16 **B. Status Conference re: Merits briefing**

17 The Court sets a status conference re: the merits briefing on **December 5, 2016** at 9:00 a.m. at
18 the United States Courthouse, located at 510 19th Street, Bakersfield, CA, before Magistrate Judge
19 Thurston. Appearances via CourtCall are authorized. **No later than November 28, 2016**, counsel
20 **SHALL** file a joint status conference statement indicating whether the matter will proceed only on the
21 administrative record or whether either party will seek to present live testimony. In the event either
22 party will present live testimony, the briefing schedule and the hearing date may need to be changed to
23 allow the briefs to be filed after the presentation of the testimony.

24 **C. Merits briefing**

25 Plaintiff's brief on the merits SHALL be filed no later than **December 19, 2016** and
26 Defendant's opposing brief SHALL be filed no later than **January 16, 2017**. Plaintiff's reply, if any,
27 SHALL be filed no later than **January 30, 2017**.

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1 **X. Hearing on the Briefs**

2 **March 28, 2017** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United
3 States District Court Judge.

4 A. This is oral argument on the merits briefs only.

5 B. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
6 California, Rule 285.

7 **XI. Compliance with Federal Procedure**

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

14 **XII. Effect of this Order**

15 This order represents the best estimate of the court and counsel as to the schedule most suitable
16 to dispose of this case. If the parties determine that the schedule outlined in this order cannot be met,
17 they must notify the court immediately so that adjustments may be made, either by stipulation or by
18 subsequent status conference.

19 **The dates set in this Order are firm and will not be modified absent a showing of good**
20 **cause even if the request to modify is made by stipulation. Stipulations extending the deadlines**
21 **contained herein will not be considered unless they are accompanied by evidence establishing**
22 **good cause for granting the relief requested.** Failure to comply with this order may result in the
23 imposition of sanctions.

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25 IT IS SO ORDERED.

26 Dated: March 15, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE