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

JOHN MICHAEL DEFRENZA,

Plaintiff,

v.

PROGRESSIVE EXPRESS INSURANCE
COMPANY,

Defendants.

) Case No.: 1:16-cv-00736 AWI JLT
)
) SCHEDULING ORDER (Fed. R. Civ. P. 16)
)
) Pleading Amendment Deadline: 12/2/2016
)
) Discovery Deadlines:
) Initial Disclosures: 9/6/2016
) Non-Expert: 6/9/2017
) Expert: 6/9/2017
) Mid-Discovery Status Conference:
) 1/18/2017 at 8:15 a.m.

) Non-Dispositive Motion Deadlines:
) Filing: 6/23/2017
) Hearing: 7/21/2017

) Dispositive Motion Deadlines:
) Filing: 8/4/2017
) Hearing: 9/27/2017

) Pre-Trial Conference:
) 11/21/2017 at 10:00 a.m.
) Courtroom 2

) Trial: 1/16/2018 at 8:30 a.m.
) Courtroom 2
) Court trial: 5 days

I. Date of Scheduling Conference

September 1, 2016.

1 **II. Appearances of Counsel**

2 Jeremy D. Swanson appeared on behalf of Plaintiff.

3 Julia Azrael appeared on behalf of Progressive Insurance Company

4 **III. Information Concerning the Court's Schedule**

5 Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno
6 Division of the Eastern District of California now has the heaviest District Court Judge caseload in
7 the entire nation. While the Court will use its best efforts to resolve this case and all other civil cases
8 in a timely manner, the parties are admonished that not all of the parties' needs and expectations may
9 be met as expeditiously as desired. As multiple trials are now being set to begin upon the same
10 date, parties may find their case trailing with little notice before the trial begins. The law requires
11 that the Court give any criminal trial priority over civil trials or any other matter. The Court must
12 proceed with a criminal trial even if a civil trial was filed earlier and set for trial first. Continuances
13 of any civil trial under these circumstances will no longer be entertained, absent a specific and stated
14 finding of good cause. All parties should be informed that any civil trial set to begin during the time
15 a criminal trial is proceeding will trail the completion of the criminal trial.

16 The parties are reminded of the availability of a United States Magistrate Judge to conduct all
17 proceedings in this action. A United States Magistrate Judge is available to conduct trials, including
18 entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and
19 Local Rule 305. The same jury pool is used by both United States Magistrate Judges and United
20 States District Court Judges. Any appeal from a judgment entered by a United States Magistrate
21 Judge is taken directly to the United States Court of Appeal for the Ninth Circuit. However, the
22 parties are hereby informed that no substantive rulings or decisions will be affected by whether a
23 party chooses to consent.

24 Finally, the Fresno Division of the Eastern District of California, whenever possible, is
25 utilizing United States Article III District Court Judges from throughout the nation as Visiting
26 Judges. Pursuant to the Local Rules, Appendix A, reassignments will be random, and the parties
27 will receive no advance notice before their case is reassigned to an Article III District Court Judge
28 from outside of the Eastern District of California.

1 The plaintiff has indicated his consent to the jurisdiction of the assigned magistrate judge.
2 The Defendant is **ORDERED** to consider consenting to Magistrate Judge jurisdiction to conduct all
3 further proceedings, including trial. **Within 10 days** of the date of this order, counsel **SHALL** file a
4 consent/decline form (provided by the Court at the inception of this case) indicating whether
5 Plaintiff will consent to the jurisdiction of the Magistrate Judge.

6 **IV. Pleading Amendment Deadline**

7 Any requested pleading amendments are ordered to be filed, either through a stipulation or
8 motion to amend, no later than **December 2, 2016**.

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

10 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P.
11 26(a)(1) on or before **September 6, 2016**.

12 The parties are ordered to complete all discovery pertaining to non-experts on or before
13 **June 9, 2017** and all discovery pertaining to experts on or before **June 9, 2017**.

14 The parties are directed to disclose all expert witnesses¹, in writing, on or before **April 7,**
15 **2017**, and to disclose all rebuttal experts on or before **May 5, 2017**. The written designation of
16 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A),**
17 **(B), and (C) and shall include all information required thereunder**. Failure to designate experts
18 in compliance with this order may result in the Court excluding the testimony or other evidence
19 offered through such experts that are not disclosed pursuant to this order.

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

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

26 A mid-discovery status conference is scheduled for **January 18, 2017** at 8:15 a.m. before the
27

28 ¹ In the event an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's opinions in this regard.

1 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
2 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
3 conference. Counsel also SHALL lodge the status report via e-mail to
4 JLTorders@caed.uscourts.gov. The joint statement SHALL outline the discovery counsel have
5 completed and that which needs to be completed as well as any impediments to completing the
6 discovery within the deadlines set forth in this order. Counsel may appear via CourtCall, providing a
7 written notice of the intent to appear telephonically is provided to the Magistrate Judge's Courtroom
8 Deputy Clerk no later than five court days before the noticed hearing date.

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

10 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
11 than **June 23, 2017**, and heard on or before **July 21, 2017**. Non-dispositive motions are heard at
12 9:00 a.m., before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the United
13 States District Courthouse located at 510 19th Street, Bakersfield, California.

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

21 **Counsel must comply with Local Rule 251 with respect to discovery disputes or the motion will**
22 **be denied without prejudice and dropped from calendar.** In scheduling such motions, the
23 Magistrate Judge may grant applications for an order shortening time pursuant to Local Rule 144(e).
24 However, if counsel does not obtain an order shortening time, the notice of motion *must* comply with
25 Local Rule 251.

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

1 All dispositive pre-trial motions shall be filed no later than **August 4, 2017**, and heard no
2 later than **September 27, 2017**, in Courtroom 2 at 8:30 a.m. before the Honorable Anthony W. Ishii,
3 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**
4 **Civ. P. 56 and Local Rules 230 and 260.**

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

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

9 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where
10 a question of fact exists; 2) determine whether the respondent agrees that the motion has merit in
11 whole or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4)
12 narrow the issues for review by the court; 5) explore the possibility of settlement before the parties
13 incur the expense of briefing a motion; and 6) to develop a joint statement of undisputed 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
16 of undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may
17 be deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the
18 joint statement of undisputed facts.

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

21 **Failure to comply may result in the motion being stricken.**

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

23 **November 21, 2017**, at 10:00 a.m. in Courtroom 2 before Judge Ishii.

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

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

4 **IX. Trial Date**

5 **January 16, 2018**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii,
6 United States District Court Judge.

7 A. This is a court trial.

8 B. Parties' Estimate of Trial Time: 2-3 days.

9 C. The parties' attention is directed to Local Rules of Practice for the Eastern District of
10 California, Rule 285.

11 **X. Settlement Conference**

12 The parties intend to undergo private mediation. If they decide they would like a Court-
13 sponsored settlement conference, they may file a stipulation with proposed dates and the Court will
14 set a conference. The settlement conference will be conducted by Judge Thurston unless any party
15 prefers that it is conducted by a judicial officer not normally assigned to the case.²

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

18 Not applicable at this time.

19 **XII. Related Matters Pending**

20 There are no pending related matters.

21 **XIII. Compliance with Federal Procedure**

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

27 _____
28 ² At the conference, Ms. Azrael indicating having a good experience in a different case with a volunteer neutral. If the parties would like this person to conduct the settlement conference, they may make this request (and identify the name of the volunteer neutral) and the Court will request the volunteer handle this matter as well.

1 District of California.

2 **XIV. Effect of this Order**

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

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

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

14
15 IT IS SO ORDERED.

16 Dated: September 1, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE