

1 **II. Appearances of Counsel**

2 Richard Nervig and Daniele Bonifazi appeared on behalf of Plaintiff.

3 William Alexander appeared on behalf of Defendant.

4 **III. Magistrate Judge Consent:**

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

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

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

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

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

26 **IV. Pleading Amendment Deadline**

27 Any requested pleading amendments are ordered to be filed, either through a stipulation or
28 motion to amend, no later than **July 10, 2017**.

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

2 The parties have exchanged the initial disclosures required by Fed. R. Civ. P. 26(a)(1).

3 The parties are ordered to complete all discovery pertaining to non-experts on or before **August**
4 **10, 2017**, and all discovery pertaining to experts on or before **September 28, 2017**.

5 The parties are directed to disclose all expert witnesses, in writing, on or before **August 17,**
6 **2017**, and to disclose all rebuttal experts on or before **September 7, 2017**. The written designation of
7 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
8 **and (C) and shall include all information required thereunder**. Failure to designate experts in
9 compliance with this order may result in the Court excluding the testimony or other evidence offered
10 through such experts that are not disclosed pursuant to this order.

11 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
12 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
13 included in the designation. Failure to comply will result in the imposition of sanctions, which may
14 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 A mid-discovery status conference is scheduled for **June 28, 2017** at 8:30 a.m. before the
18 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
19 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
20 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
21 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
22 completed as well as any impediments to completing the discovery within the deadlines set forth in this
23 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
24 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the
25 intent to appear telephonically no later than five court days before the noticed hearing date.

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

27 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
28 than **October 12, 2017**, and heard on or before **November 9, 2017**. Non-dispositive motions are heard

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

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

14 Counsel may appear and argue non-dispositive motions via teleconference by dialing (888) 557-
15 8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk
16 receives a written notice of the intent to appear telephonically no later than five court days before the
17 noticed hearing date.

18 All dispositive pre-trial motions shall be filed no later than **November 28, 2017**, and heard no
19 later than **January 9, 2018**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill,
20 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**
21 **Civ. P. 56 and Local Rules 230 and 260.**

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

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

26 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
27 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
28 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the

1 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
2 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

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

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

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

12 **March 6, 2018** at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

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

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

21 **IX. Trial Date**

22 **May 1, 2018** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United
23 States District Court Judge.

- 24 A. This is a jury trial.
25 B. Counsels' Estimate of Trial Time: 5 days.
26 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
27 California, Rule 285.

28 ///

1 **X. Settlement Conference**

2 If the parties believe the matter is in a settlement posture, the parties may file a joint
3 written request for a conference with the Court, including proposed dates for the conference.
4 Notwithstanding the provisions of Local Rule 270(b), the settlement conference will be conducted by
5 Magistrate Judge Thurston. The Court deems the deviation from the Local Rule to be appropriate and
6 in the interests of the parties and justice and sound case management based upon the location of the
7 parties. **If any party prefers that the settlement conference is conducted by a judicial officer not**
8 **already assigned to this case, that party is directed to notify the Court at least 60 days in advance**
9 **of the scheduled settlement conference to allow sufficient time for another judicial officer to be**
10 **assigned to handle the conference.**

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

13 Not applicable at this time though there may be request for appointment of a Special Master
14 related to examination of proprietary information held by both parties.

15 **XII. Related Matters Pending**

16 There are no pending related matters.

17 **XIII. Compliance with Federal Procedure**

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

24 **XIV. Effect of this Order**

25 The foregoing order represents the best estimate of the court and counsel as to the agenda most
26 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
27 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
28

1 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
2 subsequent status conference.

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

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

9
10 IT IS SO ORDERED.

11 Dated: May 11, 2017

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