

1 **II. Appearances of Counsel**

2 Glenn Kantor appeared on behalf of Plaintiff.

3 Melissa Cowan 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, the parties are 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 they 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 **November 10, 2017**. Any motion to amend the pleadings shall be heard

1 by the Honorable Dale A. Drozd, United States District Court Judge.

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

3 The parties have exchanged the initial disclosures required by Fed. R. Civ. P. 26(a)(1). The
4 parties are ordered to complete all nonexpert on or before **May 14, 2018** and expert discovery by **July**
5 **27, 2018**.

6 The parties are directed to disclose all expert witnesses¹, in writing, on or before **June 1, 2018**,
7 and to disclose all rebuttal experts on or before **June 29, 2018**. The written designation of retained and
8 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
9 **shall include all information required thereunder**. Failure to designate experts in compliance with
10 this order may result in the Court excluding the testimony or other evidence offered through such
11 experts that are not disclosed pursuant to this order.

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

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

18 A mid-discovery status conference is scheduled for **January 12, 2018 at 8:30 a.m.** before the
19 Judge Thurston, located at 510 19th Street, Bakersfield, California. Counsel SHALL file a joint mid-
20 discovery status conference report one week before the conference. Counsel also SHALL lodge the
21 status report via e-mail to JLTorders@caed.uscourts.gov. The joint statement SHALL outline the
22 discovery counsel have completed and that which needs to be completed as well as any impediments to
23 completing the discovery within the deadlines set forth in this order. Counsel may appear via
24 teleconference by dialing (888) 557-8511 and entering Access Code 1652736, provided the Magistrate
25 Judge's Courtroom Deputy Clerk receives a written notice of the intent to appear telephonically no later
26 than five court days before the noticed hearing date.

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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 **VI. Pre-Trial Motion Schedule**

2 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
3 than **August 10, 2018**, and heard on or before **September 7, 2018**. Discovery motions are heard before
4 the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
5 Bakersfield, California. For these hearings, counsel may appear via teleconference by dialing (888)
6 557-8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy
7 Clerk receives a written notice of the intent to appear telephonically no later than five court days before
8 the noticed hearing date. All other non-dispositive hearings SHALL be set before Judge Drozd.

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

20 All dispositive pre-trial motions shall be filed no later than **September 21, 2018** and heard no
21 later than **November 6, 2018**, in Courtroom 5 before the Honorable Dale A. Drozd, United States
22 District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and**
23 **Local Rules 230 and 260.**

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

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

28 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a

1 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
2 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
3 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
4 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

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

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

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

14 **December 10, 2018** at 1:30 p.m. in Courtroom 5 before Judge Drozd.

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

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

23 **IX. Trial Date**

24 **February 26, 2019** at 8:30 a.m. in Courtroom 5 before the Honorable Dale A. Drozd, United
25 States District Court Judge.

26 A. This is a jury trial.

27 B. Counsels' Estimate of Trial Time: 7-10 days.

28 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of

1 California, Rule 285.

2 **X. Settlement Conference**

3 The parties participated in a Settlement Conference with Magistrate Judge Thurston on July 17,
4 2018. If they agree a further settlement conference would be fruitful, they may request the Court set a
5 further settlement conference.

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

8 Not applicable at this time.

9 **XII. Related Matters Pending**

10 There are no pending related matters.

11 **XIII. Compliance with Federal Procedure**

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

17 **XIV. Effect of this Order**

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

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

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

IT IS SO ORDERED.

Dated: July 18, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE