

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARIO TOLLS, et al.,	)	1: 17-CV-00776-AWI - JLT
)	
Plaintiffs,	)	SCHEDULING ORDER ¹ (Fed. R. Civ. P. 16)
)	
v.	)	Pleading Amendment Deadline: 12/10/2017
)	
DHARAM PAL, et al.,	)	Discovery Deadlines:
	)	Initial Disclosures: 9/18/2017
Defendants.	)	Non-Expert: 5/4/2018
	)	Expert: 7/13/2018
	)	Mid-Discovery Status Conference:
	)	2/20/2018 at 9:00 a.m.
)	
	)	Non-Dispositive Motion Deadlines:
	)	Filing: 7/27/2018
	)	Hearing: 8/24/2018
)	
	)	Dispositive Motion Deadlines:
	)	Filing: 9/10/2018
	)	Hearing: 10/22/2018
)	
	)	Pre-Trial Conference:
	)	12/11/2018 at 10:00 a.m.
	)	Courtroom 2
)	
	)	Trial: 2/5/2019 at 8:30 a.m.
	)	Courtroom 2
	)	Jury trial: 5-7 days

¹ The Court finds that no hearing is necessary due to the completeness of the joint scheduling report.

1 **I. Information Concerning the Court's Schedule**

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

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

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

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

1 **II. 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 **December 10, 2017**.

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

5 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
6 on or before **September 18, 2017**.

7 The parties are ordered to complete all discovery pertaining to non-experts on or before **May 4,**
8 **2018**, and all discovery pertaining to experts on or before **July 13, 2018**.

9 The parties are directed to disclose all expert witnesses², in writing, on or before **May 11, 2018**,
10 and to disclose all rebuttal experts on or before **June 8, 2018**. The written designation of retained and
11 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
12 **shall include all information required thereunder**. Failure to designate experts in compliance with
13 this order may result in the Court excluding the testimony or other evidence offered through such
14 experts that are not disclosed pursuant to this order.

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

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

21 A mid-discovery status conference is scheduled for **February 20, 2018** at 9:00 a.m. before the
22 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
23 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
24 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
25 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
26 completed as well as any impediments to completing the discovery within the deadlines set forth in this

27 _____
28 ² In the event an expert will offer opinions related to an independent examination or 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 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
2 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the
3 intent to appear telephonically no later than five court days before the noticed hearing date.

4 **IV. Pre-Trial Motion Schedule**

5 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
6 than **July 27, 2018**, and heard on or before **August 24, 2018**. Non-dispositive motions are heard at
7 9:00 a.m., before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the United
8 States District Courthouse located at 510 19th Street, Bakersfield, California.

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

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

21 Counsel may appear and argue non-dispositive motions via teleconference by dialing (888) 557-
22 8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk
23 receives a written notice of the intent to appear telephonically no later than five court days before the
24 noticed hearing date.

25 All dispositive pre-trial motions shall be filed no later than **September 10, 2018**, and heard no
26 later than **October 22, 2018**, in Courtroom 2 at 8:30 a.m. before the Honorable Anthony W. Ishii,
27 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**
28 **Civ. P. 56 and Local Rules 230 and 260.**

1 **V. Motions for Summary Judgment or Summary Adjudication**

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

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

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

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

18 **VI. Pre-Trial Conference Date**

19 **December 11, 2018**, at 10:00 a.m. in Courtroom 2 before Judge Ishii.

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

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

28 ///

1 **VII. Trial Date**

2 **February 5, 2019**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii, United
3 States District Court Judge.

4 A. This is a jury trial.

5 B. Counsels' Estimate of Trial Time: 5-7 days.

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

8 **VIII. Settlement Conference**

9 If the parties believe the matter is in a settlement posture and a conference would be fruitful,
10 they may file a joint written request for a settlement conference with the Court. The written request
11 shall include proposed conference dates.

12 Notwithstanding the provisions of Local Rule 270(b), the settlement conference will be conducted
13 by Magistrate Judge Thurston. The Court deems the deviation from the Local Rule to be appropriate and
14 in the interests of the parties and the interests of justice and sound case management based upon the
15 location of the parties. **If any party prefers that the settlement conference be conducted by a judicial**
16 **officer not already assigned to this case, the joint request for the settlement conference should**
17 **indicate this preference.**

18 **XI. Requests for Bifurcation, Appointment of Special Master, or other**
19 **Techniques to Shorten Trial**

20 Not applicable at this time.

21 **X. Related Matters Pending**

22 There are no pending related matters.

23 **XI. Compliance with Federal Procedure**

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

1 **XII. Effect of this Order**

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

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

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

13
14 IT IS SO ORDERED.

15 Dated: September 11, 2017

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