

1 civil case set on the same date until a courtroom becomes available. A trial date will not be reset to a
2 continued date.

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

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

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

18 **IV. Pleading Amendment Deadline**

19 Any requested pleading amendments are ordered to be filed, either through a stipulation or
20 motion to amend, no later than **April 13, 2018**. Any motion to amend the pleadings shall be heard by
21 the Honorable Dale A. Drozd, United States District Court Judge.

22 **V. Administrative Record**

23 Plaintiff **SHALL** lodge a searchable electronic copy of the administrative record no later than
24 **May 11, 2018**. Plaintiff **SHALL** also provide a courtesy paper copy to Judge Drozd's chambers at the
25 time of the filing of the opening brief.

26 If there is a dispute over the contents of the administrative record, the objecting party **SHALL**
27 confer with the opposing party in a good faith effort to resolve the issues in dispute. If that good faith
28 effort is unsuccessful, the objecting party **SHALL** promptly seek a telephonic hearing with all involved

1 parties and the Magistrate Judge. It is the obligation of the objecting party to arrange and originate the
2 conference call to the Court. To schedule this telephonic hearing, the parties are ordered to contact
3 Courtroom Deputy Clerk, Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov.

4 **VI. Merits Briefing and Hearing**

5 Plaintiff's opening brief **SHALL** be filed no later than **May 11, 2018**, and Defendant's
6 opposition brief **SHALL** be filed no later than **June 15, 2018**. Plaintiff's reply, if any, **SHALL** be filed
7 no later than **August 21, 2018**.

8 The opening brief **SHALL** set the hearing before the Honorable Dale A. Drozd, United States
9 District Court Judge, in Courtroom 5, on **October 2, 2018** at 8:30 a.m.

10 **VII. Settlement Conference**

11 A settlement conference is scheduled for 9:30 a.m. **March 13, 2018** at 510 19th Street,
12 Bakersfield, California. Notwithstanding the requirements of Local Rule 270(b), the settlement
13 conference will be conducted by Magistrate Judge Thurston. The Court deems the deviation from the
14 Local Rule to be appropriate and in the interests of the parties and justice and sound case management
15 based upon the location of the parties. **If any party prefers that the settlement conference be**
16 **conducted by a judicial officer who is not assigned to this case, that party is directed to notify the**
17 **Court no later than 60 days in advance of the scheduled settlement conference** to allow sufficient
18 time for another judicial officer to be assigned to handle the conference.

19 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
20 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
21 to negotiate and settle the case **on terms**¹ discussed at the conference. Consideration of settlement is a
22 serious matter that requires preparation prior to the settlement conference. Set forth below are the
23 procedures the Court will employ, absent good cause, in conducting the conference.

24 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
25

26 _____
27 ¹ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are
28 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
person or persons who occupy high executive positions in the party organization and who will be directly involved in the
process of approval of any settlement offers or agreements. To the extent possible the representative shall have the
authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent
demand.

1 fax or e-mail, a written itemization of damages and a meaningful² settlement demand which includes a
2 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
3 settlement conference, Defendant **SHALL** respond via fax or e-mail with an acceptance of the offer or
4 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
5 appropriate.

6 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
7 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
8 not be filed on the court docket.

9 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

10 At least five court days before the settlement conference, the parties shall submit, directly to
11 Judge Thurston's chambers by e-mail to JLTorders@caed.uscourts.gov, a Confidential Settlement
12 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
13 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
14 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
15 Settlement Conference indicated prominently thereon.

16 The Confidential Settlement Conference Statement shall include the following:

- 17 A. A brief statement of the facts of the case.
- 18 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
19 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on
20 the claims and defenses; and a description of the major issues in dispute.
- 21 C. A summary of the proceedings to date.
- 22 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 23 E. The relief sought.
- 24 F. The party's position on settlement, including present demands and offers and a history of
25 past settlement discussions, offers and demands.

26
27 ² "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
28 party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party. If,
however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this should
trigger a recognition the case is not in a settlement posture and the parties should confer about continuing the settlement
conference via stipulation.

1 **VIII. Compliance with Federal Procedure**

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

7 **IX. Effect of this Order**

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

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

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

19
20 IT IS SO ORDERED.

21 Dated: January 8, 2018

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