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

WENDY CENIS,)	Case No.: 1:17-cv-00863 DAD JLT
)	
Plaintiff,)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
)	
v.)	Pleading Amendment Deadline: 9/15/2017
)	
WINCO HOLINDGS, INC.,)	Discovery Deadlines:
)	Expert: 12/29/2017
Defendant.)	
)	
		Non-Dispositive Motion Deadlines:
		Filing: 1/12/2018
		Hearing: 2/9/2018
		Dispositive Motion Deadlines:
		Filing: 2/16/2018
		Hearing: 3/20/2018
		Settlement Conference:
		3/2/2018 at 9:30 a.m.
		510 19th Street, Bakersfield, CA
		Pre-Trial Conference:
		6/4/2018 at 1:30 p.m.
		Courtroom 5
		Trial: 8/7/2018 at 1:00 p.m.
		Courtroom 5
		Jury trial: 4-10 day

I. Date of Scheduling Conference
August 18, 2017.

1 **II. Appearances of Counsel**

2 Christy Granieri appeared on behalf of Plaintiff.

3 Ari Hersher 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 **September 15, 2017**. Any motion to amend the pleadings shall be

1 heard 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).

4 The parties are ordered to complete all discovery pertaining to experts¹ on or before **December**
5 **29, 2017**.

6 The parties are directed to disclose all expert witnesses², in writing, on or before **November 3,**
7 **2017**, and to disclose all rebuttal experts on or before **December 11, 2017**. The written designation of
8 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**
9 **and (C) and shall include all information required thereunder**. Failure to designate experts in
10 compliance with this order may result in the Court excluding the testimony or other evidence offered
11 through such 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 **VI. Pre-Trial Motion Schedule**

19 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
20 than **January 12, 2018**, and heard on or before **February 9, 2018**. Discovery motions are heard before
21 the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in
22 Bakersfield, California. For these hearings, counsel may appear via teleconference by dialing (888)
23 557-8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy
24 Clerk receives a written notice of the intent to appear telephonically no later than five court days before
25 the noticed hearing date. All other non-dispositive hearings **SHALL** be set before Judge Drozd.

26
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¹ The parties completed non-expert discovery before the case was removed to this Court.

28 ² 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 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
2 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
3 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
4 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
5 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
6 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
7 obligation of the moving party to arrange and originate the conference call to the court. To schedule
8 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
9 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
10 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
11 **from the Court's calendar.**

12 All dispositive pre-trial motions shall be filed no later than **February 16, 2018** and heard no
13 later than **March 20, 2018**, in Courtroom 5 before the Honorable Dale A. Drozd, United States District
14 Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and Local**
15 **Rules 230 and 260.**

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

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

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

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

1 statement of undisputed facts.

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

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

6 **June 4, 2018** at 1:30 p.m. in Courtroom 5 before Judge Drozd.

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

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

15 **IX. Trial Date**

16 **August 7, 2018** at 1:00 p.m. in Courtroom 5 before the Honorable Dale A. Drozd, United States
17 District Court Judge.

18 A. This is a jury trial.

19 B. Counsels' Estimate of Trial Time: 4-10 days.

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

22 **X. Settlement Conference**

23 A Settlement Conference is scheduled for **March 2, 2018** at 9:30 a.m., located at 510 19th
24 Street, Bakersfield, California. Notwithstanding the provisions of Local Rule 270(b), the settlement
25 conference will be conducted by Magistrate Judge Thurston. The Court deems the deviation from the
26 Local Rule to be appropriate and in the interests of the parties and the interests of justice and sound
27 case management based upon the location of the parties. **If any party prefers that the settlement**
28 **conference be conducted by a judicial officer not already assigned to this case, the joint request**

1 **for the settlement conference should indicate this preference.**

2 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
3 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
4 to negotiate and settle the case **on any terms**³ at the conference. Consideration of settlement is a
5 serious matter that requires preparation prior to the settlement conference. Set forth below are the
6 procedures the Court will employ, absent good cause, in conducting the conference.

7 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
8 fax or e-mail, a written itemization of damages and a meaningful⁴ settlement demand which includes a
9 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
10 settlement conference, Defendant **SHALL** respond, via fax or e-mail, with an acceptance of the offer or
11 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
12 appropriate.

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

16 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

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

23 The Confidential Settlement Conference Statement shall include the following:

24 _____
25 ³ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are
26 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
27 person or persons who occupy high executive positions in the party organization and who will be directly involved in the
28 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.

⁴ "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
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 or vacating the
settlement conference via stipulation.

- 1 A. A brief statement of the facts of the case.
- 2 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
- 3 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on
- 4 the claims and defenses; and a description of the major issues in dispute.
- 5 C. A summary of the proceedings to date.
- 6 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 7 E. The relief sought.
- 8 F. The party's position on settlement, including present demands and offers and a history of
- 9 past settlement discussions, offers and demands.

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

12 Not applicable at this time.

13 **XII. Related Matters Pending**

14 There are no pending related matters.

15 **XIII. Compliance with Federal Procedure**

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

22 **XIV. Effect of this Order**

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

28 **The dates set in this Order are considered to be firm and will not be modified absent a**

1 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
2 **extending the deadlines contained herein will not be considered unless they are accompanied by**
3 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
4 **for granting the relief requested.**

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

6
7 IT IS SO ORDERED.

8 Dated: August 18, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE