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

UNITED STATES OF AMERICA,	)	1:17-CV-0932 - LJO - JLT
	)	
Plaintiff,	)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
	)	
v.	)	Discovery Deadlines:
	)	Initial Disclosures: 2/1/2018
29.81 ACRES OF LAND, MORE OR LESS,	)	Non-Expert: 9/24/2018
SITUATED IN KERN COUNTY,	)	Expert: 9/24/2018
CALIFORNIA, et al.,	)	Mid-Discovery Status Conference:
	)	7/24/2018 at 8:30 a.m.
Defendants.	)	
	)	
<hr/>		Non-Dispositive Motion Deadlines:
		Filing: 10/3/2018
		Hearing: 10/31/2018
		Dispositive Motion Deadlines:
		Filing: 11/7/2018
		Hearing: 12/19/2018
		Settlement Conference:
		10/12/2018 at 1:00 p.m.
		510 19th Street, Bakersfield, CA
		Pre-Trial Conference:
		1/31/2019 at 8:30 a.m.
		Courtroom 4
		Trial: 4/2/2019 at 8:30 a.m.
		Courtroom 4
		Jury trial: 4-5 days

1 **I. Magistrate Judge Consent:**

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

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

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

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

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

23 **II. Pleading Amendment Deadline**

24 Pursuant to Rule 71.1 of the Federal Rules of Civil Procedure, in this action, the Government  
25 “may—as often as it wants—amend the complaint at any time before the trial on compensation. But no  
26 amendment may be made if it would result in a dismissal inconsistent with Rule 71.1(i)(1) or (2).” Fed.  
27 R. Civ. P. 71.1(f). Any pleading amendments **SHALL** be made in accordance with the requirements of  
28 Rule 71.1.

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

2 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)  
3 on or before **February 1, 2018**.

4 The parties are ordered to complete all discovery, pertaining to non-experts and experts, on or  
5 before **September 24, 2018**.

6 The parties are directed to disclose all expert witnesses, in writing, on or before **June 25, 2018**,  
7 and to disclose all rebuttal experts on or before **August 20, 2018**. The written designation of retained  
8 and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C)**  
9 **and shall include all information required thereunder**. Failure to designate experts in compliance  
10 with 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 **July 24, 2018** at 8:30 a.m. before the  
19 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,  
20 California. Counsel SHALL file a joint mid-discovery status conference report one week before the  
21 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.  
22 The joint statement SHALL outline the discovery counsel have completed and that which needs to be  
23 completed as well as any impediments to completing the discovery within the deadlines set forth in this  
24 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code  
25 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the  
26 intent to appear telephonically no later than five court days before the noticed hearing date.

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

28 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later

1 than **October 3, 2018**, and heard on or before **October 31, 2018**. Non-dispositive motions are heard  
2 before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States  
3 Courthouse in Bakersfield, California.

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

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

19 All dispositive pre-trial motions shall be filed no later than **November 7, 2018**, and heard no  
20 later than **December 19, 2018**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill,  
21 United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R.**  
22 **Civ. P. 56 and Local Rules 230 and 260.**

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

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

27 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a  
28 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole

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

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

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

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

13 **January 31, 2019**, at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

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

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

22 **VII. Trial Date**

23 **April 2, 2019** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United  
24 States District Court Judge.

- 25 A. This is a jury trial.  
26 B. Counsels' Estimate of Trial Time: 4-5 days.  
27 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of  
28 California, Rule 285.

1 **VIII. Settlement Conference**

2 A Settlement Conference is scheduled for **October 12, 2018** at 1:00 p.m., located at 510 19<sup>th</sup>  
3 Street, Bakersfield, California.<sup>1</sup> The settlement conference will be conducted by Magistrate Judge  
4 Thurston. **If any party prefers that the settlement conference be conducted by a different judicial**  
5 **officer, that party is directed to notify the Court no later than 60 days in advance of the**  
6 **scheduled settlement conference** to allow sufficient time for another judicial officer to be assigned to  
7 handle the conference.

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

13 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to  
14 Defendant via fax or e-mail, a written itemization of damages and a meaningful<sup>3</sup> settlement demand  
15 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than  
16 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an  
17 acceptance of the offer or with a meaningful counteroffer, which includes a brief explanation of why  
18 such a settlement is appropriate.

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

22 \_\_\_\_\_  
23 <sup>1</sup> If the parties believe the action is not in a settlement posture at this time or the case schedule demands it, they  
24 may file a joint written request that the conference either be vacated or continued.

25 <sup>2</sup> 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  
29 authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent  
30 demand.

<sup>3</sup> "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.

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CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

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

The Confidential Settlement Conference Statement shall include the following:

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

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

Not applicable at this time.

**XII. Related Matters Pending**

This action is related to *United States of America v. 42.35 Acres of Land, et al.*, Case No. 1:17-cv-00930-LJO-JLT.

**XIII. Compliance with Federal Procedure**

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

1 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

2 **IX. Effect of this Order**

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

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

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

14  
15 IT IS SO ORDERED.

16 Dated: December 22, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE