

1 expeditiously as desired. As multiple trials are now being set to begin upon the same date, parties may
2 find their case trailing with little notice before the trial begins. The law requires that the Court give any
3 criminal trial priority over civil trials or any other matter. The Court must proceed with a criminal trial
4 even if a civil trial was filed earlier and set for trial first. Continuances of any civil trial under these
5 circumstances will no longer be entertained, absent a specific and stated finding of good cause. All
6 parties should be informed that any civil trial set to begin during the time a criminal trial is proceeding
7 will trail the completion of the criminal trial.

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

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

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

25 **II. Pleading Amendment Deadline**

26 The parties agree no pleading amendments will occur.

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

28 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)

1 on or before **December 18, 2017**.

2 The parties are ordered to complete all discovery pertaining on or before **April 2, 2018**.

3 **IV. Administrative record**

4 Defendant **SHALL** file the administrative record no later than **January 8, 2018**. Defendants
5 need not provide a courtesy paper copy but **SHALL** provide a searchable electronic copy to the
6 chambers of Judge O'Neill. Moreover, the parties **SHALL** file excerpts of the record in connection
7 with their motion/cross motion for summary judgment.

8 Objections or a motion to supplement the record **SHALL** be filed no later than **January 24,**
9 **2018**, and heard no later than **February 21, 2018**.

10 No objections or motion to supplement shall be filed without the prior approval of the assigned
11 Magistrate Judge. Plaintiff **SHALL** confer with the opposing party in a good faith effort to resolve the
12 issues in dispute. If that good faith effort is unsuccessful, Plaintiff promptly **SHALL** seek a telephonic
13 hearing with all involved parties and the Magistrate Judge. It is the obligation of Plaintiff to arrange
14 and originate the conference call to the Court. To schedule this telephonic hearing, the parties are
15 ordered to contact Courtroom Deputy Clerk, Susan Hall at (661) 326-6620 or via email at
16 SHall@caed.uscourts.gov.

17 **V. Briefing Schedule**

18 Prior to filing the cross motions for summary judgment the parties are **ORDERED** to meet, in
19 person or by telephone, and confer to discuss the issues to be raised in the motion **at least 21 days**
20 **prior** to the filing of the motion. The purpose of the meeting shall be to: 1) determine whether the
21 respondent agrees that the motion has merit in whole or in part; 2) discuss whether issues can be
22 resolved without the necessity of briefing; 3) narrow the issues for review by the court; 4) explore the
23 possibility of settlement before the parties incur the expense of briefing a summary judgment motion;
24 5) to arrive at a joint statement of undisputed facts.

25 In addition to the requirements of Local Rule 260, the parties **SHALL** file a joint statement of
26 undisputed facts and each party **SHALL** file excerpts of the record which are cited in each party's
27 briefs. **The parties are strongly urged to file a joint excerpt.**

28 In the notice of motion, the moving parties **SHALL** certify that they have met and conferred as

1 ordered above, or set forth a statement of good cause for the failure to meet and confer.

2 The parties' opening briefs on the cross motions for summary judgment **SHALL** be filed no
3 later than **April 16, 2018**, and oppositions to the motion **SHALL** be filed no later than **May 14, 2018**.
4 Any briefs in reply **SHALL** be filed no later than **June 4, 2018**. The hearing on the cross motions is
5 SET for **July 31, 2018** at 8:30 a.m. in Courtroom 2 before the Honorable Lawrence O'Neill, United
6 States District Court Judge.¹

7 **VI. Mediation**

8 The parties do not seek a settlement conference at this time, and intend to pursue private
9 mediation which **SHALL** be completed no later than **March 30, 2018**.

10 **VII. Compliance with Federal Procedure**

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

16 **VIII. Effect of this Order**

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

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

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28 ¹ Because the parties believe the matter will be resolved on dispositive motion, the Court does not set a pretrial
conference or trial date.

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

IT IS SO ORDERED.

Dated: December 11, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE