

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

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

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

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

27 **IV. Pleading Amendment Deadline**

28 Any requested pleading amendments are ordered to be filed, either through a stipulation or

1 motion to amend, no later than **April 30, 2018**.

2 **V. Discovery Plan and Cut-Off Date**

3 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
4 on or before **January 22, 2018**.

5 Discovery is now open for all non-expert discovery pertaining to the class certification motion
6 and to the merits, to the extent it overlaps with the class issues. All non-expert discovery related to
7 the motion for class certification **SHALL** be completed later than **November 30, 2018**. Both sides
8 may conduct discovery as to the evidence relied upon in support of the motion and in opposition to
9 the motion for class certification.

10 All discovery pertaining to experts SHALL be completed on or before **November 30, 2018**.
11 The parties are directed to disclose all expert witnesses, in writing, on or before **May 25, 2018**, and to
12 disclose all rebuttal experts on or before **June 22, 2018**. The written designation of retained and non-
13 retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
14 **shall include all information required thereunder**. Failure to designate experts in compliance with
15 this order may result in the Court excluding the testimony or other evidence offered through such
16 experts that are not disclosed pursuant to this order.

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

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

23 A mid-discovery status conference is scheduled for **June 4, 2018** at 8:30 a.m. before the
24 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
25 California. Counsel SHALL file a joint mid-discovery status conference report one week before the
26 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
27 The joint statement SHALL outline the discovery counsel have completed and that which needs to be
28 completed as well as any impediments to completing the discovery within the deadlines set forth in this

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 **VI. Pre-Trial Motion Schedule**

5 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
6 than **December 17, 2018**, and heard on or before **January 14, 2019**.

7 Non-dispositive motions are heard before the Honorable Jennifer L. Thurston, United States
8 Magistrate Judge, at the United States Courthouse in Bakersfield, California. **No motion to amend or**
9 **stipulation to amend the case schedule will be entertained unless it is filed at least one week**
10 **before the first deadline the parties wish to extend.** Likewise, no written discovery motions shall be
11 filed without the prior approval of the assigned Magistrate Judge.

12 A party with a discovery dispute must first confer with the opposing party in a good faith effort
13 to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party
14 promptly shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be
15 the obligation of the moving party to arrange and originate the conference call to the court. To
16 schedule this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan
17 Hall, at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local**
18 **Rule 251 with respect to discovery disputes or the motion will be denied without prejudice and**
19 **dropped from the Court's calendar.**

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

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

25 All dispositive pre-trial motions shall be heard by the Honorable Lawrence J. O'Neill, United
26 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
27 **and Local Rules 230 and 260.**

28 **At least 21 days before** filing a motion for summary judgment or motion for summary

1 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
2 to be raised in the motion.

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

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

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

16 **VIII. Motion for Class Certification**

17 The motion for class certification **SHALL** be filed no later than **August 10, 2018**. Opposition to
18 the motion **SHALL** be filed no later than **October 12, 2018**. During the interval between the filing of
19 the motion and the deadline for the opposition, the defendant may conduct discovery as to the evidence
20 relied upon by the plaintiff for the motion for class certification.

21 Neither the motion nor the opposition **SHALL** exceed 30 pages, exclusive of evidence and
22 evidentiary objections, unless leave is granted by the Court prior to the filing. Any reply **SHALL** be
23 filed no later than **November 30, 2018**, and shall not exceed 15 pages, exclusive of evidentiary
24 objections. During the interval between the filing of the opposition and the deadline for the reply, the
25 plaintiff may conduct discovery as to the evidence relied upon by defendant for the opposition to the
26 motion for class certification.

27 Any objections to the evidence **SHALL** be filed at the same time as the opposition (for
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1 Defendant) and the reply (for Plaintiff).¹ A hard-copy, courtesy copy of all filings related to the class
2 motion **SHALL** be sent via overnight mail to the Chambers of Judge Thurston at the same time the
3 filing is submitted. All of the pages of evidence in the hard copy **SHALL** be numbered, tabbed and
4 indexed.

5 The hearing on the motion for class certification is set on **January 7, 2019**, at 9:30 a.m.
6 before Judge Thurston at the United States Courthouse, located at 510 19th Street, Bakersfield, CA.

7 **IX. Settlement Conference**

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

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

16 **X. Compliance with Federal Procedure**

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

23 **XI. Effect of this Order**

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

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¹ No motions to strike evidence will be entertained. If the Court sustains an objection to a piece of evidence, the evidence will not be considered.

