

1 **II. Appearances**

2 Plaintiff appeared in pro per.

3 Aaron Goldstein appeared on behalf of Defendants.

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 The defense has indicated its consent to magistrate judge jurisdiction. Therefore, the plaintiff is
23 directed to consider consenting to magistrate judge jurisdiction to conduct all further proceedings,
24 including trial. **Within 10 days** of the date of this order, the parties **SHALL** file a consent/decline
25 form (provided by the Court at the inception of this case) indicating whether they will consent to the
26 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 **March 25, 2019**.

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 **February 28, 2019**.

5 The parties are ordered to complete all discovery pertaining to non-experts on or before **July 17,**
6 **2019**, and all discovery pertaining to experts on or before **September 11, 2019**.

7 The parties are directed to disclose all expert witnesses, in writing, on or before **July 31, 2019**,
8 and to disclose all rebuttal experts on or before **August 21, 2019**. The written designation of retained
9 and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C)**
10 **and shall include all information required thereunder**. Failure to designate experts in compliance
11 with this order may result in the Court excluding the testimony or other evidence offered through such
12 experts that are not disclosed pursuant to this order.

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

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

19 A mid-discovery status conference is scheduled for **May 13, 2019** at 8:30 a.m. before the
20 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
21 California. The parties SHALL file a joint mid-discovery status conference report one week before the
22 conference. The parties also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
23 The joint statement SHALL outline the discovery the parties have completed and that which needs to be
24 completed as well as any impediments to completing the discovery within the deadlines set forth in this
25 order. Counsel and Ms. Barefield may appear via teleconference by dialing (888) 557-8511 and
26 entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a
27 written notice of the intent to appear telephonically no later than five court days before the noticed
28 hearing date.

1 **VI. Pre-Trial Motion Schedule**

2 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
3 than **September 25, 2019**, and heard on or before **October 23, 2019**. Non-dispositive motions are
4 heard before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States
5 Courthouse in Bakersfield, California.

6 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
7 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
8 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
9 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
10 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
11 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
12 obligation of the moving party to arrange and originate the conference call to the court. To schedule
13 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
14 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **The parties must comply with Local Rule**
15 **251 with respect to discovery disputes or the motion will be denied without prejudice and**
16 **dropped from the Court's calendar.**

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

21 All dispositive pre-trial motions shall be filed no later than **September 25, 2019**, and heard no
22 later than **November 6, 2019**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill,
23 United States District Court Judge. In scheduling such motions, **the parties shall comply with Fed. R.**
24 **Civ. P. 56 and Local Rules 230 and 260.**

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

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

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

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

11 In the notice of motion, the moving party **SHALL** certify that the parties have met and
12 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.

13 **Failure to comply may result in the motion being stricken.**

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

15 **January 2, 2020** at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

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

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

24 **IX. Trial Date¹**

25 **March 3, 2020** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill, United
26

27 ¹ The parties are advised that Judge O'Neill has announced that he will retire from the Court in January 2020.
28 Because the will not be completed before his retirement, after January 2020, the case will be reassigned but it is unlikely the
trial will occur until Judge O'Neill's replacement is selected. In recent times, this process has taken up to three years to
occur.

1 States District Court Judge.

2 A. This is a jury trial.

3 B. Parties' Estimate of Trial Time: 2 days.

4 C. The parties' attention is directed to Local Rules of Practice for the Eastern District of
5 California, Rule 285.

6 **X. Settlement Conference**

7 If the parties believe the action is in a settlement posture and a conference with the Court would
8 be beneficial, the parties may file a joint written request for a settlement conference.

9 Notwithstanding the requirements of Local Rule 270(b), the settlement conference will be
10 conducted by Magistrate Judge Thurston. The Court deems the deviation from the Local Rule to be
11 appropriate and in the interests of the parties and justice and sound case management based upon the
12 location of the parties. **If any party prefers that the settlement conference be conducted by a**
13 **different judicial officer, that party is directed to notify the Court no later than 60 days in**
14 **advance of the requested settlement conference** to allow sufficient time for another judicial officer to
15 be assigned to handle the conference.

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

18 Not applicable at this time.

19 **XII. Related Matters Pending**

20 There are no pending related matters.

21 **XIII. Compliance with Federal Procedure**

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

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1 **XIV. Effect of this Order**

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

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

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

13
14 IT IS SO ORDERED.

15 Dated: January 25, 2019

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