

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

I. Magistrate Judge Consent:

SUSAN OTTELE, et al.,) Case No.: 1:22-cv-00187-JLT-BAK
Plaintiffs,)
) SCEDULING ORDER¹ (Fed. R. Civ. P. 16)
v.)
) Pleading Amendment Deadline: 11/4/2022
OSCAR MARTINEZ, et al.,)
Defendants.) Discovery Deadlines:
) Initial Disclosures: 8/4/2022
) Non-Expert: 2/7/2023
) Expert: 4/21/2023
) Mid-Discovery Status Conference:
) 12/7/2022 at 8:30 a.m.

Non-Dispositive Motion Deadlines:
Filing: 4/28/2023
Hearing: 6/2/2023

Dispositive Motion Deadlines:
Filing: 6/20/2023
Hearing: 8/1/2023

Pre-Trial Conference:
9/29/2023 at 1:30 p.m.
Courtroom 4

Trial: 12/5/2023 at 8:30 a.m.
Courtroom 4
Jury trial: 4-5 days

¹ The Court finds the information provided in the Joint Scheduling Report and Scheduling Conference Worksheet (Doc. 19) is sufficient to schedule the matter without a hearing. Thus, the scheduling conference set for August 4, 2022, is VACATED.

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

2 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
3 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial before a District
4 Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case set on the
5 same date until a courtroom becomes available.

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

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

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

20 **II. Pleading Amendment Deadline**

21 Any requested pleading amendments are ordered to be filed, either through a stipulation or
22 motion to amend, no later than **November 4, 2022**.

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

24 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
25 on or before **August 4, 2022**.

26 The parties are ordered to complete all discovery pertaining to non-experts on or before
27 **February 7, 2023**, and all discovery pertaining to experts on or before **April 21, 2023**.

1 The parties are directed to disclose all expert witnesses², in writing, on or before **February 21, 2023**, and to disclose all rebuttal experts on or before **March 24, 2023**. The written designation of retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall include all information required thereunder**. Failure to designate experts in compliance with this order may result in the Court excluding the testimony or other evidence offered through such experts that are not disclosed pursuant to this order.

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

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

13 A mid-discovery status conference is scheduled for **December 7, 2022**, at 8:30 a.m. before the assigned Magistrate Judge. Counsel SHALL file a joint mid-discovery status conference report one week before the conference. Counsel also SHALL lodge the report via e-mail to BAKorders@caed.uscourts.gov. The joint statement SHALL outline the discovery counsel have completed and that which needs to be completed as well as any impediments to completing the discovery within the deadlines set forth in this order. **Counsel SHALL discuss settlement and certify that they have done so**. Counsel may appear via teleconference by dialing (877) 402-9757 and entering Access Code 6966236, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the intent to appear telephonically no later than five court days before the noticed hearing date.

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

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

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 than **April 28, 2023**³ and heard on or before **June 2, 2023**. Non-dispositive motions are heard before
2 the assigned Magistrate Judge.

3 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
4 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
5 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
6 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
7 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
8 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. To schedule this
9 telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at (661)
10 326-6620 or via email at SHall@caed.uscourts.gov. At least three days before the conference, counsel
11 SHALL file informal letter briefs detailing their positions. The briefs may not exceed 7 pages,
12 excluding exhibits. **Counsel must comply with Local Rule 251 with respect to discovery disputes**
13 **or the motion will be denied without prejudice and dropped from the Court's calendar.**

14 Counsel may appear and argue non-dispositive motions via teleconference by dialing (877) 402-
15 9757 and entering Access Code 6966236, provided the Magistrate Judge's Courtroom Deputy Clerk
16 receives a written notice of the intent to appear telephonically no later than five court days before the
17 noticed hearing date.

18 All dispositive pre-trial motions shall be filed no later than **June 20, 2023**, and heard no later
19 than **August 1, 2023**, in Courtroom 4 at 8:30 a.m., before the Honorable Jennifer L. Thurston, United
20 States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56**
21 **and Local Rules 230 and 260.**

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

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

26 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
27

28 ³ Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of
discovery of the dispute, but in not later than 30 days after the expiration of the non-expert discovery deadline.

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

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

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

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

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

14 **September 29, 2023**, at 1:30 p.m. in Courtroom 4 before the Honorable Jennifer L. Thurston,
15 United States District Court Judge.

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 via
18 email at JLTorders@caed.uscourts.gov.

19 Counsels' 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 counsel in preparing for the pre-trial conference.
21 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
22 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
23 Court to explain the nature of the case to the jury during voir dire.

24 **VII. Trial Date**

25 **December 5, 2023**, at 8:30 a.m. in Courtroom 4 before the Honorable Jennifer L. Thurston,
26 United States District Court Judge.

27 A. This is a jury trial.
28 B. Counsels' Estimate of Trial Time: 4-5 days.

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

3 **VIII. Settlement Conference**

4 The parties may file a joint written request for a settlement conference if they believe that such
5 a conference would be fruitful.

6 **IX. Request for Bifurcation, Appointment of Special Master, or other**

7 **Techniques to Shorten Trial**

8 Not applicable.

9 **X. Related Matters Pending**

10 There are no pending related matters.

11 **XI. Compliance with Federal Procedure**

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

17 **XII. Effect of this Order**

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

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

28 ///

1 Failure to comply with this order may result in the imposition of sanctions.
2
3

4 IT IS SO ORDERED.
5

6 Dated: July 28, 2022
7

8 */s/ Sheila K. Oberto*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28