

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OMAR MORAN, *et al.*

Case No. 1:23-cv-01236-ADA-CDB

Plaintiffs,

SCHEDULING ORDER (Fed. R. Civ. P. 16)

V.

ALTEC INDUSTRIES

Discovery Deadlines:

Defendant

Discovery Deadlines:

- Amend Pleadings: March 25, 2024
- Expert Disclosures: June 10, 2024
- Rebuttal Expert Disclosures: July 1, 2024
- Fact Discovery: May 27, 2024
- Expert Discovery: August 1, 2024
- Mid-Discovery Status Conference: April 22, 2024, at 10:00 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA 93301

Non-Dispositive Motion Deadlines:

- Filing: August 15, 2024
- Hearing: On or before September 23, 2024, at 10:30 a.m. in Bakersfield Federal Courthouse

Dispositive Motion Deadlines:

- Filing: October 7, 2024
- Hearing: On or before November 18, 2024, at 1:30 p.m., in Robert E. Coyle Federal Courthouse, Fresno, Courtroom 1, 8th Floor

Pre-Trial Conference: April 28, 2025, at 1:30 p.m., in Fresno Federal Courthouse

Trial: June 24, 2025, at 8:30 a.m., in Fresno
Federal Courthouse

1 On or about July 11, 2023, Plaintiffs Omar and Sandy Moran filed complaint in the Superior
2 Court of the State of California, County of Kern. (Doc. 1). On August 18, 2023, Defendant Altec
3 Industries removed the action to this Court. *Id.* In their complaint, Plaintiffs raise the following claims
4 against Defendant: (1) products liability, (2) negligence, and (3) loss of consortium. (Doc. 1-1).

5 **I. Date of Scheduling Conference**

6 November 13, 2023, before Magistrate Judge Christopher D. Baker, via Zoom
7 videoconference.

8 **II. Appearances of Counsel**

9 Steven W. Martin appeared on behalf of Plaintiffs Omar and Sandy Moran.

10 Jeffrey R. Williams appeared on behalf of Altec Industries.

11 **III. Magistrate Judge Consent:**

12 The parties do not consent to magistrate judge jurisdiction.

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

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

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

24 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
25 conduct all further proceedings, including trial, and to file a consent/decline form (provided by the
26 Court at the inception of this case) indicating whether they will consent to the jurisdiction of the
27 Magistrate Judge.

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1 **IV. Pleading Amendment**

2 Any motions to amend the pleadings, including to substitute any Doe Defendant(s), must be
3 filed by **March 25, 2024**. The parties are advised that filing a motion and/or stipulation requesting
4 leave to amend the pleadings does not reflect on the propriety of the amendment or imply good cause to
5 modify the existing schedule, if necessary. All proposed amendments must (A) be supported by good
6 cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any modification to the existing
7 schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), and (B)
8 establish, under Fed. R. Civ. P. 15(a), that such an amendment is not (1) prejudicial to the opposing
9 party, (2) the product of undue delay, (3) proposed in bad faith, or (4) futile, *see Foman v. Davis*, 371
10 U.S. 178, 182 (1962).

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

12 The parties are ordered to complete all discovery pertaining to non-experts by **May 27, 2024**,
13 and all discovery pertaining to experts by **August 1, 2024**.

14 The parties are directed to disclose all expert witnesses¹, in writing, by **June 10, 2024**, and to
15 disclose all rebuttal experts by **July 1, 2024**. The written designation of retained and non-retained
16 experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall include all
17 information required thereunder. Failure to designate experts in compliance with this order may result
18 in the Court excluding the testimony or other evidence offered through such experts that are not
19 disclosed pursuant to this order.

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

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

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27
28 ¹ 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 A mid-discovery status conference is scheduled for **April 22, 2024**, at 10:00 a.m. before
2 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
3 report no later than one week before the conference. Counsel also SHALL lodge the joint status report
4 via e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery
5 counsel have completed and that which needs to be completed as well as any impediments to
6 completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss
7 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement,
8 and (2) proposed dates for convening a settlement conference before a U.S. magistrate judge.

9 **VI. Pre-Trial Motion Schedule / Informal Discovery Dispute Conferences**

10 All non-dispositive pre-trial motions, including any discovery motions, shall be filed by **August
11 15, 2024**² and heard on or before **September 23, 2024**. Discovery motions shall be set before
12 Magistrate Judge Baker. For these hearings and at the direction of the Courtroom Deputy Clerk, the
13 Court may direct counsel to appear remotely (via Zoom). For hearings noticed to occur in-person, the
14 Court may permit counsel to appear remotely (via Zoom) provided the Courtroom Deputy Clerk
15 receives a written notice of the request to appear remotely no later than five court days before the
16 noticed hearing date.

17 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
18 filed at least three days before the first deadline the parties wish to extend.

19 No written discovery motions shall be filed without the prior approval of Magistrate Judge
20 Baker. A party with a discovery dispute must first confer with the opposing party in a good faith effort
21 to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the requesting
22 party promptly shall seek a conference with all involved parties and Magistrate Judge Baker. To
23 schedule this conference, the parties should contact the Courtroom Deputy Clerk, Susan Hall, at (661)
24 326-6620 or via email at SHall@caed.uscourts.gov. At least two days before the conference, counsel
25 SHALL file a joint, informal letter brief detailing each party's position. Each party's narrative shall not

28 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable
time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-
expert discovery deadline.

1 exceed three pages, excluding exhibits. At the commencement of the conference, if the parties jointly
2 agree to Magistrate Judge Baker's consideration and resolution of the discovery disputes outside the
3 formal Local Rule 251 procedures, the Court will entertain arguments by the parties and issue a ruling.
4 If the parties do not jointly agree to the informal discovery dispute resolution procedures set forth
5 herein, the requesting party may then seek relief through motion to compel. Counsel must comply with
6 Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice and
7 removed from the Court's calendar.

8 All dispositive pre-trial motions shall be filed by **October 7, 2024**, and heard on or before
9 **November 18, 2024**, in Courtroom 1 at 1:30 p.m. before the Honorable Ana de Alba, United States
10 District Judge. In scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and Local
11 Rules 230 and 260.

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

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

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

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

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

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

2 **April 28, 2025**, at 1:30 p.m. in Courtroom 1 before the Honorable Ana de Alba, United States
3 District Judge.

4 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
5 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
6 to Judge de Alba's chambers, by email at ADAorders@caed.uscourts.gov.

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

12 **IX. Trial Date**

13 **June 24, 2025**, at 8:30 a.m. in Courtroom 1 before the Honorable Ana de Alba, United States
14 District Judge.

- 15 A. This is a jury trial.
- 16 B. Counsels' Estimate of Trial Time: 7 days

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

19 **X. Settlement Conference**

20 The parties are advised that Judge de Alba requires that a mandatory settlement conference be
21 conducted prior to trial. Where the parties filed a summary judgment/adjudication motion, a settlement
22 conference shall be scheduled 30 days after the motion is fully briefed. In cases where the parties do
23 not file a summary judgment/adjudication motions, a settlement conference shall be scheduled 30 days
24 after the last day for the filing of dispositive motions. Unless otherwise requested by the parties, the
25 Settlement Conference will be set before Magistrate Judge Baker.

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

28 Not applicable at this time.

1 **XII. Related Matters Pending**

2 There are no pending related matters.

3 **XIII. Compliance with Federal Procedure**

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

9 **XIV. Effect of this Order**

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

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

19 Failure to comply with this order may result in the imposition of sanctions.
20 IT IS SO ORDERED.

21 Dated: November 13, 2023



UNITED STATES MAGISTRATE JUDGE