



1           III. JURISDICTION/VENUE

2           Jurisdiction is predicated upon 28 U.S.C. sections 1331 and  
3 1361 and 5 U.S.C. section 701 et seq. Jurisdiction and venue are  
4 not contested.

5           IV. DISCOVERY

6           In agreeing that no need for additional discovery is  
7 indicated at this time, the parties appear to concede that  
8 judicial review of agency decisions is limited to the  
9 administrative record, unless a need to expand that record is  
10 demonstrated by the parties. See Southwest Center for Biological  
11 Diversity v. U.S., 100 F.3d 1443, 1450 (9th Cir. 1996); see also  
12 5 U.S.C. § 706. Consequently, the Court's review will be limited  
13 to the administrative record unless good cause is found for  
14 augmentation of that record. Respondents shall provide  
15 Petitioner a copy of the entire administrative record within **60**  
16 days of the date of this Pretrial Scheduling Order. The filing  
17 of the written administrative record shall be filed not later  
18 than **July 14, 2010**.

19           V. MOTION HEARING SCHEDULE

20           The Petitioner's dispositive motion shall be filed by  
21 **July 8, 2010**. Respondents' opposition and cross-motion shall be  
22 filed by **July 29, 2010**. Petitioner's reply and opposition shall  
23 be filed by **August 12, 2010**. Respondents' reply shall be filed  
24 by **August 26, 2010**. Hearing on such motions shall be on  
25 **September 2, 2010, at 2:00 p.m.** The opposition and reply must be  
26 filed by **4:00 p.m.** on the day due.

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1 The time deadline for disposition motions does not apply to  
2 motions for continuances, temporary restraining orders or other  
3 emergency applications.

4 All purely legal issues are to be resolved by timely  
5 pretrial motions. Failure to comply with Local Rules 230 and  
6 260, as modified by this Order, may be deemed consent to the  
7 motion and the Court may dispose of the motion summarily.  
8 Further, failure to timely oppose a summary judgment motion<sup>1</sup> may  
9 result in the granting of that motion if the movant shifts the  
10 burden to the nonmovant to demonstrate that a genuine issue of  
11 material fact remains for trial.

12 The Court places a page limit of twenty (20) pages on all  
13 initial moving papers, twenty (20) pages on oppositions, and ten  
14 (10) pages for replies. All requests for page limit increases  
15 must be made in writing to the Court setting forth any and all  
16 reasons for any increase in page limit at least fourteen (14)  
17 days prior to the filing of the motion.

18 For the Court's convenience, citations to Supreme Court  
19 cases should include parallel citations to the Supreme Court  
20 Reporter.

21 The parties are reminded that a motion in limine is a  
22 pretrial procedural device designed to address the admissibility  
23 of evidence. The Court will look with disfavor upon  
24 dispositional motions presented at the Final Pretrial Conference  
25 or at trial in the guise of motions in limine.

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27 <sup>1</sup> The Court urges any party that contemplates bringing a  
28 motion for summary judgment or who must oppose a motion for  
summary judgment to review Local Rule 260.

1 The parties are cautioned that failure to raise a  
2 dispositive legal issue that could have been tendered to the  
3 court by proper pretrial motion prior to the dispositive motion  
4 cut-off date may constitute waiver of such issue.

5 VI. FINAL PRETRIAL CONFERENCE

6 The Final Pretrial Conference is set for **November 18, 2010**  
7 at **2:00 p.m.** At least one of the attorneys who will conduct the  
8 trial for each of the parties shall attend the Final Pretrial  
9 Conference. If by reason of illness or other unavoidable  
10 circumstance a trial attorney is unable to attend, the attorney  
11 who attends in place of the trial attorney shall have equal  
12 familiarity with the case and equal authorization to make  
13 commitments on behalf of the client.

14 Counsel for all parties are to be fully prepared for trial  
15 at the time of the Final Pretrial Conference, with no matters  
16 remaining to be accomplished except production of witnesses for  
17 oral testimony.

18 The parties shall file, not later than **October 27, 2010**, a  
19 Joint Final Pretrial Conference Statement. The provisions of  
20 Local Rules 281 shall apply with respect to the matters to be  
21 included in the Joint Final Pretrial Conference Statement. In  
22 addition to those subjects listed in Local Rule 281(b), the  
23 parties are to provide the Court with a plain, concise statement  
24 that identifies every non-discovery motion tendered to the Court  
25 and its resolution. Failure to comply with Local Rule 281, as  
26 modified by this Pretrial Scheduling Order, may be grounds for  
27 sanctions.

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1 At the time of filing the Joint Final Pretrial Conference  
2 Statement, counsel shall also electronically mail to the Court in  
3 digital format compatible with Microsoft Word or WordPerfect, the  
4 Joint Final Pretrial Conference Statement in its entirety  
5 including the witness and exhibit lists. **These documents shall**  
6 **be sent to: mceorders@caed.uscourts.gov.**

7 The parties should identify first the core undisputed facts  
8 relevant to all claims. The parties should then, in a concise  
9 manner, identify those undisputed core facts that are relevant to  
10 each claim. The disputed facts should be identified in the same  
11 manner. Where the parties are unable to agree as to what  
12 disputed facts are properly before the Court for trial, they  
13 should nevertheless list all disputed facts asserted by each  
14 party. Each disputed fact or undisputed fact should be  
15 separately numbered or lettered.

16 Each party shall identify and concisely list each disputed  
17 evidentiary issue which will be the subject of a motion in  
18 limine.

19 Each party shall identify the points of law which concisely  
20 describe the legal issues of the trial which will be discussed in  
21 the parties' respective trial briefs. Points of law should  
22 reflect issues derived from the core undisputed and disputed  
23 facts. Parties shall not include argument or authorities with  
24 any point of law.

25 The parties are reminded that pursuant to Local Rule 281  
26 they are required to list in the Joint Final Pretrial Conference  
27 Statement all witnesses and exhibits they propose to offer at  
28 trial.

1 After the name of each witness, each party shall provide a brief  
2 statement of the nature of the testimony to be proffered. The  
3 parties may file a joint list or each party may file separate  
4 lists. These list(s) shall not be contained in the body of the  
5 Joint Final Pretrial Conference Statement itself, but shall be  
6 attached as separate documents to be used as addenda to the Final  
7 Pretrial Order.

8         Petitioner's exhibits shall be listed numerically.  
9 Respondents' exhibits shall be listed alphabetically. The  
10 parties shall use the standard exhibit stickers provided by the  
11 Court Clerk's Office: pink for petitioner and blue for  
12 respondent. In the event that the alphabet is exhausted, the  
13 exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. After three  
14 letters, note the number of letters in parenthesis (i.e.,  
15 "AAAA(4)") to reduce confusion at trial. All multi-page exhibits  
16 shall be stapled or otherwise fastened together and each page  
17 within the exhibit shall be numbered. All photographs shall be  
18 marked individually. The list of exhibits shall not include  
19 excerpts of depositions, which may be used to impeach witnesses.  
20 In the event that Petitioner and Respondents offer the same  
21 exhibit during trial, that exhibit shall be referred to by the  
22 designation the exhibit is first identified. The Court cautions  
23 the parties to pay attention to this detail so that all concerned  
24 will not be confused by one exhibit being identified with both a  
25 number and a letter.

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1 The Final Pretrial Order will contain a stringent standard  
2 for the offering at trial of witnesses and exhibits not listed in  
3 the Final Pretrial Order, and the parties are cautioned that the  
4 standard will be strictly applied. On the other hand, the  
5 listing of exhibits or witnesses that a party does not intend to  
6 offer will be viewed as an abuse of the court's processes.

7 The parties also are reminded that pursuant to Rule 16 of  
8 the Federal Rules of Civil Procedure it will be their duty at the  
9 Final Pretrial Conference to aid the Court in: (a) the  
10 formulation and simplification of issues and the elimination of  
11 frivolous claims or defenses; (b) the settling of facts that  
12 should properly be admitted; and (c) the avoidance of unnecessary  
13 proof and cumulative evidence. Counsel must cooperatively  
14 prepare the Joint Final Pretrial Conference Statement and  
15 participate in good faith at the Final Pretrial Conference with  
16 these aims in mind. A failure to do so may result in the  
17 imposition of sanctions which may include monetary sanctions,  
18 orders precluding proof, elimination of claims or defenses, or  
19 such other sanctions as the Court deems appropriate.

20 VII. TRIAL BRIEFS

21 The parties shall file trial briefs not later than  
22 **November 3, 2010** by **4:00 p.m.** Counsel are directed to Local Rule  
23 285 regarding the content of trial briefs.

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1 VIII. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

2 Any evidentiary or procedural motions are to be filed by  
3 **October 27, 2010**. Oppositions must be filed by **November 3, 2010**  
4 and any reply must be filed by **November 10, 2010**. The motions  
5 will be heard by the Court at the same time as the Final Pretrial  
6 Conference.

7 IX. TRIAL SETTING

8 The trial is set for **January 14, 2011** at **9:00 a.m.** Trial  
9 will be a **one (1) day** bench trial.

10 X. SETTLEMENT CONFERENCE

11 At the Final Pretrial Conference, the Court may set a  
12 settlement conference if the parties so request. In the event no  
13 settlement conference is requested, the parties are free to  
14 continue to mediate or attempt to settle the case with the  
15 understanding that the trial date is a firm date.

16 In the event a settlement conference is set by the Court,  
17 counsel are instructed to have a principal with full settlement  
18 authority present at the Settlement Conference or to be fully  
19 authorized to settle the matter on any terms. At least seven (7)  
20 calendar days before the settlement conference, counsel for each  
21 party shall submit to the chambers of the settlement judge a  
22 confidential Settlement Conference Statement. Such statements  
23 are neither to be filed with the Clerk nor served on opposing  
24 counsel. Each party, however, shall serve notice on all other  
25 parties that the statement has been submitted. If the settlement  
26 judge is not the trial judge, the Settlement Conference Statement  
27 shall not be disclosed to the trial judge.

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1 Notwithstanding the foregoing, the parties may request a  
2 settlement conference prior to the Final Pretrial Conference if  
3 they feel it would lead to the possible resolution of the case.  
4 In the event an early settlement conference date is requested,  
5 the parties shall file said request jointly, in writing. The  
6 request must state whether the parties waive disqualification,  
7 pursuant to Local Rule 270(b), before a settlement judge can be  
8 assigned to the case. Absent the parties' affirmatively  
9 requesting that the assigned Judge or Magistrate Judge  
10 participate in the settlement conference AND waiver, pursuant to  
11 Local Rule 270(b), a settlement judge will be randomly assigned  
12 to the case.

13 XI. VOLUNTARY DISPUTE RESOLUTION PROGRAM

14 Pursuant to Local Rule 271 parties will need to lodge a  
15 stipulation and proposed order requesting referral to the  
16 Voluntary Dispute Resolution Program.

17 XII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

18 The parties are reminded that pursuant to Rule 16(b) of the  
19 Federal Rules of Civil Procedure, the Pretrial Scheduling Order  
20 shall not be modified except by leave of court upon a showing of  
21 **good cause**. Agreement by the parties pursuant to stipulation  
22 alone to modify the Pretrial Scheduling Order does not constitute  
23 good cause. Except in extraordinary circumstances,  
24 unavailability of witnesses or counsel will not constitute good  
25 cause.

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1 XIII. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

2 This Pretrial Scheduling Order will become final without  
3 further order of the Court unless objections are filed within  
4 seven (7) court days of service of this Order.

5 IT IS SO ORDERED.

6 Dated: May 11, 2010

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9 MORRISON C. ENGLAND, JR.  
10 UNITED STATES DISTRICT JUDGE  
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