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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CENTRAL VALLEY CHRYSLER
VALLEY JEEP, INC., et al.,

Plaintiff,

vs.

CATHERINE E. WITHERSPOON,

Defendants.

**CASE NO. CV-F-04-6663 REC LJO
SCHEDULING CONFERENCE ORDER**

Expert
Disclosure: March 31, 2006

Supplemental
Expert Disclosure: April 28, 2006

Nonexpert
Discovery Cutoff: June 30, 2006

Expert
Discovery Cutoff: September 18, 2006

Pretrial
Motion Filing
Deadline: October 17, 2006

Pretrial Motion
Hearing Deadline: November 17, 2006

Settlement Conf.: None

Pretrial Conf.: Date: December 1, 2006
Time: 9:00 a.m.
Dept.: 6 (LJO)

Court Trial: Date: January 16, 2007
(20 days est.) Time: 10 a.m.
Dept.: 1 (REC)

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1 This Court conducted an August 25, 2005 scheduling conference. Plaintiffs Central Valley
2 Chrysler-Jeep, Inc., Kitahara Pontiac GMC Buick, Inc., Madera Ford Mercury, Inc., Madera Chevrolet,
3 Frontier Dodge, Inc., Tom Fields Motors, Inc., Pistoresi Chrysler Dodge Jeep, Bob Williams Chevrolet,
4 Courtesy Oldsmobile Cadillac, Inc., Merle Stone Chevrolet, Inc., Merle Stone Porterville, Inc., Sturgeon
5 and Beck Incorporated, Swanson Fahrney Ford, Inc., General Motors Corporation, DaimlerChrysler
6 Corporation, Tulare County Farm Bureau and the Alliance of Automobile Manufacturers (Collectively
7 “plaintiffs”) appeared by counsel Timothy Jones, Sagaser, Jones & Haesy, Stuart Drake, and Andrew
8 Clubok or Kirland & Ellis. Defendant Catherine Witherspoon, in her official capacity as Executive
9 Officer of the California Air Resources Board, appeared by counsel Marc Melnick, Deputy Attorney
10 General. Other appearances were made as follows. Potential Plaintiff Intervenor the Association of
11 International Automobile Manufacturers appeared by counsel Wallace Upton of Kimbel, MacMichael
12 & Upton. Potential Defendant Intervenor Bluewater Network, Global Exchange, and Rainforest Action
13 Network appeared by telephone by counsel Danielle Fugere. Potential Defendant Intervenor Sierra Club,
14 Natural Resources Defense Council, and Environmental Defense appeared by counsel Roman Silberfeld,
15 Robbins, Kaplan, Miller & Ciresi. It is anticipated that a ruling on the substantive motions pending
16 before the District Court judge will be decided in approximately a week. Pursuant to F.R.Civ.P. 16(b),
17 this Court sets a schedule for this action.

18 **1. Summary Of The Action**

19 For a summary of the action, the Court references the parties’ Scheduling Report, filed August
20 18, 2005, at pages 2-8.

21 **A. Background**

22 1. The Parties:

23 Plaintiffs Central Valley Chrysler-Jeep, Inc., Kitahara Pontiac GMC Buick, Inc., Madera Ford
24 Mercury, Inc., Madera Chevrolet, Frontier Dodge, Inc., Tom Fields Motors, Inc., Pistoresi Chrysler
25 Dodge Jeep, Bob Williams Chevrolet, Courtesy Oldsmobile Cadillac, Inc., Merle Stone Chevrolet, Inc.,
26 Merle Stone Porterville, Inc., Sturgeon and Beck Incorporated, Seanson Fahrney Ford, Inc. (“dealer
27 plaintiffs”) are automobile dealers operating in the southern San Joaquin Valley of California.

28 Plaintiffs DaimlerChrysler Corporation and General Motors Corporation supply new

1 motor vehicles for sale by the dealer plaintiffs and others in the southern San Joaquin Valley. Both are
2 Alliance members.

3 Plaintiff The Tulare County Farm Bureau states that it is a voluntary, nongovernmental,
4 nonpartisan association of farm and ranch families who reside in Tulare County, California and is
5 organized under the California Nonprofit Mutual Benefit Corporation Law (Cal. Corp. Code § § 7110
6 *et seq.*). According to plaintiffs, in 2003, Tulare County produced the second-highest amount of
7 agricultural produce in California.

8 Plaintiff the Alliance of Automobile Manufacturers is an association of motor vehicle
9 manufacturers including BMW of North America, LLC, DaimlerChrysler Corporation, Ford Motor
10 Company, General Motors Corporation, Mazda North American Operations, Mitsubishi Motor Sales
11 of America, Inc., Porsche Cars North America, Inc., Toyota Motor North America, Inc., and Volkswagen
12 of America, Inc.

13 Defendant Catherine E. Witherspoon is the Executive Officer of the California Air
14 Resources Board (“CARB ”), an agency in the executive branch of the California government.
15 Defendant Catherine E. Witherspoon is made a defendant to this action in her official capacity only.
16 Defendant Witherspoon, in her official capacity, resides in Sacramento, California.

17 The Basis of the Dispute:

18 By way of introduction, a party’s allegations, beliefs and contentions set forth in this
19 report are deemed to be denied by the opposing party.

20 **Plaintiffs’ Contentions**

21 _____The state law involved in this proceeding was adopted by the 2001-2002 Regular Session
22 of the California Legislature as Assembly Bill 1493 (“A.B. 1493”), approved by Governor Gray Davis
23 in July 2002, and codified at section 43018.5 of the California Health & Safety Code. Defendant has
24 interpreted A.B. 1493 to require the adoption and enforcement of rules to limit the release of carbon
25 dioxide from new motor vehicles sold in California beginning in the 2009 model year, which starts in
26 calendar year 2008. Plaintiffs seek to restrain enforcement of CARB’s regulations by the Executive
27 Officer.

28 Plaintiffs allege that the regulations at issue illegally regulate fuel economy. Plaintiffs

1 believe that because carbon dioxide is an unavoidable by-product of the combustion of gasoline, there
2 is a direct relationship between the amount of fuel consumed by a vehicle and the amount of carbon
3 dioxide emitted by that vehicle. Therefore, regulations that require vehicles to burn less gasoline will
4 limit the release of carbon dioxide from those vehicles and vice versa. As such, Plaintiffs believe that
5 the CARB regulations are preempted by the federal statute that created the authority for the Department
6 of Transportation to regulate fuel economy, and the federal regulations enacted under that statutory
7 authority. Plaintiffs also allege that the adopted rule could not be enforced without interference with the
8 national motor vehicle fuel economy program established under the federal fuel economy statute, and
9 that the A.B. 1493 rule stands as an obstacle to, and impedes, the objectives of the federal motor vehicle
10 fuel economy program.

11 Plaintiffs allege that state emissions regulations are also expressly preempted by the
12 federal Clean Air Act. In some circumstances California can obtain a waiver of that preemption from
13 U.S. EPA in order to address air pollution conditions that compel unique and specific regulation to
14 address the needs of California. However, the A.B. 1493 rule is, by its own definition, a measure aimed
15 to reduce global warming, as distinguished from air pollution, and does not address conditions that are
16 unique to California. Thus, Plaintiffs believe that the Clean Air Act precludes enforcement of the
17 California regulation.

18 Plaintiffs believe that the relief sought in this action will not have any negative effect on
19 CARB's efforts to control air pollution. The A.B. 1493 regulation will raise vehicle prices, and those
20 price increases will slow the rate at which newer gasoline-powered vehicles replace older vehicles in
21 California. Because older gasoline-powered vehicles have higher emissions of smog-forming and other
22 harmful pollutants than newer gasoline-powered vehicles, the increased average age of vehicles in
23 California resulting from the A.B. 1493 regulation will increase smog-forming emissions from the
24 operation of motor vehicles in California. In other words, if the A.B. 1493 regulation is *not*
25 implemented, smog-forming emissions released from the California gasoline-powered motor vehicle
26 fleet will actually be lower than they would be if the regulation *is* implemented.

27 Plaintiffs also allege that the A.B. 1493 rule oversteps the national prerogative of control
28 of foreign policy matters. Plaintiffs believe that, with respect to the issue of global warming, it is not

1 the prerogative of either the Executive Officer or the State of California to try to set national greenhouse
2 gas control policy for new motor vehicles. The United States is committed to addressing global climate
3 change through multilateral agreements. The A.B. 1493 regulation is therefore also preempted because
4 it conflicts with that policy and weakens the diplomatic leverage of the federal government in
5 negotiations on greenhouse gas standards with other nations.

6 Plaintiffs believe that the implementation of A.B. 1493 will require motor vehicles to
7 attain substantially higher fuel economy than those required by federal regulation, at higher retail prices
8 to the consumer, and with much higher costs and burdens on the industry, than under the federal fuel
9 economy regulations. In addition to increasing prices for all consumers, certain Plaintiffs believe that
10 CARB's regulation will reduce the current range of choices among different vehicle models in the
11 California new-vehicle market because it will be financially impossible for some manufacturers to keep
12 their current full line of vehicles -- offering a variety of different engines, horsepower, and towing
13 capacities -- in the California market once Defendant's regulations are fully implemented.

14 Plaintiffs do not believe that any significant local benefits exist to offset this weighty toll
15 on interstate commerce. Because greenhouse gases disperse evenly in the atmosphere, Plaintiffs believe
16 that any rule that CARB might adopt applicable to new motor vehicles sold in this State will have no
17 more than a trivial effect in reducing the concentration of greenhouse gas emissions in the upper
18 atmosphere above California, much less the national or global atmosphere. Plaintiffs thus allege that
19 the economic burdens created by the A.B. 1493 regulation disproportionately outweigh any putative
20 benefits of the rule, thereby violating the dormant Commerce Clause of the U.S. Constitution.

21 The regulation approved by CARB on September 24, 2004, in Resolution 04-28, requires
22 that if one manufacturer owns a ten percent or greater share of another manufacturer, the two companies
23 will be treated as a single manufacturer for compliance purposes. Because manufacturers attempt to
24 control the mix of vehicles that are sold by raising and lowering prices to encourage and discourage sales
25 of particular vehicle models or groups, Plaintiffs believe that to ensure that the correct mix of vehicles
26 is sold, a manufacturer attempting to comply with a fleet average fuel economy standard will have to
27 exchange price information and perhaps even coordinate pricing to ensure that another manufacturer in
28 which the first manufacturer owns a 10 percent or greater share does not upset the overall mix of

1 vehicles. The two manufacturers will also need to coordinate the sale of vehicles according to their fuel
2 economy, promoting the most fuel-efficient vehicles or restricting the less fuel efficient vehicles, as
3 necessary. Plaintiffs assert that such coordination -- and in particular, any price fixing -- will have a
4 substantial effect on interstate commerce and is prohibited by federal antitrust law, which prohibits
5 “[e]very contract ... or conspiracy[] in restraint of trade or commerce among the several States.” 15
6 U.S.C. § 1. Yet, the Executive Officer has not articulated any valid basis for antitrust immunity for this
7 feature of the California regulation.

8 Based on the foregoing, Plaintiffs have sought claims for declaratory and injunctive relief
9 against Defendant under the Supremacy Clause in Article VI of the United States Constitution and 42
10 U.S.C. § 1983. Plaintiffs challenge the requirements of a state law and a regulation implementing the
11 state law that are preempted by federal law.

12 *Defendant’s Contentions*

13 _____ Defendant’s analysis of the legal issues in this case begins with the fact that these
14 challenged proposed regulatory amendments set standards for emissions from new motor vehicles for
15 four greenhouse gases (carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons). As such,
16 Defendant contends they fall within the scope of section 209 of the Clean Air Act. In enacting and later
17 strengthening subsection (b) of that section (commonly referred to as the California "waiver" provision),
18 Congress intended to give California wide latitude to adopt motor vehicle emission standards that it saw
19 fit to adopt. And Congress understood, and approved of the fact, that those California emission
20 standards – like federal emission standards – would have a demonstrable effect on fuel economy.
21 According to Defendant, this congressional authorization overcomes the general preemption provisions,
22 preemption principles, and dormant Commerce Clause principles upon which Plaintiffs base their action.
23 Defendant believes that even without the authorization of Clean Air Act section 209(b), the reach of
24 Plaintiffs’ claims is not so far as they allege, given the presumptions against finding preemption and the
25 deference paid to state police power.

26 Defendant believes that while it is likely that this challenge will be decided on legal
27 grounds, it is appropriate to also explain the factual side of this case. These proposed regulatory
28 amendments set maximum fleet-wide average greenhouse gas emission standards for two classes of

1 vehicles for model years 2009 to 2016, with the maximum levels moving downward over time. While
2 automobile manufacturers could comply with these proposed regulatory amendments in a myriad of
3 ways, Defendant contends that California’s technological analysis of the issues has shown (and will
4 show) that automobile manufacturers can meet these standards by applying already available or
5 soon-to-be-available technological improvements to their engines, transmissions, electrical systems, and
6 air conditioning systems. Defendant’s analysis shows that the average costs for these improvements for
7 passenger cars, small trucks, and small SUVs will be between \$17 (for model year 2009) and \$1,064 (for
8 model year 2016). Intervening model years and average costs for large trucks and SUVs will be between
9 those figures. In contrast, the operational savings from the model year 2016 standard set by these
10 proposed regulatory amendments will average approximately \$3,000 (over the average life time of the
11 vehicle), assuming a gasoline price of just \$1.74. These operational savings lead to economic benefits
12 for Californians and for the California economy – in addition to the greenhouse gas emission reductions
13 (and associated smog-forming pollutant emission reductions).

14 By taking these steps, California is doing what it can, within its jurisdiction, to try to
15 prevent the increasing effects of global warming. These effects are significant for Californians, and
16 include rising oceans, shrinking snowpack, adverse health effects due to heat and more smog, and more
17 intense weather and wildfires.

18 **B. Plaintiffs’ Complaint:**

19 _____The First Amended Complaint states five claims for relief. Plaintiffs’ first claim for relief
20 is for preemption under the federal fuel economy laws. Plaintiffs contend that the regulation approved
21 by CARB on September 24, 2004, in Resolution 04-28, which Defendant is charged with implementing,
22 is “related to fuel economy standards and average fuel economy standards,” and is preempted under 49
23 U.S.C. § 32919(a). Plaintiffs contend that the regulation approved by Resolution 04-28 is preempted
24 by the federal fuel economy laws and cannot be enforced.

25 Plaintiffs’ second claim for relief is for preemption under the federal Clean Air Act.
26 Plaintiffs contend that the regulation approved by CARB on September 24, 2004, in Resolution 04-28,
27 is a standard related to the control of emissions from new motor vehicles. Plaintiffs contend that the
28 regulation is preempted by section 209(a) of the Clean Air Act, 42 U.S.C. § 7543(a).

1 Plaintiffs' third claim for relief is for preemption under the foreign policy of the United
2 States and the foreign affairs power of the federal government. Plaintiffs contend that the regulation
3 approved by CARB on September 24, 2004, in Resolution 04-28, intrudes upon the foreign policy of
4 the United States and the foreign affairs prerogatives of the President and Congress of the United States.

5 Plaintiffs' fourth claim for relief is for violation of the Dormant Commerce Clause of the
6 U.S. Constitution. Plaintiffs contend that the regulation approved by CARB on September 24, 2004,
7 in Resolution 04-28, burdens the production and sale of new motor vehicles by increasing the purchase
8 price to the customer by thousands of dollars, while providing no local environmental benefit, or
9 insubstantial local benefits at best.

10 Plaintiffs' fifth claim for relief is brought under the Sherman Antitrust Act. Plaintiffs
11 contend that the regulation approved by CARB on September 24, 2004, in Resolution 04-28, *de facto*
12 requires manufacturers that are otherwise competitors to exchange production, supply, and price
13 information regarding new motor vehicles. Plaintiffs contend that such coordination will have a
14 substantial effect on interstate commerce and is prohibited by federal antitrust law, which prohibits
15 "[e]very contract ... or conspiracy[] in restraint of trade or commerce among the several States." 15
16 U.S.C. § 1.

17 **C. Defendant's Answer:**

18 Defendant has not yet filed an Answer, but intends to do so, as necessary, following the Court's ruling
19 on the pending motion to dismiss.

20 **2. Amendment To The Parties' Pleadings**

21 The parties propose no amendment to their respective pleadings.

22 **3. Summary Of Uncontested And Contested Facts**

23 For a summary of uncontested and contested facts, the Court references the parties' Scheduling
24 Report, filed August 18, 2005, at page 8-12.

25 _____ Insofar as any of the following items overlap both law and fact, they are to be considered
26 under both categories:

27 **A. Uncontested Facts:**

28 **Technical Background**

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1. Greenhouse gases retain heat in the earth’s atmosphere.
2. Water vapor contributes to the greenhouse effect. The natural greenhouse effect allows the Earth to retain the heat needed to sustain life. Carbon dioxide, methane, and oxygen all occur naturally in the atmosphere at some level. In addition, human activity creates carbon dioxide, and that carbon dioxide created by human activity comprises the largest volume of greenhouse gases created by human activity.
3. Carbon dioxide is also released from any combustion process that includes fossil fuels, such as the operation of a gasoline-powered vehicle, the burning of coal or natural gas in a power plant, or the operation of an industrial kiln.
4. Carbon dioxide exists in the earth’s atmosphere, and under normal conditions carbon dioxide is stable, inert, and nontoxic.
5. Carbon dioxide is not currently listed on the web-site of the San Joaquin Valley Air Pollution Control District as one of the ten pollutants for which there exist federal or state limits applicable to air pollution in the Central Valley.
6. Some greenhouse gases, including carbon dioxide, disperse evenly in the upper atmosphere. The effect on the global climate of a given amount of some greenhouse gases (such as carbon dioxide) anywhere on the planet is unaffected by the location of where those greenhouse gases were emitted.
7. The Pew Center on Global Climate Change has noted that “a ton of greenhouse gases emitted in the United States has the same impact as a ton emitted in Malaysia.”
8. Carbon dioxide from California passenger cars and light-duty trucks currently comprises less than two percent of anthropogenic greenhouse gas emissions in the United States and a smaller fraction of global anthropogenic greenhouse gas emissions.
9. Greenhouse gas emissions in the developing world and in many industrialized nations are increasing, and increases in some types of greenhouse gas emissions from sources outside California will have the same long-term climate change effect as any similar quantity increases in those types of greenhouse gas emissions from sources inside California.

1 **Regulation of Fuel Economy**

- 2 10. EPA provides NHTSA with fuel economy calculations for individual vehicle models
3 using procedures that measure carbon dioxide and other motor vehicle emissions and are
4 published in title 40, part 600 of the Code of Federal Regulations.
- 5 11. The level of carbon dioxide emitted from a gasoline-powered engine is generally related
6 to its fuel consumption (the higher the level of a vehicle’s fuel consumption, the greater
7 tends to be its production of carbon dioxide).
- 8 12. Motor vehicle fuel economy is regulated at the national level by the National Highway
9 Traffic Safety Administration (“NHTSA”), a federal agency within the U.S. Department
10 of Transportation.
- 11 13. NHTSA regulations regulate the average fuel economy of each manufacturer’s fleet of
12 cars or light duty trucks.
- 13 14. NHTSA regulates motor vehicle fuel economy based on miles per gallon (“mpg”) of
14 gasoline consumed.

15 **Statutory & Rulemaking History**

- 16 _____ 15. The greenhouse gas rule being challenged in this proceeding was developed pursuant to
17 a state law adopted by the 2001-2002 Regular Session of the California Legislature as
18 Assembly Bill 1493 (“A.B. 1493”), approved by the Governor in July 2002, and codified
19 at section 43018.5 of the California Health & Safety Code.
- 20 16. CARB held a public hearing in September 2004 on CARB staff’s proposed greenhouse
21 gas emission regulatory amendments. The public hearing was held in a meeting room
22 in a hotel near the Los Angeles International Airport, and oral and written comments
23 were received at the public hearing. At the public hearing the Chairman of CARB closed
24 the record and the public comment period, CARB voted to adopt Resolution 04-28
25 (which included a few modifications to the original proposal that were recommended
26 during the course of the public hearing), CARB adjourned, and the record was reopened
27 for public comment from October 19, 2004 through November 5, 2004, and from May
28 11, 2005 to May 26, 2005.

- 1 United States.
- 2 5. The impact of the greenhouse gas rule on motor vehicle safety.
- 3 6. The impact of the greenhouse gas rule on the federal motor vehicle fuel economy
- 4 program.
- 5 7. The impact of the greenhouse gas rule on consumer choice and consumer welfare in the
- 6 United States.
- 7 8. The impact of the greenhouse gas rule's requirements for aggregation of different
- 8 manufacturers' product lines on competition.
- 9 9. The impact of the greenhouse gas rule on national control of United States policy related
- 10 to the international control of greenhouse gas emissions and the issue of global climate
- 11 change.
- 12 10. The dollar amount of the operational cost savings from the greenhouse gas rule.
- 13 11. The extent to which the greenhouse gas rule will provide benefits to the California
- 14 economy.

15 **4. Summary Of Undisputed And Disputed Legal Issues**

16 For a summary of undisputed and disputed legal issues, the Court references the parties'
17 Scheduling Report, filed August 18, 2005, at page 12-14.

18 **A. Undisputed Legal Issues**

- 19 1. The parties agree that at least one plaintiff has standing to bring this action.
- 20 2. The parties agree that the Court has personal jurisdiction over the plaintiffs.
- 21 3. The parties agree that the Court has personal jurisdiction over the defendants.
- 22 4. Discovery may need to be conducted before the parties can determine whether there are
- 23 any other legal issues not in dispute.

24 **B. Disputed Legal Issues**

25 Insofar as any of the following items overlap both law and fact, they are to be considered under both
26 categories:

27 **A. Uncontested Legal Issues:**

- 28 1. The parties agree that at least one plaintiff has standing to bring this matter.

- 1 2. The parties agree that the Court has personal jurisdiction over Plaintiffs in this matter.
- 2 3. The parties agree that the Court has personal jurisdiction over Defendant in this matter.
- 3 4. Discovery may need to be conducted before the parties can determine whether there are
- 4 any other legal issues not in dispute.

5 **B. Contested Legal Issues:**

- 6 1. Whether this action could be filed in Fresno under Local Rule 3-120.
- 7 2. Whether the doctrine of primary jurisdiction applies to the claim of preemption under the
- 8 Clean Air Act.
- 9 3. Whether the greenhouse gas rule, which Defendant is charged with implementing, is
- 10 “related to fuel economy standards and average fuel economy standards,” and is
- 11 preempted under 49 U.S.C. § 32919(a).
- 12 4. Whether the greenhouse gas rule, which Defendant is charged with implementing,
- 13 intrudes upon a field of regulation occupied by the federal government.
- 14 5. Whether the greenhouse gas rule, which Defendant is charged with implementing, is
- 15 inconsistent with NHTSA’s determination of the “maximum feasible” corporate average
- 16 fuel economy standards for cars and light-duty trucks, based upon NHTSA’s assessment
- 17 of technological feasibility, economic practicability, the effect of other motor vehicle
- 18 standards of the Government on fuel economy, and the need of the United States to
- 19 conserve energy, 49 U.S.C. § 32902(f), and thereby frustrates the accomplishment of
- 20 federal objectives.
- 21 6. Whether the greenhouse gas rule is a standard related to the control of emissions from
- 22 new motor vehicles preempted by section 209(a) of the Clean Air Act, 42 U.S.C.
- 23 § 7543(a).
- 24 7. Whether the greenhouse gas rule intrudes upon the foreign policy of the United States
- 25 and the foreign affairs prerogatives of the President and Congress of the United States.
- 26 8. Whether the alleged coordination required by greenhouse gas rule will have a substantial
- 27 effect on interstate commerce and is prohibited by federal antitrust law.
- 28 9. Whether any part of the greenhouse gas rule found to be unlawful can be severed by the

1 Court from other parts of the regulation.

2 10. Whether the greenhouse gas rule qualifies for a waiver under Clean Air Act section
3 209(b).

4 11. Discovery and further investigation may reveal that there are additional legal issues in
5 dispute.

6 **5. Consent To Magistrate Judge**

7 All of parties do not consent to the conduct of all further proceedings, including trial, before a
8 United States Magistrate Judge.

9 **6. Expert Witnesses**

10 Initial expert witness disclosures by any party shall be served no later than **March 31, 2006**.
11 Supplemental expert witness disclosures by any party shall be served no later than **April 28, 2006**. Such
12 disclosures must be made pursuant to F.R.Civ.P. 26(a)(2)(A) and (B) and shall include all information
13 required thereunder. In addition, F.R.Civ.P. 26(b)(4) and F.R.Civ.P. 26(e) shall specifically apply to all
14 discovery relating to expert witnesses and their opinions. Each expert witness must be fully prepared
15 to be examined on all subjects and opinions included in the designations. Failure to comply with these
16 requirements will result in the imposition of appropriate sanctions, which may include the preclusion
17 of testimony or other evidence offered through the expert witness. In particular, this Court will enforce
18 preclusion of testimony or other evidence for failure to strictly comply with F.R.Civ.P. 26(e).

19 **7. Discovery Cutoffs**

20 All nonexpert discovery and related discovery motions (including motions to compel) shall be
21 completed or heard no later than **June 30, 2006**. All expert discovery and related discovery motions
22 (including motions to compel) shall be completed or heard no later than **September 18, 2006**. Initial
23 disclosure shall be no later than **October 14, 2005**.

24 **8. Pretrial Motion Schedule**

25 All pretrial motions, both dispositive and nondispositive (except discovery motions addressed
26 above), shall be served and filed no later than **October 17, 2006**. All pretrial dispositive and
27 nondispositive motions (except discovery motions addressed above) shall be set before the appropriate
28 judge for a hearing to be conducted no later than **November 17, 2006**. The parties must note that this

1 pretrial motion schedule includes **the filing and hearing dates for motions in limine.**

2 **9. Mandatory Settlement Conference**

3 Should the parties desire a settlement conference, they should jointly request one of the Court,
4 and one will be arranged. In making such request, the parties are directed to notify the Court as to
5 whether or not they desire the undersigned to conduct the settlement conference or to arrange for one
6 before another judicial officer.

7 **10. Pretrial Conference**

8 A pretrial conference is set for **December 1, 2006 at 9:00 a.m.** in Department 6 (LJO) of this
9 Court. The parties are directed to file a joint pretrial statement which complies with the requirements
10 of this Court's Local Rule 16-281. In addition, the joint pretrial statement should include a brief factual
11 summary and an agreed upon neutral statement of the case. An additional copy of the joint pretrial
12 statement, carefully prepared and executed by all counsel, shall be electronically filed in CM/ECF and
13 shall be e-mailed in WordPerfect format to ljoorders@caed.uscourts.gov.

14 The parties' attention is directed to this Court's Local Rules 16-281 and 16-282. The Court will
15 insist upon strict compliance with those rules.

16 At the pretrial conference, the Court will set deadlines, among others, final witness and exhibits
17 lists, objections thereto, and other trial documents.

18 **11. Trial Date**

19 A 20 day court trial is set for **January 16, 2007 at 10 a.m.** in Department 1 (REC) of this Court.

20 The Court understands the need to retain the above trial date due to the issues involved in this
21 case. As of the date of this Scheduling Conference, the Fresno Division of this Court is in flux as to
22 availability of judges on the selected trial date. If the case is transferred to a different trial judge, the
23 transfer will be with the acknowledgment that the trial date is firm.

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1 **12. Effect Of This Order**

2 This order represents the best estimate of the Court and parties as to the agenda most suitable to
3 dispose of this case. If the parties determine at any time that the schedule outlined in this order cannot
4 be met, the parties are ordered to notify the Court immediately of that fact so that adjustments may be
5 made, either by stipulation or by subsequent status conference. Stipulations extending the deadlines
6 contained herein will not be considered unless they are accompanied by affidavits or declarations with
7 attached exhibits, where appropriate, which establish good cause for granting the relief requested.

8 Failure to comply with this order shall result in the imposition of sanctions.

9 **IT IS SO ORDERED.**

10 **Dated: September 19, 2005**
11 **b9ed48**

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE

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