

**HONORABLE LINDA LOPEZ
UNITED STATES DISTRICT JUDGE
CIVIL CHAMBERS RULES**

For questions regarding filing and/or docketing, contact:

- The Clerk’s Office at (619) 557-5600;
- The CM/ECF Helpline at (866) 233-7983; and/or
- The CASD CM/ECF Helpdesk at ecfhelp@casd.uscourts.gov

Courtroom Deputy:

- Rhea Andrews: (619) 557-6412

Court Reporter

- Vanessa Evans: Vanessa_Evans@casd.uscourts.gov

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Unless otherwise ordered by the Court, counsel and pro se litigants are expected to follow the Federal Rules of Civil Procedure, the Local Rules for the Southern District of California (“Civil Local Rules”), the Electronic Case Filing Administrative Policies and Procedures Manual (“ECF Manual”), and any other applicable rules. The Civil Local Rules and the ECF Manual are available on this district’s website: www.casd.uscourts.gov.

1. Communications with Chambers

Parties seeking a hearing date must refer to the procedure for doing so below in Section 3B. In light of the Court’s procedure for setting motion hearing dates, telephone calls to chambers are rarely necessary. Such calls may only be made by **counsel** with knowledge of the case. **Calls from secretaries, legal assistants, paralegals, or parties represented by counsel are prohibited.** Counsel should not call chambers with procedural questions. The Court does not give time estimates for

its written rulings. Court personnel are prohibited from giving legal advice or discussing the merits of a case. When calling chambers, be prepared to identify your case name and number so your call may be directed to the appropriate law clerk. If your call is not answered, you may leave a voicemail—including your name, contact information, case number, case name, and detailed message. Upon reviewing the voicemail, the Court may return the phone call if necessary.

Letters, faxes, and emails are prohibited unless otherwise authorized by the Court. The Court's e-file email account must only be used to lodge or submit proposed orders, required trial documents, or other documents requested by the Court. It is generally not to be used for communication purposes (e.g., asking questions).

2. Discovery

Counsel must contact the magistrate judge's chambers directly for all matters pertaining to discovery. Any objection to a discovery ruling of the magistrate judge must be filed as a motion pursuant to Civil Local Rule 7.1.

3. Motion Practice

A. Conference of Counsel Prior to Filing Noticed Motions

Any party contemplating the filing of any noticed motion before this Court must first contact opposing counsel to discuss thoroughly—preferably in person—the substance of the contemplated motion and any potential resolution. The conference must take place at least **seven (7) days** prior to the filing of the motion. If the parties are unable to reach a resolution that eliminates the need to file the anticipated motion, counsel for the moving party must include in the notice of motion a statement to the following effect: “This motion is made following the conference of counsel that took place on [date].”

The only exceptions to this meet-and-confer requirement are: (1) in cases where the plaintiff is appearing pro se and is not an attorney; (2) for applications for temporary restraining orders or preliminary injunctions; and (3) motions and cross-motions for summary judgment. Ex parte applications,

which have separate requirements below, and joint motions are exempt from this rule as they are not noticed motions.

B. Motion Hearing Dates

Parties filing a noticed motion must set the hearing to be thirty-five (35) days from the motion’s filing date.¹ Parties intending to file a motion may **not** contact chambers for a hearing date. This rule supersedes the requirement of Civil Local Rule 7.1(b). Opposition and reply briefs are due based on the noticed hearing date. See CivLR 7.1(e). The hearing date does not indicate a date for when appearances are necessary; rather, it sets the briefing schedule for the motion pursuant to the applicable local rules including Civil Local Rule 7.1(e). Consequently, the filing party will not specify a hearing time on its motion and must include the following language in the caption of the motion: **PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT**. A party may request oral argument by filing a separate request that explains why oral argument would be helpful to the Court. If the Court grants a request for oral argument or sua sponte decides to hear oral argument, the Court will issue an order setting forth the date and time for oral argument.

Parties must contact the assigned magistrate judge’s chambers for hearing and scheduling dates needed for cases referred—either by operation of local rule or by order—to the magistrate judge. *See* CivLR 72.3.

Motions that do not comply with the requirements set forth above will be stricken from the docket.

C. Proposed Orders

Any proposed orders must be submitted simultaneously with all motions. In accordance with Section 2(h) of the ECF Manual, proposed orders must not contain the name and law firm information of the filing party, and must not contain the word “proposed” in the caption. Counsel must email proposed orders in Word format to efile_lopez@casd.uscourts.gov, and include the

¹ For example, if the motion is filed on September 1, 2016, the motion date should be October 6, 2016.

case number and case name in the subject line of the email. Proposed orders or other documents requiring the judge's signature must not be filed on the docket.

D. Briefing

If multiple parties are moving for substantially the same relief, they must make every effort to obtain the same hearing date for their motions. If multiple parties are moving for substantially the same relief or opposing a motion seeking substantially the same relief sought against them, and noticed for the same hearing date, counsel must make every effort to coordinate and consolidate the briefing or use the notice of joinder procedure to avoid duplication in briefing. If the briefing is not coordinated or consolidated, counsel for each party must file a declaration concurrently with the briefing describing the efforts and explaining why they were not successful.

E. Sur-Replies and Notices of Supplemental Authority

Sur-replies and notices of supplemental authority may not be filed unless leave of court has been granted. The parties must obtain leave of court by filing an *ex parte* request before filing any sur-replies or notices of supplemental authority.

The only exception to this requirement is if there is a change in binding intervening law that is directly on point issued *after* the filing. Under these circumstances, parties may file a notice of supplemental authority that includes a copy of the order or opinion and any case-identifying information. Counsel may not include any argument in the notice.

F. Motions and Cross-Motions for Summary Judgment

If upon being served with a motion for summary judgment an opposing party determines that it intends to file a cross-motion, that party must file an *ex parte* application requesting a consolidated briefing schedule well in advance of the due date for the opposition to the first-filed motion for summary judgment. The Court requires no duplication of briefing and exhibits.

No later than fifteen (15) days before the deadline for filing dispositive motions, all parties on the same side of the case (*i.e.*, all defendants or all plaintiffs), must meet and confer about whether they intend to file a motion

for summary judgment, and if so, the bases for that motion. If multiple parties are moving for substantially the same relief or opposing a motion seeking substantially the same relief sought against them, counsel must make every effort to coordinate and consolidate the briefing or use the notice of joinder procedure to avoid duplication in briefing. If necessary, parties jointly moving for or opposing summary judgment may request an expanded page limit upon a showing of good cause. If the briefing is not coordinated or consolidated, counsel for each party must file a declaration concurrently with the briefing describing the efforts and explaining why they were not successful. If the Court finds that briefing should have been consolidated but was not, it may strike the briefs and require them to be resubmitted as a joint motion for summary judgment.

All motions for summary judgment shall be accompanied by a separate statement setting forth **plainly and concisely** all material facts that the moving party contends are undisputed. Each material fact shall be followed by a reference to the supporting evidence. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in support of the motion for summary judgment. Separate statements assist the Court in identification of the material facts as well as pinpointing the evidence that proves those facts. The failure to comply with this requirement of a separate statement may in the Court's discretion constitute a sufficient ground for denying the motion.

Any opposition to a summary judgment motion shall include a response to the separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. The statement shall also set forth **plainly and concisely** any other material facts the opposing party contends are disputed. The parties should avoid using the separate statements as a means of presenting or repeating legal arguments that are or should be made in the memorandum of points and authorities in opposition to the motion for summary judgment. Failure to comply with this requirement of a separate statement may in the Court's discretion constitute a sufficient ground for granting the motion.

The separate statement must be in a two-column format with the moving party providing in labeled numerical sequence the undisputed material facts in the first column followed by the evidence citation that establishes those undisputed facts. In opposition, the opposing party shall indicate in the second column whether the fact is “disputed” or “undisputed.” If disputed, the opposing party must state in the second column, directly opposite the fact in dispute, the reasons for the dispute and cite the evidence that supports the position that the fact is controverted. If any opposing party fails to indicate whether a fact is disputed or undisputed, the Court will consider the fact undisputed.

Absent leave of court, separate statements shall be limited to fifteen (15) pages and must comply with the font requirements of Civil Local Rule 5.1.

All material facts referenced in a summary-judgment memorandum must cite to that party’s separate statement of facts by number, or if not included in a separate statement of facts, to the specific pages in the evidentiary record.

G. List of Terms/Names

For technical motions (especially in patent cases), the parties must send an email (not to be filed) to chambers one week prior to the hearing with a list of pertinent technical terms and/or proper names to assist the court reporter.

H. Exhibits

The parties must avoid duplication of exhibits as much as possible. All exhibits submitted in support of motions should be excerpted to include only relevant material. All exhibits must be clearly labeled, dated, tabbed, and indexed.

I. Courtesy Copies

Courtesy copies of filings that exceed **75 pages in length**, including attachments and exhibits, must be submitted in accordance with Section 2(e) of the ECF Manual via United States Postal Service mail, courier, or delivery to the Clerk’s Office at 333 West Broadway, Suite 420, San Diego, CA 92101. Courtesy copies must be received by the Court no later than three days after the filing date. The courtesy copy must contain the CM/ECF document header on the top of each page. The Court prefers courtesy copies

to be printed double-sided but will accept single-sided. If a filing has more than three (3) exhibits, the exhibits must be tabbed. Parties need **not** provide courtesy copies for filings that do not exceed 75 pages in length.

J. Failure to Oppose

An opposing party's failure to file an opposition to any motion may be construed as consent to the granting of the motion pursuant to Civil Local Rule 7.1(f)(3)(c).

4. Seeking Leave to File Documents Under Seal

There is a presumptive right of public access to court records based upon common law and first amendment grounds.² As such, motions to file documents under seal are strongly discouraged. Even where a public right of access exists, such access may be denied by the court in order to protect sensitive personal or confidential information.³ The Court may seal documents to protect sensitive information; however, the documents to be filed under seal will be limited by the Court to only those documents, or portions thereof, necessary to protect such sensitive information.

Parties seeking a sealing order must provide the Court with: (1) a specific description of the particular documents or categories of documents they need to protect; and (2) declarations showing a compelling reason or good cause to protect those documents from disclosure. The standard for filing documents under seal will be strictly applied.

² See *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 597 (1978); *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002).

³ Although courts may be more likely to order the protection of the information listed in Rule 26(c)(7) of the Federal Rules of Civil Procedure, courts have consistently prevented disclosure of many types of information, such as letters protected under attorney-client privilege which revealed the weaknesses in a party's position and was inadvertently sent to the opposing side, see *KL Group v. Case, Kay, and Lynch*, 829 F.2d 909, 917-19 (9th Cir. 1987); medical and psychiatric records confidential under state law, see *Pearson v. Miller*, 211 F.3d 57, 62-64 (3d Cir. 2000); and federal and grand jury secrecy provisions, see *Krause v. Rhodes*, 671 F.2d 212, 216 (6th Cir. 1982). Most significantly, courts have granted protective orders to protect confidential settlement agreements. See *Hasbrouck v. BankAmerica Housing Serv.*, 187 F.R.D. 453, 455 (N.D.N.Y. 1999); *Kalinauskas v. Wong*, 151 F.R.D. 363, 365-67 (D. Nev.1993).

Where good cause is shown for a protective order, the court must balance the potential harm to the moving party's interests against the public's right to access the court files. Any protective order must be narrowly drawn to reflect that balance. **The fact that both sides agree to seal or that a protective order was issued at the onset of the case alone is insufficient cause for sealing.**

The party requesting sealing must file a "public" version of the document it seeks to file under seal. In the public version, the party may redact only that information that is deemed confidential or privileged. The party shall file the redacted document(s) simultaneously with the motion requesting that the confidential portions of the document(s) be filed under seal.

E-filings of motions to seal and sealed documents must comply with ECF Manual Section 2(j).

5. Ex Parte Applications

Before filing any ex parte application, counsel must contact the opposing party to meet and confer regarding the subject of the ex parte application. All ex parte applications must comply with Civil Local Rule 83.3(g) including a declaration from the movant documenting: (1) efforts to contact opposing counsel, (2) counsel's good faith, in person or by telephone meet-and-confer efforts to resolve differences with opposing counsel, and (3) opposing counsel's general position regarding the ex parte application. Any ex parte application filed with the Court must be served on opposing counsel via facsimile, electronic mail with return receipt requested, or overnight mail. The Court may rule on ex parte applications without requiring a response from the opposing party. **Any ex parte motion that is not opposed within two (2) Court days will be considered unopposed and may be granted on that ground.**

6. Joint Motions / Stipulations

Pursuant to Civil Local Rule 7.2 and Section 2(f)(4) of the ECF Manual, all stipulations must be filed as joint motions, except for a properly executed stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) that does not require a court order to terminate a case. Joint motions must be signed by the Court to have legal effect. At the time of the filing of a joint motion, a proposed order must be submitted to the Court pursuant to Section 3(C) above.

7. **Settlement and Dismissal**

If the parties settle a case, counsel must immediately notify this Court and the magistrate judge of the settlement. If the magistrate judge does not set a deadline for the filing of a “Joint Motion to Dismiss,” the parties must file a stipulation of dismissal signed by all parties who have appeared pursuant to Federal Rule of Civil Procedure 41(a)(1)(A).

Any joint motion for dismissal that includes a provision that the court retain jurisdiction will be rejected unless it is accompanied by a consent to Magistrate Judge jurisdiction over all disputes arising out of the settlement agreement, including interpretation and enforcement of the settlement agreement, signed by all parties and their counsel.

8. **Temporary Restraining Orders**

All motions for temporary restraining orders must be briefed. While temporary restraining orders may be heard in true ex parte fashion (i.e., without notice to an opposing party), the Court will do so only in extraordinary circumstances. The Court’s strong preference is for the opposing party to be served and afforded a reasonable opportunity to file an opposition. Absent extraordinary circumstances, the parties shall follow the same procedures required for ex parte applications, as set forth in Section 5 above. In appropriate cases, the Court may issue a limited restraining order to preserve evidence pending further briefing.

9. **Pro Se Prisoner Cases**

In cases involving pro se prisoners as litigants, the Court expects defense counsel and the government entity with which a defendant is associated to cooperate in facilitating the prisoner’s telephonic appearances or personal appearances for any scheduled conference, hearing, or trial. This responsibility includes preparing any writs of *habeas corpus ad testificandum* for the incarcerated pro se plaintiff and any of his or her incarcerated witnesses, as authorized by the Court.

10. **Pretrial Conference**

Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties lodge by email to chambers a proposed pretrial order at least fourteen (14) days before the pretrial conference. The proposed pretrial order must strictly comply with the requirements set forth in Civil Local Rule 16.1(f)(6)(c). All parties are required to

cooperate in completing the proposed pretrial order.

For all pretrial dates—including the motions in limine briefing and hearing, final pretrial conference, and other relevant deadlines—parties must refer to the scheduling order issued in their respective case, which is issued by the assigned magistrate judge. Dates in the scheduling order are subject to change by court order.

11. Motions in Limine

Each side is limited to a maximum of five (5) motions in limine. Each motion in limine must be filed separately on the docket. Each motion in limine and each opposition shall not exceed ten (10) pages in length. Attachments to any motion in limine or opposition shall also be limited to ten (10) pages in length. No replies shall be filed unless directed by the Court.

If the case involves multiple plaintiffs or multiple defendants, only one brief per motion in limine *per side* will be accepted. Unless the parties obtain leave of Court to exceed the limitations contained herein prior to filing, multiple filings and filings that exceed the page limitations will be stricken.

12. Telephonic Appearances

Telephonic appearances will be permitted *only* in emergency circumstances upon court approval. If a party needs to appear telephonically before this Court, he or she must contact chambers immediately upon learning of the emergency and leave a voicemail. Upon reviewing the voicemail, the Court will contact the party. Until the Court grants permission for telephonic appearance, the party needing to appear telephonically must arrange to have a colleague appear on his or her behalf.

13. Trial Practice

A. Electronic Equipment for the Courtroom

The Court provides the following audio/visual equipment: (1) monitors; (2) an overhead projector; and (3) computer connections. Counsel should make his or her own arrangements for their respective needs. Counsel should contact the Court's courtroom deputy to arrange a time to allow counsel to review and set up equipment for trial.

B. Jury Selection

Unless authorized by the Court, parties should not submit jury questionnaires. The courtroom deputy will provide counsel with a list of the jury panel in random order before voir dire.

The courtroom deputy will seat all prospective jurors. Twenty (22) prospective jurors will generally be summoned for civil cases. The Court will conduct the initial jury voir dire.

After each side has exercised its peremptory challenges, the first eight (8) persons not challenged peremptorily or successfully challenged for cause will constitute the jury. All remaining prospective jurors will be excused at that time unless alternates are selected.

C. Trial Exhibits

In preparing trial exhibits, the parties are directed to contact the Clerk's Office for exhibit stickers. Parties may create their own exhibit stickers as long as the stickers include the exhibit number and case number. Pursuant to Civil Local Rule 16.1.f.2.c., Plaintiff's exhibits must be identified numerically, starting with "1," and Defendant's alphabetically, starting with A to Z, then AA to AZ, then BA to BZ, etc., unless otherwise ordered by the Court.

For both bench trial and jury trials, the parties must submit one (1) courtesy copy of the trial exhibits three (3) days before trial is set to begin. Counsel should contact the Court's courtroom deputy to arrange a time to deliver the courtesy copies. The parties must also submit the trial exhibits in an electronic-media format (e.g., CD, DVD, or USB flash drive) three (3) days before trial is set to begin.

The parties must also exchange their Final Exhibit and Witness Lists seven (7) days before trial. They must also email a copy of their Final Exhibit and Witness Lists to chambers.

D. Trial Procedures

Trial generally proceeds from 9:00 a.m. to 4:00 p.m., Monday through Thursday, unless the Court schedules otherwise. Jury deliberations also generally proceed from 9:00 a.m. to 4:00 p.m., unless the Court schedules otherwise.

In civil trials, it is the practice of the Court to set a reasonable time limit for the entire trial. The time limit set by the Court includes opening statements, arguments, testimony, closing arguments, and any other matters that occur over the course of the trial, excluding jury selection. The Court will keep track of time limits and, upon request, the courtroom deputy will inform the parties of the time spent and remaining for trial. The time limit is subject to exception for good cause shown.

Counsel and witnesses are expected to be present for trial except in case of an emergency. Lawyers must make every effort to have their witnesses available on the day they are to testify. The Court attempts to accommodate witnesses' schedules and may permit counsel to call them out of sequence if warranted. Counsel must anticipate any such possibility and discuss it with opposing counsel and the Court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

Do not enter the well, except during voir dire, opening statements, and closing argument. Conduct all examination of witnesses from the podium. Seek permission from the Court before approaching a witness. Keep your visit to the witness stand brief, i.e., by quickly orienting the witness with an exhibit and returning to the podium. When objecting, state only the legal ground for the objection, i.e., "objection, hearsay." Speaking objections are not permitted unless the Court requests further information from counsel. When a party has more than one lawyer, only one lawyer may conduct the examination of a given witness.

E. Bench Trial

Fourteen (14) days before trial, counsel must serve and file proposed Findings of Fact and Conclusions of Law. An electronic copy of the proposed Findings of Fact and Conclusions of Law must be emailed to efile_lopez@casd.uscourts.gov in Word format.

14. **Hearing / Trial Transcripts**

The court reporter should *only* be contacted to order hearing or trial transcripts, or to ask transcript-related questions (e.g., inquiring about pricing). The court reporter should not be contacted for any other reason.

15. **Courtesy**

Be courteous and respectful at all times, in all settings. Please be familiar with and abide by Civil Local Rule 2.1.