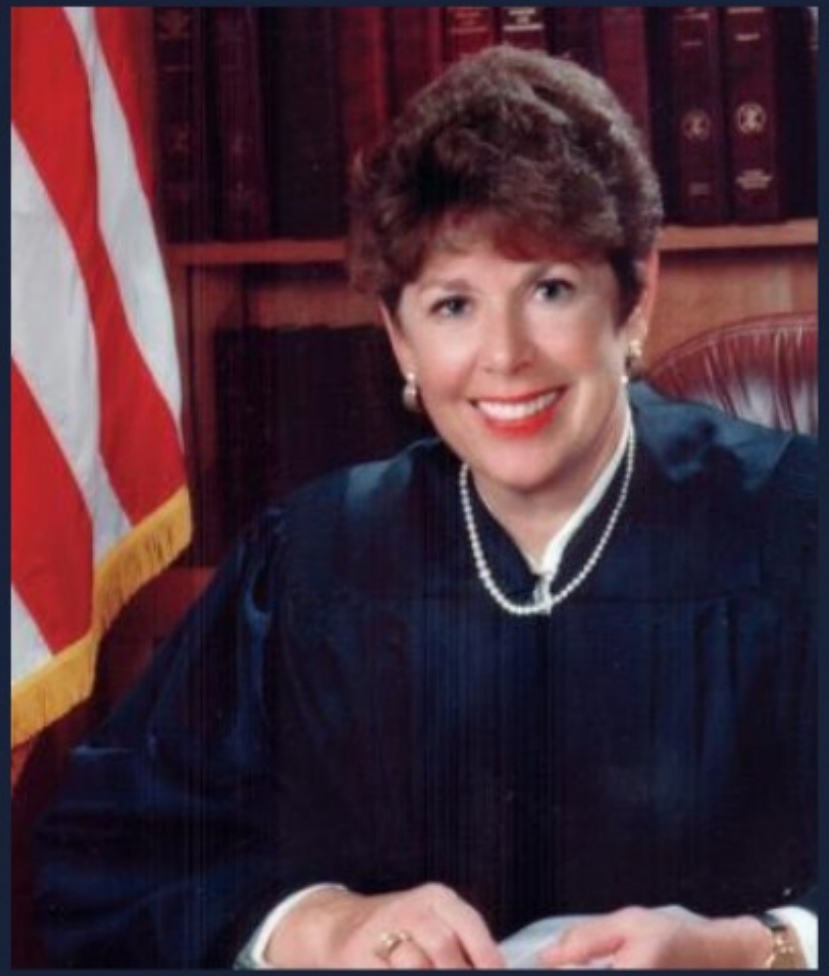

Federal Bar Association
San Diego Chapter

presents:

THE 18TH ANNUAL JUDITH N. KEEP FEDERAL CIVIL PRACTICE SEMINAR

September 29, 2022 | Westin Gaslamp Quarter | 1:00 p.m. – 6:00 p.m.

Federal Civil Jury Selection

Hon. Gonzalo P. Curiel, U.S. District Judge

Hon. Linda Lopez, U.S. District Judge

Hon. Janis M. Sammartino, U.S. District Judge

Sandor Callahan & Morgan Suder, Moderators

District Judge Survey Results: Timekeeping Considerations

- **15.5 Minutes**

Average Time Per Side

- **30 Minutes**

Longest Time Allowed Per Side

- **0 minutes**

One Judge Does Not Allow Attorney Questions

District Judge Survey Results: Approaches to Jury Selection

- **Struck Method: 19 Judges**
- **Traditional Jury Box Method: 1 Judge**
- **Hybrid Method: 1 Judge**

District Judge Survey Results: Size of the Venire

- Varies by judge and case type
- Ranges from 18 to 40 jurors
- Most civil juries consist of 8 jurors to ensure 6-juror minimum, per Rule 48

District Judge Survey Results: Anecdotes

- Many judges solicit attorney questions prior to the court's voir dire
- Some judges frequently use questionnaires
- One judge using the "struck" method has peremptory challenges made orally rather than passing a list

Questions?

Thank you!

Thank You for Supporting!

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT of CALIFORNIA
HON. DANA M. SABRAW, CHIEF JUDGE
JOHN MORRILL, CLERK OF COURT

Federal Bar Association
San Diego Chapter

HONORABLE GONZALO P. CURIEL
UNITED STATES DISTRICT JUDGE
CIVIL PRETRIAL & TRIAL PROCEDURES

Criminal matters contact:

Courtroom Deputy A. Sacco: (619) 557-5539

Civil matters contact:

Judge Curiel's Law Clerks in chambers: (619) 557-7667

Transcript requests contact:

Court Reporter: Chari Bowery (858) 822-8828

Location: Schwartz Courthouse - Courtroom 2D

These rules will help civil litigants appearing before Judge Curiel. 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, the Electronic Case Filing Administrative Policies and Procedures Manual, and any other applicable rules. The Local Rules and the Electronic Case Filing Administrative Policies and Procedures Manual are available on the Court's website: http://www.casd.uscourts.gov.

COMMUNICATION WITH CHAMBERS

Telephone calls to chambers are permitted only for scheduling or calendaring motion hearings or as otherwise authorized by the Court. Court personnel are prohibited from interpreting orders, discussing the merits of a case, or giving legal advice, including advice on procedural matters. Letters, faxes, and emails are prohibited unless otherwise authorized by the Court.

DISCOVERY

Counsel shall 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.

PROPOSED ORDERS

Proposed orders shall be submitted in Word format simultaneously with all motions, except motions that are fully noticed and set for hearing at least 28 days beyond the date of filing. In accordance with Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures Manual, proposed orders shall not contain the name and law firm information of the filing party and shall not contain the word "proposed" in the caption. Counsel shall email proposed orders to opposing counsel and to the following address: efile_curiel@casd.uscourts.gov, and include the docket number and case name in the subject line of the email.

JOINT MOTIONS/STIPULATIONS

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, all stipulations must be filed as joint motions. Joint motions must be signed by the Court to have legal effect.

EX PARTE MOTIONS

The Court may rule upon *ex parte* motions without requiring a response from the opposing party. If a party intends to oppose the *ex parte* motion, the party must immediately file a notice stating that the party intends to oppose the *ex parte* motion and providing the date upon which the opposition will be filed.

PRETRIAL MOTION PRACTICE

HEARING DATES

Motion hearing dates are generally set on **Fridays at 1:30 p.m.**

Pursuant to Civil Local Rule 7.1(b), all dates for motion hearings must be obtained by calling the law clerk before filing any motion. Motion papers **MUST** be filed and served *the same day* of obtaining a motion hearing date from chambers. A briefing schedule will be issued once a motion has been filed. The parties must obtain leave of Court by filing an ex parte request before filing any sur-replies.

The Court strongly encourages litigants to be mindful of opportunities for young lawyers to conduct hearings before the Court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or

response. Frequently, the Court will issue a written order and vacate the hearing unless oral argument appears to be necessary. If a written request for oral argument is made in the moving, opposition or reply briefs stating that an attorney with less than five years of experience after becoming a member of the California bar will argue the oral argument, then such a representation will weigh in favor of holding a hearing.

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).

MOTIONS 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 of the 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 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.

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

COURTESY COPIES

Courtesy copies of filings that exceed 20 pages in length, including attachments and exhibits, shall be submitted in accordance with Section 2(e) of the Electronic Case Filing Administrative Policies and Procedures via United States Postal Service mail, courier, or delivery to the Clerk's Office. The courtesy copy shall 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.

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.[1] 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.[2] The Court may seal documents to protect sensitive

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

2 Although courts may be more likely to order the protection of the information listed in Rule 26(c) 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

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 particular documents or categories of documents they need to protect; and 2) affidavits showing good cause to protect those documents from disclosure. 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. Any member of the public may challenge the sealing of any particular document. *See Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999).

PRETRIAL CONFERENCE

Pursuant to Civil Local Rule 16.1(f)(6), the Court requires that the parties email to Chambers a proposed pretrial order in Word or WordPerfect format at least seven (7) days before the pretrial conference. The proposed pretrial order must include all elements set out in Civil Local Rule 16.1(f)(6)(c) and any other issues relevant to the trial. The requirement to file a Memoranda of Contentions of Law and Fact, pursuant to Civil Local Rule 16.1(f)(2)(a), is waived. All parties are required to cooperate in completing the proposed pretrial order.

The Court will set a trial date during the pretrial conference. The Court will also schedule a motion in limine hearing date during the pretrial conference. All motions in limine are due two weeks before the motion in limine hearing date. All responses are due seven (7) days before the motion in limine hearing date. Unless otherwise ordered by the Court, the joint proposed jury instructions, trial briefs, proposed verdict form, *voir dire* questions, statement of the case, and exhibit binders are to be placed in a trial notebook, and are also due seven (7) days before the motion in limine hearing date. The proposed jury instructions, proposed verdict form, and statement of the case shall also be emailed to the Court in Word format.

F.R.D. 453, 455 (N.D.N.Y. 1999); *Kalinauskas v. Wong*, 151 F.R.D. 363, 365-67 (D. Nev. 1993).

TRIAL PRACTICE

ELECTRONIC EQUIPMENT FOR THE COURTROOM

The Court now has new audio/visual equipment for counsels' use. The courtroom has individual monitors at counsels' tables, the lectern, the witness box, and the jury box as well as a large 55" gallery monitor for public viewing. A document camera and a DVD/Blue Ray player are now available for use and can be connected to counsels' computers, laptops and tablets. HDMI and VGA video inputs are available at the lectern, witness box and counsels' tables.

Counsel are required to bring their own computers, laptops, tablets, HDMI or VGA adapters and wireless cards, if necessary. Counsel should contact the CRD for details and instructions and with questions regarding the use of equipment not provided for by the Court.

JURY SELECTION

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 (20 prospective jurors will generally be summoned for civil cases). Unless authorized by the Court, parties should not submit jury questionnaires. The Court will conduct the initial jury *voir dire*. Counsel may propose questions to be posed to jurors during the court conducted *voir dire*. In appropriate cases, the Court may permit follow-up *voir dire* by the attorneys.

After *voir dire* of the entire panel has been completed, counsel may make any challenges for cause at side bar. If a challenge for cause is sustained, the excluded panelist shall remain in his or her seat for the time being.

Counsel will exercise peremptory challenges using the "Double Blind Method," whereby the parties simultaneously exercise their challenges.

After each side has exercised its peremptory challenges, depending on the estimated length of the trial, the first seven to nine persons not challenged

peremptorily or successfully challenged for cause shall constitute the jury. All remaining prospective jurors will be excused at that time.

TRIAL PROCEDURES

Trial generally proceeds from 9:00 a.m. to 5:00 p.m., Tuesday through Friday, unless the Court schedules otherwise. Jury deliberations generally proceed from 9:00 a.m. to 5:00 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.

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, e.g., by quickly orienting the witness with an exhibit and returning to the podium. When objecting state only the legal ground for the objection, e.g., "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 and that lawyer alone may make objections concerning that witness.

BENCH TRIAL

Seven (7) days before trial, counsel will submit proposed Findings of Fact and Conclusions of Law by hard copy and an electronic copy of the proposed Findings of Fact and Conclusions of Law shall be emailed to efile_curiel@casd.uscourts.gov in Word format.

SETTLEMENT

A. NON-CLASS ACTION SETTLEMENTS

If the parties settle a case, counsel shall file a "Notice of Settlement" and immediately inform 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 shall file the "Joint Motion to Dismiss" and email a proposed order to this Court within twenty-eight (28) days of the settlement.

B. CLASS ACTION SETTLEMENTS

1. PRELIMINARY APPROVAL

Proposed orders for preliminary approval of class certification and/or preliminary settlement approval must be supported by an affidavit and memorandum of points and authorities establishing that all Rule 23 statutory requirements have been satisfied, including the class certification factors and fairness factors, and should include information about the following:

INFORMATION ABOUT THE SETTLEMENT

a. If a litigation class has not been certified, any differences between the settlement class and the class proposed in the operative complaint and an explanation as to why the differences are appropriate in the instant case as well as any differences between the claims to be released and the claims in the operative complaint and an explanation as to why the differences are appropriate in the instant case.

b. If a litigation class has been certified, any differences between the settlement class and the class certified and an explanation as to why the differences are appropriate in the instant case as well as any differences between the claims to be released and the claims certified for class

treatment and an explanation as to why the differences are appropriate in the instant case.

c. The anticipated class recovery under the settlement, the potential class recovery if plaintiffs had fully prevailed on each of their claims, and an explanation of the factors bearing on the amount of the compromise.

d. The proposed allocation plan for the settlement fund.

e. If there is a claim form, an estimate of the number and/or percentage of class members who are expected to submit a claim in light of the experience of the selected claims administrator and/or counsel from other recent settlements of similar cases, the identity of the examples used for the estimate, and the reason for the selection of those examples.

f. In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designated for class recovery will revert to any defendant, the potential amount or range of amounts of any such reversion, and an explanation as to why a reversion is appropriate in the instant case.

SETTLEMENT ADMINISTRATION—The parties should identify the proposed settlement administrator, the settlement administrator selection process, how many settlement administrators submitted proposals, what methods of notice and claims payment were proposed, and the lead class counsel's firms' history of engagements with the settlement administrator over the last two years. The parties should also address the anticipated administrative costs, the reasonableness of those costs in relation to the value of the settlement, and who will pay the costs. The court may not approve the amount of the cost award to the settlement administrator until the final approval hearing.

NOTICE—The parties should ensure that the class notice is easily understandable, taking into account any special concerns about the education level or language needs of the class members. The notice should include the following information: (1) contact information for class counsel to answer questions; (2) the address for a website, maintained by the claims administrator or class counsel, that has links to the notice, motions for approval and for attorneys' fees and any other important documents in the case; (3) instructions on how to access the case docket via PACER or in person at any of the court's locations. The notice should state the

date of the final approval hearing and clearly state that the date may change without further notice to the class. Class members should be advised to check the settlement website or the Court's PACER site to confirm that the date has not been changed. The notice distribution plan should be an effective one.

Class counsel should consider the following ways to increase notice to class members: identification of potential class members through third-party data sources; use of social media to provide notice to class members; hiring a marketing specialist; providing a settlement website that estimates claim amounts for each specific class member and updating the website periodically to provide accurate claim amounts based on the number of participating class members; and distributions to class members via direct deposit.

The notice distribution plan should rely on U.S. mail, email, and/or social media as appropriate to achieve the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23(c)(2). If U.S. mail is part of the notice distribution plan, the notice envelope should be designed to enhance the chance that it will be opened.

ATTORNEYS' FEES—The court will not approve a request for attorneys' fees until the final approval hearing, but class counsel should include information about the fees they intend to request and their lodestar calculation in the motion for preliminary approval. In a common fund case, the parties should include information about the relationship among the amount of the award, the amount of the common fund, and counsel's lodestar calculation. To the extent counsel base their fee request on having obtained injunctive relief and/or other non-monetary relief for the class, counsel should discuss the benefit conferred on the class. Counsel's lodestar calculation should include the total number of hours billed to date and the requested multiplier, if any. Additionally, counsel should state whether and in what amounts they seek payment of costs and expenses, including expert fees, in addition to attorneys' fees.

INCENTIVE AWARDS—The court will not approve a request for incentive awards until the final approval hearing, but the parties should include information about the incentive awards they intend to request as well as the evidence supporting

the awards in the motion for preliminary approval. The parties should ensure that neither the size nor any conditions placed on the incentive awards undermine the adequacy of the named plaintiffs or class representatives. In general, unused funds allocated to incentive awards should be distributed to the class pro rata or awarded to cy pres recipients.

CY PRES AWARDS—If the settlement contemplates a cy pres award, the parties should identify their chosen cy pres recipients, if any, and how those recipients are related to the subject matter of the lawsuit and the class members. The parties should also identify any relationship they or their counsel have with the proposed cy pres recipients. In general, unused funds allocated to attorneys' fees, incentive awards, settlement administration fees and payments to class members should be distributed to the class pro rata or awarded to cy pres recipients.

2. FINAL APPROVAL

CLASS MEMBERS'RESPONSE—The motion for final approval briefing should include information about the number of undeliverable class notices and claim packets, the number of class members who submitted valid claims, the number of class members who elected to opt out of the class, and the number of class members who objected to or commented on the settlement. In addition, the motion for final approval should respond to any objections.

ATTORNEYS' FEES—All requests for approval of attorneys' fees must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed. Counsel should be prepared to submit copies of billing records themselves at the court's order.

INCENTIVE AWARDS—All requests for incentive awards must be supported by evidence of the proposed awardees' involvement in the case and other justifications for the awards.

3. POST-DISTRIBUTION ACCOUNTING

Within 21 days after the distribution of the settlement funds and payment of attorneys' fees, the parties should file a Post-Distribution Accounting, which provides the following information:

The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per claimant, the largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to each cy pres recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any.

In addition to the above information, where class members are entitled to non-monetary relief, such as discount coupons, debit cards, or similar instruments, the number of class members availing themselves of such relief and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members' interests. Where injunctive and/or other non-monetary relief has been obtained, discuss the benefit conferred on the class.

Within 21 days after the distribution of the settlement funds and award of attorneys' fees, the parties should post the Post-Distribution Accounting, including the easy-to-read chart, on the settlement website.

The Court may hold a hearing following submission of the parties' Post-Distribution Accounting.

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

Chambers

- United States District Court
  Southern District of California
  221 West Broadway, Suite 5190
  San Diego, CA 92101
  Tel: (619) 557-5585
  Courtroom 5D
  efile_lopez@casd.uscourts.gov

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 magistratejudge 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

Cross motions for summary judgment have the same filing deadline as a motion for summary judgment. To the extent possible, the parties shall coordinate the filings of a motion and cross motion for summary judgment so that a consolidated briefing schedule may be applied. 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).

K. Amended Pleadings

Any amended pleading—not just those accompanying a motion for leave to amend—must be accompanied by a redline showing how the amended pleading differs from the operative pleading. Pro se plaintiffs who are incarcerated are excused from this requirement.

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.

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[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).

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.

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. <u>Ex Parte Applications</u>

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., Tuesday through Friday, 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.