Federal Bar Association
San Diego Chapter

presents:

THE 19TH ANNUAL JUDITH N. KEEP FEDERAL CIVIL PRACTICE SEMINAR

September 20, 2023 | Westin Gaslamp Quarter | 1:00 p.m. – 6:00 p.m.

Tips from the Magistrate Judges

Hon. Jill L. Burkhardt, U.S. Magistrate Judge

Hon. Lupe Rodriguez, Jr., U.S. Magistrate Judge

Hon. Bernard G. Skomal, U.S. Magistrate Judge

Discovery Motions Before Magistrate Judges and Motion Alternatives

slido

In your practice, do you prefer zoom or phone for resolving discovery disputes?

ⓘ Start presenting to display the poll results on this slide.

Early Neutral Evaluations

Case Management

New Rule Regarding Judge Assignments and Transfer of Cases to New Magistrate Judges

Pro Se Litigants &
Bridging the Access-to-Justice Gap

— Tips from the Magistrate Judges —

Hon. Jill L. Burkhardt

The Honorable Jill Burkhardt has, since 2014, served as a federal Magistrate Judge in the Southern District of California. Before joining the bench, Judge Burkhardt was an Assistant United States Attorney for the Southern District of California in the Criminal Division. Prior to joining the U.S. Attorney's Office, Judge Burkhardt had a civil litigation practice as an Associate with the San Diego office of Baker and McKenzie. Judge Burkhardt has been active in the community and currently serves on the board of the Enright Inn of Court, the advisory board of the Federal Bar Association-San Diego, the advisory board of Lawyers Club of San Diego, and the planning committee of the San Diego County High School Mock Trial program. She is a past president of the San Diego County Bar Association and Lawyers Club of San Diego. She has a long history of pro bono work and volunteerism, most recently focused on adult literacy tutoring. Judge Burkhardt got her undergraduate degree from the University of Minnesota-Twin Cities and graduated cum laude from Harvard Law School.

Hon. Lupe Rodriguez, Jr.

The Honorable Lupe Rodriguez, Jr., was appointed as a Magistrate Judge for the United States District Court, Southern District of California on September 28, 2022. Judge Rodriguez was a civil and criminal litigation attorney for 27 years. As a civil litigator he handled business and insurance disputes involving breach of contract, indemnity, medical malpractice, employment, class actions and general liability issues. As a criminal defense attorney, he handled cases in a variety of subject matter areas, including violent crime, racketeering, drug trafficking, immigration, fraud, identity theft and human trafficking. Judge Rodriguez also served as an Assistant United States Attorney for the United States Attorney's Office for the Southern District of California where he handled border crimes, including illegal entry, assaults, narcotics, and alien smuggling reactive and conspiracy cases. Judge Rodriguez currently serves on the Criminal Justice Act Committee and the Magistrate Judges Issues Committee for the Southern District of California. Judge Rodriguez also currently serves on the Diversity & Inclusion Committee and the International Committee for the Federal Magistrate Judges Association. Judge Rodriguez graduated from the University of California - Los Angeles in 1990, and from California Western School of Law in 1994.

Hon. Bernard Skomal

The Honorable Bernard Skomal became the Presiding Magistrate Judge for the Southern District of California in September 2022. He was appointed as a Magistrate Judge in 2010. Judge Skomal was in private practice from 1989 to 2010. He specialized in federal and state criminal defense. From 1997 to 1998 he was Assistant Public Defender for Mendocino County. He was Senior Trial Attorney at Federal Defenders of San Diego, Inc. from 1988 to 1989. From 1983 to 1988 he was a Trial Attorney at Federal Defenders of San Diego, Inc.

19th Annual Judith N. Keep Federal Civil Practice Seminar
Tips from the Magistrate Judges

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FILED

May 24, 2023

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY M. Cobos DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

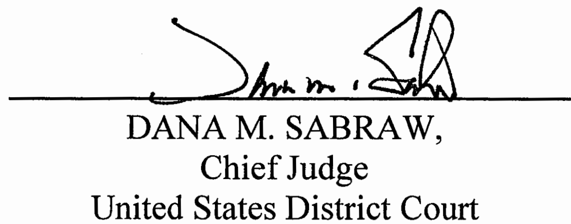
In the matter of	)	
	)	
THE TRANSFER OF CASES TO NEW MAGISTRATE JUDGES	)	General Order No. 639-A
	)	

Upon the induction of a new magistrate judge, the Clerk of the Court will identify for transfer all the active cases that had previously been assigned to the magistrate judge whose seat the incoming magistrate judge is filling.

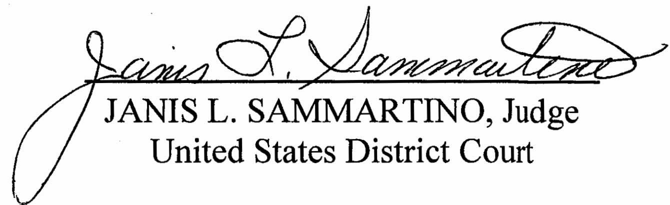
The Clerk of the Court will then ascertain the average civil caseload of all magistrate judges and the type and number of civil cases assigned to each magistrate judge. Based upon these numbers, the Chief Judge and the Presiding Magistrate Judge will determine the type and number of additional civil cases to transfer to the new magistrate judge so the caseload of the incoming magistrate judge will reasonably reflect the average. Within the parameters set by the Chief Judge and the Presiding Magistrate Judge, the Clerk of the Court will then randomly select the additional civil cases for transfer. The following will be excluded from the list of additional civil cases for transfer: cases with pending motions; fully briefed 28 U.S.C. § 2254 cases; and multi-district litigation cases.

IT IS SO ORDERED.

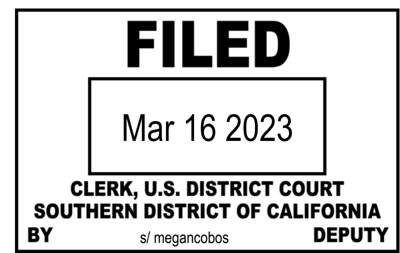
Dated: 5-24-23



DANA M. SABRAW,
Chief Judge
United States District Court



JANIS L. SAMMARTINO, Judge
United States District Court



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the matter of AMENDMENTS TO THE LOCAL RULES	General Order No. 748

Good cause appearing, and following a public comment period, the Court amends the following Local Rules as follows:

Civil Local Rule 16.1 Pretrial and Setting for Trial

* * *

e. **Cases in which ~~Status Conferences~~ Early Neutral Evaluation (ENE) and Case Management Conferences are not Required.** At the discretion of a judge assigned to the case, ENE and case management conferences need not be set in the following categories of cases:

1. Habeas corpus cases;
2. Cases reviewing administrative rulings;
3. Social Security Cases;
4. Default proceedings;
5. Cases in which a substantial number of defendants have not answered;
6. Actions to enforce judgments;
7. Bankruptcy appeals~~;~~.
8. ~~ENE conferences will not be set in Section 1983 cases.~~

Civil Local Rule 40.1 Assignment of Civil Cases

* * *

b. Assignments to New Judges. Upon the induction of a new judge or judges, the Court will assign the new judge(s) a portion of the existing civil case load from the dockets of the active judges. The Clerk will ~~then indicate to each active judge the~~

~~number of cases to be transferred~~ randomly select the civil cases for transfer to the new judge.

~~The Court will enter an order designating the number of such cases to be selected by the transferring judge and the number to be chosen randomly by the Clerk.~~ The transferring judge may decline to transfer a case and then another case will be randomly selected.

The new judge may refuse to accept any such transfer when there are grounds for recusal, in which instance another case will be selected.

The Clerk will then add the name of the new judge to the random selection system that governs the assignment of new cases to active judges.

Criminal Local Rule 16.1.a Meet and Confer Requirement

Not later than fourteen calendar days after the arraignment on an Indictment or Information, the attorney for the defendant(s) and the attorney for the government must confer and attempt to agree on a timetable and procedures for the pretrial disclosure of materials set forth in Federal Rule of Criminal Procedure 16. Generally, this conference should be in person; however, in early disposition (fast track) cases or when it is impractical to meet in person, the conference may be conducted via telephone or email.

During the conference, or as soon as practicable thereafter considering the size and complexity of the case, the parties should consider ways in which to ensure the elimination of unjustifiable expense and delay and the expeditious government production of electronically stored information ("ESI") and other voluminous discovery. If discovery includes ESI, the parties must discuss the appropriate form and format of the production of materials containing ESI. To the extent practicable, this material should be produced in a searchable and reasonably usable format.

Not later than seven calendar days prior to the first motion hearing, the parties must inform the Court in writing of the agreed upon timetable for the production of discovery, including the Alien Registration File, body-port-or remote cam video, car/vehicle inspection, DEA drug reports, cell phone extraction data, and/or ESI where applicable, as well as the proposed timing for disclosure of expert witnesses under Rule 16, and any areas of disagreement.

HONORABLE MICHAEL S. BERG
U.S. MAGISTRATE JUDGE
CIVIL CHAMBERS RULES

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

I. <u>Civility.</u> First and foremost, the Court does not simply expect, but rather demands civility from the parties. As part of its Chambers Rules, the Court adopts the "Ethics, Professionalism and Civility Guidelines" enacted by the Association of Business Trial Lawyers and the San Diego County Bar Association. Parties appearing before this Court must be aware of and adhere to these guidelines. The guidelines may be found here: **Guidelines**.

II. <u>Communications with Chambers.</u> Chambers staff includes two law clerks and one courtroom deputy. The law clerks handle inquiries on civil matters while the courtroom deputy handles inquiries on criminal matters. For civil matters, contact the law clerks in chambers at (619) 557-6632. For criminal matters, call (619) 557-6695.

A. Letters, Faxes, or E-mails. Letters, faxes, or e-mails to chambers are prohibited unless specifically requested by the Court.

B. Telephone Calls. Telephone calls to chambers are permitted only for matters such as scheduling and calendaring, or as specifically permitted in these rules. Court personnel are prohibited from giving legal advice or discussing the merits of a case. **Only counsel with knowledge of the case** may contact chambers.

C. Lodging Documents. When an order directs you to "lodge" a document with chambers, you should either send it via e-mail to efile_berg@casd.uscourts.gov, or deliver the document to Judge Berg's chambers, 221 West Broadway, Suite 2160, San Diego, CA 92101. Proposed orders must be lodged in **Word format**.

D. Courtesy Copies. Courtesy copies of filings **exceeding 20 pages** must be submitted directly to chambers, 221 West Broadway, Suite 2160, San Diego, CA 92101. Unless expressly required by the Court, courtesy copies must be identical to the electronically-filed documents. The pages of each pleading must be firmly bound. If a pleading or settlement brief has exhibits, the exhibits must be tabbed.

E. Transcript Requests. Requests for hearing transcripts are no longer submitted through the courtroom deputy. Attorneys must submit transcript requests online, through CM/ECF. Detailed instructions are on the Court's website, under the "Attorneys" tab.

III. **Early Neutral Evaluation ("ENE") Conference and Other Settlement Conferences.** All named parties and party representatives (including claims adjusters for insured defendants), as well as the principal attorney(s) responsible for the litigation, must be present **in person** and legally and factually prepared to discuss and resolve the case at the ENE or any other settlement conference. **Please see the order scheduling the conference for more information.** The Court will **not** grant requests to excuse a required party from personally appearing absent extraordinary circumstances. Distance of travel alone does **not** constitute an "extraordinary circumstance."

IV. **Discovery Disputes.** (Fed. R. Civ. P. 26–37, 45; Civ. LR 26.1)

A. **Meet and Confer Requirement.** Counsel are to promptly meet and confer regarding all disputed issues, pursuant to the requirements of Civil Local Rule 26.1.a.

B. **Trigger Dates and Deadlines for Raising Discovery Disputes With the Court.**

1. **Written Discovery.** For written discovery (e.g. interrogatories, requests for production) or third-party discovery, the event giving rise to the discovery dispute is the date of service of the response, **not** the date on which counsel reach an impasse in meet and confer efforts. If a party fails to provide a discovery response, the event giving rise to the discovery dispute is the date response was due. If the parties are unable to resolve a dispute regarding written discovery through the meet and confer process, they must contact the Court to request an informal discovery conference within **thirty (30) days** of the event giving rise to the discovery dispute.

2. **Depositions.** If the dispute arises during a deposition regarding an issue of privilege, enforcement of a court-ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), counsel should suspend the deposition and immediately meet and confer. If the dispute is not resolved in the meet and confer process, counsel may call Judge Berg's chambers for an immediate ruling on the dispute. If Judge Berg is available, he will either rule on the dispute or give counsel further instructions on how to proceed. If Judge Berg is unavailable, counsel must mark the deposition at the point of the dispute and continue with the deposition. Counsel must contact the Court to request an informal discovery conference within **fourteen (14) days** of the completion of the transcript of the relevant portion of the deposition. If counsel cannot informally resolve their disputes, the Court may require the parties to file a joint motion as provided below.

C. **Informal Discovery Dispute Conference. No discovery motion may be filed until the Court has conducted its pre-motion telephonic conference, unless the movant has obtained leave of Court. The Court will strike any discovery motion that does not comply with this process.**

1. Requesting a discovery conference. Within the time limits indicated above, parties who wish to file a discovery motion must first place a joint call to chambers to obtain a date for an informal discovery conference from Judge Berg's law clerk.

2. If directed to do so by the Court when the parties call to request a discovery conference, the parties shall exchange **informal letter briefs** and lodge the same by e-mail to Judge Berg's Chambers at efile_berg@casd.uscourts.gov. The informal letter brief must specify the issue(s) in dispute and the party's position and supporting authority for each issue. Counsel should not attach copies of any meet and confer correspondence. The Court will review the lodgments before the discovery conference.

3. If the parties cannot resolve their discovery dispute during the discovery conference with Judge Berg, **they will be given a deadline to file a Joint Discovery Motion**.

D. Joint Discovery Motion. If given permission and a deadline from the Court, the parties may file a Joint Discovery Motion.

1. The Joint Discovery Motion must include the following:

a. The Interrogatory, Request for Admission, Request for Production, or deposition question in dispute;

b. The verbatim response to the request or question by the responding party;

c. A statement by the propounding party as to why a further response should be compelled; and

d. A precise statement by the responding party as to the basis for all objections and/or claims of privilege.

2. The Joint Discovery Motion shall be accompanied by a declaration of compliance with the meet and confer requirement. It may also include points and authorities (not to exceed five (5) pages per side).

3. The joint motion shall not be accompanied by copies of correspondence or electronic mail between counsel unless it is evidence of an agreement alleged to have been breached.

4. Opportunity to Participate. A party seeking to bring a discovery dispute before the Court must provide the opposing party a reasonable opportunity to contribute to the joint motion. An *ex parte* motion or application to compel is only appropriate under circumstances where the opposing party refuses to participate in contributing to a joint motion after a reasonable opportunity has been provided, or if the motion to compel is directed to a non-party. This Court considers a **minimum** of **five (5) business days** prior to the anticipated filing date of the joint motion to be a reasonable time period for a party to participate meaningfully in the preparation of a joint motion. This means that the party initiating a joint discovery motion must provide opposing counsel with a complete draft of the joint motion and any exhibits or supporting declarations **at least five (5) business days** prior to the anticipated filing date. An *ex parte* motion or application to compel discovery that does not contain a declaration stating the opposing party has been given a meaningful opportunity to participate in a joint motion will be rejected by the Court.

E. Hearings on Discovery Motions. Following the filing of the Joint Discovery Motion, the Court will either issue an order, or will hold a telephonic or in-person discovery hearing.

F. These rules address the most common discovery disputes. **If litigants encounter circumstances that do not fit within these rules, they should contact Judge Berg's law clerk for applicable procedures.**

V. Continuances. Whether made by joint motion or *ex parte* application, any request to continue an ENE, MSC, or scheduling order deadline shall be made in writing no less than **seven (7) calendar days** before the affected date. The request shall include:

A. The original deadline or date;

B. The number of previous requests for continuance;

C. A showing of good cause for the request;

D. Whether the request is opposed and why;

E. Whether the requested continuance will affect other case management dates; and

F. A declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why the deadlines cannot be met.

VI. Stipulated Protective Orders.

A. When filing a motion for entry of a stipulated protective order, the motion must include the language of the stipulated protective order and the signatures of counsel for all parties. A proposed stipulated protective order must be e-mailed to efile_berg@casd.uscourts.gov.

B. The proposed protective order must contain:

1. The following language:

"No document may be filed under seal, except pursuant to a court order that authorizes the sealing of the particular document, or portion of the document. A sealing order may issue only upon a showing that the information is privileged or protectable under the law. **The request must be narrowly tailored to seek sealing only of the confidential or privileged material**.

To file a document under seal, the parties must comply with the procedures explained in Section 2.j of the Electronic Case Filing Administrative Policies and Procedures Manual for the United States District Court for the Southern District of California and Civil Local Rule 79.2. In addition, a party must file a redacted version of any document that it seeks to file under seal. The document must be titled to show that it corresponds to an item filed under seal, e.g., 'Redacted Copy of Sealed Declaration of John Smith in Support of Motion for Summary Judgment.' The party should file the redacted document(s) simultaneously with a joint motion or ex parte application requesting that the confidential portions of the document(s) be filed under seal and setting forth good cause for the request."

2. A provision regarding the disposition of confidential or sealed documents and information after the case is closed.

VII. *Ex Parte* Motions. All *ex parte* motions must comply with Civ. LR 83.3(g). Further, declaration(s) in support of the *ex parte* motion must describe meet and confer efforts made to resolve the dispute without the Court's intervention. After service of the *ex parte* motion, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond or contact the assigned law clerk to request additional time. The Court will either issue an order on the written submissions or set a date and time for a hearing.

HONORABLE JILL L. BURKHARDT
U.S. MAGISTRATE JUDGE
CIVIL CHAMBERS RULES

Updated May 2022

Please Note: Counsel and *pro se* litigants are expected to comply with the procedures set forth below. However, **<u>the Court may vary these procedures by Court order as appropriate in any case</u>**. Except as set forth below, counsel and *pro se* litigants are expected to comply with the Local Rules of Practice for the United States District Court for the Southern District of California ("Local Rules") and the Electronic Case Filing Administrative Policies and Procedures Manual ("ECF Manual"). Litigants should familiarize themselves with the Local Rules and the ECF Manual, which are available on the District Court's website.

I. <u>GENERAL DECORUM</u>

The Court expects all counsel and parties to be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Professionalism and civility—in court appearances, communications with Chambers, and written submissions—are of paramount importance to the Court. Personal attacks on counsel or opposing parties will not be tolerated under any circumstances.

Counsel and all *pro se* litigants are to read and be familiar with the tenets espoused in CivLR 2.1, which shall be the guiding principles of conduct in this Court. Counsel and all parties are expected to be punctual for all proceedings.

II. <u>COMMUNICATIONS WITH CHAMBERS</u>

A. <u>Telephone Calls</u>. Before calling Chambers, all counsel and *pro se* litigants must first review these Rules and the Local Rules. **For represented parties, only counsel of record** on the docket in the case may contact the Court by telephone. When leaving a voicemail message with Chambers, include the case name, case number, and appropriate call-back information. **Chambers staff cannot provide time estimates for rulings, give legal advice, or discuss the merits of a case.**

B. <u>Lodging Documents</u>. When an order or these Rules direct you to **lodge** a document with the Court, send it via e-mail to efile_Burkhardt@casd.uscourts.gov. If the lodged document(s) **exceeds 30 pages**, also provide a courtesy copy. (*See* § II.E.) Lodged documents **shall <u>not</u> be filed** with the Clerk of Court or on the CM/ECF system unless the Court directs otherwise.

As set forth in the ECF Manual, the efile_Burkhardt@casd.uscourts.gov e-mail address is **<u>not</u>** to be utilized to communicate with the Court unless otherwise ordered or invited by the Court.

C. <u>Letters, Faxes, or E-mails</u>. Letters, faxes, and/or e-mails to the Court are **<u>not</u> permitted** except as authorized by order or by these Rules. The Court should not be copied on e-mail correspondence between counsel.

D. <u>Transcripts</u>. Parties seeking a copy of a transcript from a proceeding on the record should contact Judge Burkhardt's courtroom deputy, Aishah Smith, at (619) 557-6425 and provide the case name, case number, and date of the proceeding.

E. <u>Courtesy Copies</u>. Courtesy copies shall be provided in cases where any one filing or lodgment (or multiple filings or lodgments in a single court day) **exceeds 30 pages**. Courtesy copies shall be delivered directly to Judge Burkhardt's Chambers within 1 court day of the filing or lodgment deadline.

Unless otherwise ordered or invited by the Court, courtesy copies of documents must be identical to the electronically-filed or lodged documents. Courtesy copies of electronically-filed documents **must be printed from CM/ECF**, with the CM/ECF stamp displayed on the top of each page. Courtesy copies must be 2-hole punched at the top. If a filing has more than 3 exhibits, the exhibits in the courtesy copy must be tabbed. **Double-sided copies are preferred.**

III. <u>MANDATORY SETTLEMENT CONFERENCES</u>

In addition to the requirements set forth in the order setting the Mandatory Settlement Conference ("MSC"), the parties shall comply with the following requirements in advance of the MSC:

A. <u>Formal Settlement Proposal</u>. No later than **<u>21 days</u>** before the MSC, the plaintiff must serve on the defendant a written settlement proposal with a specific demand amount and any other material terms. The defendant must respond to the plaintiff in writing with a specific settlement offer prior to the meet and confer discussion (*see* § III.B). The parties should not file or copy the Court on these exchanges. Rather, the parties must include their written settlement proposals in their respective MSC statements.

B. <u>Meet and Confer Requirement</u>. No later than **<u>14 days</u>** before the MSC, counsel for the parties must meet and confer in person or telephonically (not by e-mail) and discuss the following:

1. Who will attend the MSC on behalf of each party, including counsel, client representative(s) with full settlement authority, and any insurance representative(s).

2. Identification of any persons or entities, such as a board of directors, who must approve a proposed settlement agreement before it can be executed, as well as the nature and duration of any such approval process.

3. Insurance coverage available to cover all or part of the claimed losses or to fund all or part of any party's defense, and status of any tenders for coverage.

C. <u>MSC Statements</u>. By the deadline set forth in the order setting the MSC (generally 7–10 days before the MSC), the parties shall **lodge** MSC statements with the Court. MSC statements are not to exceed **<u>10 pages</u>**, exclusive of exhibits. If any statement exceeds 30 pages with exhibits, a courtesy copy is required. (*See* § II.E.) MSC statements may be submitted confidentially or shared with an opposing party at the submitting party's discretion.

MSC statements shall include the following:

1. **MSC Attendees.** A list of all attorney and non-attorney conference attendees for that side, including the name(s) and title(s)/position(s) of the party/party representative(s) who will attend and have settlement authority at the MSC. In addition, <u>if the MSC will be held by video conference</u>, for each participant listed, the statement shall also include:
   - **a.** An **e-mail address** for the participant to receive the video conference invitation; and
   - **b.** A **telephone number** where the participant may be reached so that if technical difficulties arise, the Court will be in a position to proceed telephonically instead of by video conference. (If counsel prefers to have all participants of their party on a single conference call, counsel may provide a conference number and appropriate call-in information, including an access code, where all counsel and parties or party representatives for that side may be reached as an alternative to providing individual telephone numbers for each participant.)

2. **Substance of the Suit.**
   - **a.** A brief statement of the facts of the case.
   - **b.** The claims and material defenses, including the statutory or other grounds upon which the claims and defenses are founded.
   - **c.** A summary of the significant proceedings to date, including a list of the substantive motions previously made, their dispositions, and any pending motions.
   - **d.** A statement of facts not reasonably in dispute.
   - **e.** A list of the key facts in dispute and the specific evidence relevant to a determination of those facts.
   - **f.** Any discrete issue(s) that, if resolved, would facilitate the resolution of the case.
   - **g.** A brief statement of the issues of law with respect to liability and damages. The statement should be supported by legal authority, but extended legal argument is not necessary.

3. **Relief Sought.** A statement of the relief sought (for the plaintiff and any counter- or cross-claimants), including an itemization of damages and any other non-monetary relief.

4. **Settlement Discussions.** A description of the history and status of any settlement negotiations, including the formal settlement proposal required by § III.A.

IV. MOTIONS TO AMEND SCHEDULING ORDERS OR TO CONTINUE OTHER DATES AND DEADLINES

A. Timing. Any request to amend the scheduling order or to continue or reschedule any date, deadline, or court proceeding should be filed no fewer than **7 calendar days** in advance of the dates and deadlines at issue. Any motion filed fewer than 7 calendar days in advance of the dates and deadlines at issue **must** address excusable neglect for the untimely request. Fed. R. Civ. P. 6(b)(1)(B).

B. Written Motion Required. Any request to amend the scheduling order or to continue or reschedule any date, deadline, or court proceeding shall be **filed** as a joint motion pursuant to CivLR 7.2 or, if opposed, as an *ex parte* motion pursuant to CivLR 83.3(g). Whether filed as a joint motion or an *ex parte* motion, the parties are not required to obtain a hearing date. Counsel shall **not** call Chambers to request to continue or reschedule any date, deadline, or Court proceeding.

C. Additional Motion-Specific Requirements.

1. **Motions to Amend the Scheduling Order.** The dates and times set forth in the scheduling order will not be modified except for good cause shown in a timely-filed motion. Fed. R. Civ. P. 6(b), 16(b)(4). Counsel are reminded of their duty of diligence and that they must "take all steps necessary to bring an action to readiness for trial." CivLR 16.1(b).

   Motions requesting to amend any date or deadline in the scheduling order shall include the following:

   a. A showing of good cause for the request. Fed. R. Civ. P. 6(b), 16(b)(4).
   b. A statement of whether the request is timely. Untimely requests **must** include a showing of excusable neglect. Fed. R. Civ. P. 6(b)(1)(B).
   c. A **table** of all remaining dates and deadlines in the operative scheduling order and the proposed amendment for **every** remaining date or deadline in the scheduling order at the time the motion is filed. If no amendment is requested for any remaining date or deadline, the parties shall so indicate.
   d. The number of previous requests to amend.
   e. A declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set forth in the scheduling order and the specific reasons why deadlines cannot be met. If the motion is brought *ex parte*, the declaration must address the steps counsel took to obtain a stipulation from the opposing party.

   Absent express permission from the Court, and notwithstanding the pendency of any motion, counsel shall timely comply with the dates and deadlines ordered by the Court in the scheduling order.

2. **Motions to Continue or Reschedule Court Proceedings.** Motions requesting to continue or reschedule any Court proceeding must include **three mutually-agreeable, alternative dates** for the proceeding.

3. **Motions to Continue Discovery Dispute Deadlines.** Counsel for the parties must meet and confer in person or by telephone prior to filing a motion to continue discovery dispute deadlines. Any such motion shall include the following:

   a. The date of the event giving rise to the discovery dispute. (*See* § V.E.)
   b. The current meet and confer deadline. (*See* § V.A.)
   c. The current deadline to contact the Court with the discovery dispute. (*See* § V.B.)
   d. A specific proposed date by which the parties will conclude the meet and confer process and, if still necessary, contact the Court with any remaining discovery disputes.

V. DISCOVERY DISPUTES

A. Meet and Confer Requirement. The Court will not address discovery disputes until counsel have met and conferred to resolve the dispute. *See* CivLR 26.1(a). Counsel must proceed with due diligence in scheduling and conducting an appropriate meet and confer conference as soon as the dispute arises. Counsel shall commence the meet and confer process within **14 calendar days** of the event giving rise to the dispute (*see* § V.E.).

The Court expects strict compliance with the meet and confer requirement, as it is the experience of the Court that the vast majority of disputes can be resolved by means of that process. Counsel must **thoroughly** meet and confer in person or by telephone and shall make every effort in good faith to resolve all disputes without the Court's intervention. Under no circumstances may the parties satisfy the meet and confer requirement by exchanging e-mails or other written correspondence.

B. Contacting the Court with an Unresolved Discovery Dispute. No later than **30 calendar days** after the date upon which the event giving rise to the discovery dispute occurred (*see* § V.E.), if the parties have been unable to resolve their dispute through the meet and confer process, the parties shall do **both** of the following:

1. **Lodge** a **Joint Discovery Statement** with the Court. The Joint Discovery Statement shall be no more than **5 pages** without exhibits and include the following:
   a. The date of the event giving rise to the discovery dispute and the corresponding deadline to contact the Court with the dispute. (*See* §§ V.B. & E.)
   b. The requests in dispute along with each party's position on each request.
   c. At least **3 mutually agreeable dates** within **10 calendar days** for an informal Discovery Conference with the Court.
   d. Attached exhibits of **only the relevant** requests and responses at issue (including any material definitions and general objections). Counsel should not attach copies of any meet and confer correspondence.

2. Leave a **joint voicemail message** with Judge Burkhardt's Chambers notifying the Court that a Joint Discovery Statement has been lodged.

After reviewing the Joint Discovery Statement, the Court may set a telephonic or in-person Discovery Conference or may issue a briefing schedule.

C. Discovery Motions. A motion seeking to resolve a discovery dispute requires advance permission from the Court. (*See* § V.B.) Unless the Court directs otherwise, a discovery motion and any opposition thereto shall be no more than **10 pages** each, exclusive of exhibits. Reply briefs will not be permitted unless requested or authorized by the Court. Requested or authorized reply briefs shall be no more than **5 pages**.

1. **Motion Contents.** The motion shall include the following:

   a. A specific reference to each discovery request and response at issue.
   b. A statement as to why the discovery is needed, including the legal authority to support the position.
   c. A declaration of compliance with the meet and confer requirements of CivLR 26.1. Counsel should **not** attach copies of any meet and confer correspondence to the declaration or motion.
   d. Attached exhibits of the relevant requests and responses at issue (including any material definitions and general objections).

2. **Following the Filing of the Motion.** After reviewing the parties' briefs, the Court may set a telephonic or in-person hearing or may issue an order without oral argument. *See* CivLR 7.1(d)(1).

D. Disputes Arising During Depositions. If a dispute arises during a deposition regarding an issue of privilege, enforcement of a court-ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), counsel may leave a joint voicemail message with Judge Burkhardt's Chambers at (619) 557-6624 to seek an immediate ruling on the dispute. If Judge Burkhardt is available, she will either rule on the dispute or give counsel further instructions regarding how to proceed. If Judge Burkhardt is unavailable, counsel shall mark the deposition at the point of the dispute and continue with the deposition. Thereafter, counsel shall meet and confer regarding all disputed issues pursuant to the requirements of CivLR 26.1(a) within 14 calendar days of the deposition (*see* § V.A.). If counsel have not resolved their disputes through the meet and confer process, they shall proceed as provided in § V.B.

E. Calculating When the Event Giving Rise to the Dispute Occurs. For written discovery, the event giving rise to the discovery dispute is the date of the service of the answer/response or, in the absence of a response, the date upon which a timely answer/response was due. For oral discovery, the event giving rise to the discovery dispute is the completion of the deposition session during which the dispute arose.

VI. STIPULATED PROTECTIVE ORDERS

A. Joint Motion Required.

All stipulated protective orders submitted for the Court's approval **must be filed as a joint motion** pursuant to CivLR 7.2. The joint motion must contain the language of the stipulated protective order sought and the parties' electronic signatures. In addition, the parties must **lodge** a proposed order in **Word format** to efile_Burkhardt@casd.uscourts.gov. The proposed order must contain the language of the stipulated protective order and include any attached exhibits.

B. Required Provisions.

The parties may use Judge Burkhardt's model protective order, which is available on Judge Burkhardt's page on the Court's website (Homepage → Judges → Magistrate Judges → Hon. Jill L. Burkhardt).

If the parties opt against using Judge Burkhardt's model protective order, the stipulated protective order submitted for the Court's approval **must** nonetheless include the following provisions, or the joint motion will be denied:

1. **Designation of information as confidential.** A party or non-party subject to the protective order may only designate documents or other information in this action as confidential if the designating party or non-party has an articulable, good faith basis to believe that each document or other information designated as confidential qualifies for protection under Federal Rule of Civil Procedure 26(c).

2. **What the Court shall do with confidential documents.** Absent an *ex parte* motion made within 10 calendar days of the termination of the case, the parties understand that the Court will destroy any confidential documents in its possession.

3. **Modification of the Protective Order by the Court.** The Court may modify the terms and conditions of the Protective Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings.

4. **Relation to any Court or Local Rules.** Without separate court order, the Protective Order and the parties' stipulation do not change, amend, or circumvent any court rule or local rule.

5. **Filing documents under seal.** No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, or the party who produced the document, if different from the opposing party. If the application to file a document designated as confidential under seal is being made by the non-designating party, then, upon request, the designating party must promptly provide the applicant with a legal basis for the confidential designation and the non-designating party must include the basis in the application. If opposing counsel, or the party who produced the document, if different

from the opposing party, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application **within one (1) court day**, to notify the judge's staff that an opposition to the application will be filed. If only portions of the document are subject to sealing, the party must file a redacted version of the document publicly on the docket.

VII. *EX PARTE* PROCEEDINGS

If unopposed, requests for relief should be made to the Court by joint motion. *Ex parte* motions are appropriate only in exigent circumstances when opposing counsel is not reachable or when opposing counsel refuses to participate in the preparation of a joint motion. All *ex parte* motions must comply with CivLR 83.3(g). The Court does not have regular *ex parte* hearing days or hours. After service of an *ex parte* motion, opposing counsel will ordinarily have **until 5:00 PM** on the next court day to respond. If more time is needed, opposing counsel should initiate a joint call to Judge Burkhardt's Chambers and leave a detailed message with the extension of time sought. If a joint call is unfeasible, opposing counsel may call Chambers *ex parte*, but should limit any voicemail message to the extension of time sought.

After receipt of the *ex parte* motion and opposition (if any), the Court may set a telephonic or in-person hearing or may issue an order without oral argument. *See* CivLR 7.1(d)(1). Reply briefs will not be permitted unless requested or authorized by the Court.

VIII. MISCELLANEOUS

A. Notice of Settlement. If a case is settled in its entirety or as to one or more parties, counsel for the **plaintiff** must file a Notice of Settlement or the parties may jointly file a Notice of Settlement. If the Notice of Settlement is filed less than 48 hours before any court proceeding, such as an ENE or MSC, the plaintiff's counsel shall place a call to Chambers as soon as possible and leave a voicemail message notifying the Court of the settlement.

B. Technical Questions Relating to CM/ECF. Any technical questions relating to CM/ECF should be directed to the CM/ECF Help Desk at (866) 233-7983.

C. Criminal Matter Inquiries. All inquiries regarding criminal matters should be directed to Judge Burkhardt's courtroom deputy, Aishah Smith, at (619) 557-6425. For further information, please see Judge Burkhardt's Criminal Chambers Rules.

HONORABLE DANIEL E. BUTCHER

UNITED STATES MAGISTRATE JUDGE

CIVIL CHAMBERS RULES

Updated August 19, 2022

NOTE: These rules apply to all civil cases, except Social Security appeals and habeas petitions, unless otherwise ordered. All parties must comply with the Civil Local Rules for the Southern District of California ("Local Rules") and the Electronic Case Filing Administrative Policies and Procedures Manual ("ECF Manual"), which are available on the Court's website.

I. CIVILITY AND PROFESSIONALISM

The Court places a high premium on civility and professionalism in all matters, including those that occur outside the presence of the Court. All counsel and unrepresented parties must read and familiarize themselves with Local Rule 2.1 (Professionalism).

II. COMMUNICATING WITH CHAMBERS

Chambers' staff includes two law clerks and one courtroom deputy. The law clerks handle inquiries on civil matters, and the courtroom deputy handles inquiries on criminal matters. The telephone number for the law clerks is (619) 446-3704. The telephone number for the courtroom deputy is (619) 446-3576. The email address for communications to the law clerks or the courtroom deputy is efile_butcher@casd.uscourts.gov.

Telephone calls and emails to Chambers are permitted only for administrative matters such as scheduling and calendaring and to bring discovery disputes to the Court's attention pursuant to Section VI of these Rules. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Except for exigent circumstances when counsel is unavailable, only counsel with knowledge of the case may contact Chambers.

Letters and emails to Chambers are prohibited unless authorized elsewhere in these Rules or otherwise requested by the Court.

For technical questions relating to the Case Management/Electronic Case Filing system ("CM/ECF"), please contact the CM/ECF Help Desk at (866) 233-7983. In addition, there is detailed guidance on CM/ECF on the Court's website.

III. EARLY NEUTRAL EVALUATION AND CASE MANAGEMENT CONFERENCES

Pursuant to Local Rule 16.1(c), the Court will hold an Early Neutral Evaluation Conference ("ENE") within 45 days of the filing of an answer. Requests to continue an ENE are strongly disfavored and will only be granted upon a strong showing of good cause.

The ENE is informal, off-the record settlement conference. The purpose of the ENE is to have a meaningful settlement conference before sunken attorneys' fees and costs present an impediment to resolving the dispute.

Counsel and the parties must come prepared to engage in a detailed discussion of the merits of their respective cases and engage in good faith settlement discussions. Counsel attending the ENE are expected to have a command of the facts and applicable law.

Unless otherwise ordered by the Court, the following are required to attend the ENE with full settlement authority:

1. Counsel with primary responsibility for handling the case;
2. All individual parties, and, for corporate and organizational parties, a representative who has authority over the litigation and full and unlimited settlement authority;[1]
3. Adjusters for all insured defendants and counter-defendants; and
4. All third parties who are contractually obligated to indemnify any defendant or counter-defendant.

A. Early Neutral Evaluation Statements

No later than seven (7) calendar days before the ENE, each party must lodge a "Confidential ENE Statement" by email to efile_butcher@casd.uscourts.gov.

ENE Statements must include all matters listed in the Court's Order Setting the Early Neutral Evaluation and Case Management Conference. Unless pre-approved by the Court, ENE Statements must not exceed seven (7) pages formatted in accordance with Local Rule 5.1(a) (i.e., on pleading paper, double spaced, 14-point font). Parties may attach significant materials pertaining to their claim(s) or defense(s) as exhibits. Parties attaching exhibits must attach only the relevant pages of multi-page exhibits and must highlight the relevant portions. The parties

[1] Government entities are excused from this requirement provided that an attorney attends who has: (1) primary responsibility for handling the case; and (2) authority to negotiate and recommend settlement offers to the official(s) having ultimate settlement authority.

are also encouraged in appropriate cases to attach a chronology setting forth a timeline of the events at issue. If submitted, the chronology should be in a chart or column format with the column headings "DATE," "EVENT," and "EXHIBIT" (if the event is documented by an attached exhibit). The chronology is not counted against the page limits

B. Case Management Conference

The Court will conduct the Case Management Conference ("CMC") required by Fed. R. Civ. P. 16 immediately following the ENE if the case does not settle.

At least seven (7) days prior to the scheduled ENE/CMC, the parties must file a Joint Discovery Plan on CM/ECF. The Joint Discovery Plan must include: (1) the parties' positions and proposals for each item listed in Fed. R. Civ. P. 26(f)(3); and (2) all other matters requested in the Court's Order Setting the Early Neutral Evaluation and Case Management Conference.

IV. SETTLEMENT CONFERENCES

Pursuant to Local Rule 16.3, the Court will hold a Mandatory Settlement Conference ("MSC") at the conclusion of fact discovery and will hold additional MSCs as needed. The Court will also entertain a request to hold a voluntary settlement conference upon the request of any party.

The ENE attendance requirements apply to MSCs and settlement conferences.

Each party must lodge a Confidential Settlement Brief at least seven (7) days before the settlement conference by email to efile_butcher@casd.uscourts.gov. The Confidential Settlement Brief may not exceed ten (10) pages, excluding exhibits, and must be formatted according to the requirements of Local Rule 5.1(a). Parties attaching exhibits must attach only the relevant pages of multi-page exhibits and must highlight the relevant portions.

All Confidential Settlement Briefs must include the following:

(1) the party's position on liability and damages supported by relevant facts, a discussion of the significant facts established during discovery, and legal analysis with citations to controlling legal authority. The parties are also encouraged in appropriate cases to attach a chronology setting forth a timeline of the events at issue. If submitted, the chronology should be in a chart or column format with the column headings "DATE," "EVENT," and "EXHIBIT" (if the event is documented by an attached exhibit). The chronology is not counted against the page limit;

(2) **for plaintiffs**, a specific and current settlement demand addressing all relief sought and an itemization of the damages sought, and, **for defendants**, a specific and current offer and the bases for that offer. (Note: a general statement that a party will "negotiate in good faith," "offer a nominal cash sum," or "be prepared to make a demand or offer

at the conference" is not a specific demand or offer. If a specific offer or demand cannot be made at the MSC or settlement conference, state the reasons why and explain what additional information is required to make a settlement demand or offer.);

(3) a brief description of any previous settlement negotiations or mediations; and

(4) the names of attorney(s) and non-attorney(s) who will attend the conference, including the name(s) and title(s)/position(s) of the party/party representative(s).

V. NOTIFICATION OF CASE RESOLUTION

If the parties reach a settlement outside the presence of the Court, counsel must promptly call or email Chambers to advise of the settlement and file a Notice of Settlement on the CM/ECF system.

VI. DISCOVERY DISPUTES (Fed. R. Civ. P. 26–37, 45; Civ.LR 26.1)

A. Meet and Confer Requirement. Before bringing any dispute to the Court, lead counsel (or attorneys with full authority to make decisions on the matter in dispute) must promptly and thoroughly meet and confer in person or, if counsel does not reside in the same county, by videoconference regarding all disputed issues.[2] Letters, emails, or telephone calls do not satisfy this requirement.

B. Disputes During Depositions. If a dispute requiring immediate resolution by the Court arises during a deposition, the parties must suspend the deposition and immediately meet and confer. If the dispute is not resolved after meeting and conferring, the parties may call Chambers for an immediate ruling on the dispute. If Judge Butcher is available, he will rule on the dispute or give instructions on how to proceed. If Judge Butcher is not available, the parties must mark the deposition at the point of the dispute and continue with the deposition. Upon completion of the deposition, the parties must once again meet and confer and, if the dispute is still not resolved, follow the procedures set out in sections C, D, and E below.

C. Disputes Over Written Discovery Requests. For disputes over written discovery, the parties must jointly call Chambers and speak to the law clerk assigned to the case. Counsel will be asked to explain without argument: (1) the details of the dispute; (2) the parties' respective positions; (3) what meet and confer efforts have taken place; and (4) what relief is requested. Following that call, the law clerk will either schedule a telephonic discovery conference with Judge Butcher or direct the parties to file a motion and set a briefing schedule and page limits.

[2] Counsel residing in the same county may satisfy the in-person requirement by videoconference during the Covid-19 pandemic.

D. Discovery Motions. Any discovery motion (e.g. motion to compel or an opposed motion for a protective order) must include the following:

1. The verbatim Interrogatory, Request for Admission, Request for Production, Request for Inspection, or deposition question in dispute;

2. The verbatim response to the request or question;

3. A statement with applicable authorities explaining what relief the moving party seeks and why the Court should grant it;

4. If a privilege or protection from disclosure is asserted, the line item(s) of the privilege log describing the document(s) in question.

The parties may not attach correspondence between counsel unless it evidences an agreement alleged to have been breached.

The parties are not required to lodge a proposed order.

E. Timing. The parties must initiate the procedure described in sections B and C above within **thirty (30) days** of the date of the event giving rise to the dispute. For depositions, the event giving rise to the dispute is the completion of the relevant portion of the transcript. For written discovery, the event giving rise to the dispute is the date the response was served. If a party fails to respond, the event giving rise to the discovery dispute is the date the response was due. The Court may extend the time limitation upon a showing of good cause.

F. Disputes Concerning Electronically Stored Information. Before bringing any dispute over electronically stored information, the parties must consult and comply with the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information, found at https://www.casd.uscourts.gov/judges/butcher/docs/Electronically%20Stored%20Information%20Checklist.pdf.

G. Discovery Disputes Involving Third Parties. If a discovery dispute involves a third party subpoena, and compliance is required in the Southern District of California pursuant to Fed. R. Civ. P. 45(c), the procedures described in sections B and C above apply if the third party is represented. If the third party is not represented, the party bringing the dispute may file an appropriate motion within the time set out in section E above.

VII. REQUESTS TO CONTINUE

A. Early Neutral Evaluation and Settlement Conferences. Parties may request the continuance of an ENE, MSC, or settlement conference by placing a joint call or sending an email to Chambers after counsel have met and conferred regarding whether the parties agree to the requested continuance. The request must be made as soon as counsel is aware of the circumstances that warrant rescheduling the conference. When requesting a continuance of the ENE, the parties must remember that Local Rule 16.1.c.1. requires that the ENE take place within 45 days of the filing of the first answer.

B. Deadline to Contact the Court re Discovery Disputes. The parties may initiate a request to extend the 30-day deadline to contact Chambers about a discovery dispute by placing a joint call or email to Chambers.

C. Scheduling Order Dates & Deadlines. Parties may make a request to continue a Scheduling Order deadline through a Joint Motion for Continuance. The parties must file the Joint Motion in accordance with Local Rule 7.2 no less than seven (7) days before the affected date. The parties are not required to lodge a proposed order.

The Joint Motion must include the following information:

1. The original deadline(s) or date(s);
2. The number of previous requests for continuance;
3. A showing of good cause for the request;
4. If the request is opposed, a description of the parties' meet and confer efforts and a statement by the opposing party explaining the basis for its opposition;
5. Whether the requested continuance will affect other case management dates; and,
6. If the reason for the requested continuance is to engage in private mediation, the date of the mediation.

The filing of a Joint Motion for Continuance does NOT permit the parties to disregard the current deadlines. Unless and until the Court grants the Joint Motion, the parties must continue to comply with all deadlines in the Scheduling Order.

Requests to amend the Scheduling Order that necessitate an extension of the motion filing cut-off, pre-trial conference, and/or trial date are strongly disfavored and require a showing of exceptional circumstances.

VIII. PRIVILEGE LOGS

Unless the parties' Joint Discovery Plan or a Court order provides otherwise, a party withholding documents based upon a claimed protection or privilege must produce a privilege log that contains sufficient information to allow the requesting party to understand and evaluate the basis for withholding the documents. The privilege log must include the following information:

1. Date of the document;
2. Bates number range of the document;
3. Author;
4. Primary addressee (and the relationship of that person(s) to the client and/or author of the document);
5. Secondary addressee(s) (and the relationship of that person(s) to the client and/or author of the document);
6. Any other individual(s) to whom the document was disseminated (and the relationship of that person(s) to the client and/or author of the document);
7. Type of document (e.g., internal memo, letter with enclosures, draft affidavit, etc.);
8. Client (i.e., party asserting privilege);
9. Attorney(s) involved and party represented;
10. Subject matter of document or privileged communication;
11. Basis for withholding the document or communication (e.g., work product, attorney client privilege, or some other asserted privilege or protection); and
12. Identification and description of any attachments.

IX. PROTECTIVE ORDERS

If a protective order is requested, the parties must file a Joint Motion on the CM/ECF system and lodge the proposed protective order by email to efile_butcher@casd.uscourts.gov.

The proposed protective order must contain a provision regarding the disposition of confidential or sealed documents and information upon conclusion of the case.

The proposed protective order must also contain the following provisions:

1. At any stage of the proceedings, any party may object to a designation of materials as confidential information. The objecting party must notify the designating party, in writing, of the materials objected to and the ground(s) for the objection. Thereafter, lead counsel (or attorneys with full authority to make decisions and bind the client without later seeking approval from a supervising attorney) must promptly meet and confer, pursuant to Local Rule 26.1.a. If the dispute is not resolved within seven (7) days of receipt of the objections, and after counsel have thoroughly and completely met and conferred, the parties must place a joint call to the assigned magistrate judge's chambers to explain the dispute and the parties' respective positions. The materials at issue must be treated as confidential until the Court has ruled on the objection or the matter has been otherwise resolved.

2. No party may file any document under seal, except pursuant to a court order that authorizes the filing of the document, or portion of the document, under seal. A sealing order will issue only upon a showing that the information is privileged or protectable under the law. The party seeking to file under seal must limit its sealing request to the specific portion of the document that contains the confidential or privileged material.

3. The Court may modify the protective order in the interest of justice or for public policy reasons.

X. EX PARTE PROCEEDINGS

Ex parte motions are appropriate only in exigent circumstances when opposing counsel is not reachable or refuses to participate in the preparation of a Joint Motion, or when the Court directs a party to submit the requested relief as an ex parte motion.

The Court does not have regular ex parte hours. A party seeking ex parte relief must file a motion on the CM/ECF system that includes: (1) a short description of the dispute and the relief sought; (2) a declaration describing efforts to meet and confer with the opposing party; and (3) a proof of service if the opposing party is not registered on the CM/ECF system.

The Court will ordinarily give the opposing party until 5:00 p.m. the next business day to respond. If more time is required, the opposing party must contact the Court's law clerk at (619) 446-3704. Unless otherwise ordered, the Court will issue a decision without a hearing.

XI. MISCELLANEOUS MATTERS

A. Lodging Documents. When these Chambers Rules direct a party to "lodge" a document, email the document to efile_butcher@casd.uscourts.gov and do not file the document on the CM/ECF system.

B. Filing Documents Under Seal. The party seeking to file a document under seal must comply with Local Rule 79.2 and Section 2.j. of the ECF Manual. Instructions on how to file a motion to file documents under seal in CM/ECF can be found at https://www.casd.uscourts.gov/_assets/pdf/cmecf/How%20to%20File%20Civil%20Sealed%20Documents.pdf.

C. Technical Questions Relating to CM/ECF. Guidance regarding CM/ECF is available in the ECF Manual found at https://www.casd.uscourts.gov/_assets/pdf/cmecf/Electronic%20Case%20Filing%20Procedures%20Manual.pdf and the User's Manual for Electronic Case Filing found at https://www.casd.uscourts.gov/_assets/pdf/cmecf/Users%20Manual%20for%20Electronic%20Case%20Filing.pdf. Parties may also direct technical questions to the CM/ECF Help Desk at (866) 233-7983.

D. Transcripts. Transcript orders for proceedings before Judge Butcher must be electronically filed. Instructions, including how to determine page estimates, a blank transcript order form, and where to find the page rates can be found at https://www.casd.uscourts.gov/attorney/transcript-order.aspx.

Honorable Steve B. Chu
United States Magistrate Judge
Civil Chambers Rules

Last Updated July 31, 2023

Pro se litigants and counsel are expected to comply with this Court's Civil Chambers Rules as set forth below. The Civil Chambers Rules intend to serve as guidance throughout magistrate-specific proceedings before this Court. Concurrently, the Court may vary these Rules by separate order in any case as appropriate. Please note the Civil Chambers Rules do not supplant to any extent the Federal Rules of Civil Procedure, the Civil Local Rules for the Southern District of California[1] ("Local Rules"), or the Electronic Case Filing Administrative Policies and Procedures Manual[2] ("ECF Manual").

I. Civility

The Court expects all parties and counsel to conduct themselves with civility and respect. This expectation extends to all oral, written, virtual, and in-person interactions with party opponents, opposing counsel, and the Court, including its staff. At all times, *pro se* litigants and counsel are expected to comply with Civil Local Rule 2.1 on Professionalism, including during proceedings that occur outside the Court's presence. The Court will not tolerate disrespect from parties or counsel.

II. Communications with Chambers Staff

Chambers staff consists of two law clerks and one courtroom deputy ("CRD"). Law clerks handle civil matters exclusively. The CRD handles criminal matters exclusively. The law clerks and the CRD may be reached via email at efile_chu@casd.uscourts.gov. To contact the law clerks by phone, please call 619. 557. 5391. To contact the CRD by phone, please call 619. 557. 5973.

a. **Scope of Communications:** Telephone calls to Chambers in civil cases may be initiated to solely address administrative matters. Emails to Chambers in civil cases are appropriate to either (1) lodge documents and/or information as directed by the Court or (2) raise discovery disputes

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[1] For the Local Rules, see https://www.casd.uscourts.gov/rules/local-rules.aspx.
[2] For the ECF Manual, see https://www.casd.uscourts.gov/cmecf.aspx#undefined2.

pursuant to Section VI of these Civil Chambers Rules. Law clerks are not permitted to discuss the merits of a case, provide legal advice, or indicate how or when the Court may resolve pending motions or other substantive matters.

b. **Telephone Calls:** No *pro se* litigant or attorney shall contact Chambers prior to reviewing the Local Rules, this Court's Civil Chambers Rules, and relevant orders of this Court. **For represented parties, only the attorney-in-charge may call Chambers**. Further, all calls placed to Chambers shall be jointly made, except as specified under Section VIII of these Rules pertinent to *ex parte* proceedings. When leaving a voicemail for Chambers, please state the (1) case name and number; (2) all callers' names and telephone numbers; and (3) a brief description of the nature of the inquiry.

c. **Letters, Faxes, or E-mails:** None of these items shall be submitted unless specifically requested by this Court. Consistent with this Civil Chambers Rule, Chambers should not be included on correspondences exchanged amongst counsel or between *pro se* litigants and counsel.

d. **Lodging Documents and Courtesy Copies:** "Lodging" documents or information means emailing such items to efile_chu@casd.uscourts.gov or delivering courtesy copies of documents to this Court's Chambers, which are located at the Schwartz Courthouse, 221 W. Broadway, Suite 5195, San Diego, CA 92101. Documents shall be lodged via email exclusively where the total pages lodged, inclusive of exhibits, do not exceed fifty (50) pages. Where the documents to be lodged exceed fifty (50) pages, inclusive of exhibits, courtesy copies must be delivered to Chambers consistent with the applicable deadline and during the Court's hours of operation.

e. **Transcript Requests:** Requests for transcripts in civil proceedings must be placed online. For more information, please visit the following website: https://www.casd.uscourts.gov/attorney/transcript-order.aspx.

III. Settlement Conferences: Early Neutral Evaluation Conferences ("ENE") and Mandatory Settlement Conferences ("MSC")

a. Settlement Statements

All parties to an ENE or an MSC must lodge via email non-confidential settlement statements of seven (7) pages or fewer, excluding exhibits, setting forth the

following: (1) the nature of the case, inclusive of the claims at issue, defenses asserted, a summary of the undisputed facts, and a brief recital of key facts in dispute; and (2) the parties' respective settlement positions, inclusive of the most recent demand and counteroffer exchanged and all obstacles the parties anticipate may impede settlement. If so desired, parties may include in their email to Chambers a confidential version of their settlement statements for the Court's consideration.

In addition to lodging their respective settlement statements, all ENE and MSC participants must exchange copies of their non-confidential settlement statements with all other parties to the settlement conference. The exchange of settlement statements must occur consistent with the deadline reflected in the Court's order setting the ENE or MSC. To that end, the Court expects all parties to an ENE or MSC to fully review and comply with all provisions of the Court's order setting the ENE or MSC.

b. Time Allotment

The Court reserves two (2) hours for settlement conferences. Unless otherwise indicated by court order, morning settlement conferences will be held between 9:30 a.m. and 11:30 a.m. and afternoon settlement conferences will be held between 1:30 p.m. and 3:30 p.m. All participants, including parties, party representatives, insurance adjusters for insured parties, and counsel, must be available to participate in the settlement conference for the entirety of such allotted time.

c. Settlement Authority Required

Pursuant to Civil Local Rule 16.3(b), all parties and party representatives other than counsel must have complete authority to negotiate and enter into a binding settlement agreement at the time of the ENE or MSC. This requirement renders unnecessary intervention from a superior who is not otherwise a participant to the settlement conference and thus ensures efficiency in the parties' negotiations.

Counsel for a government entity may be excused from this requirement so long as the government attorney who attends the settlement conferences (1) has primary responsibility for handling the case; and (2) may negotiate settlement offers which the attorney is willing to recommend to the government official who has ultimate settlement authority.

d. Settlements Preceding the ENE or MSC

In the event a settlement is reached prior to an ENE or MSC, the parties must notify Chambers immediately by sending a joint email to efile_chu@casd.uscourts.gov. Upon receipt of such notice, the Court shall take prompt action as appropriate.

IV. Case Management Conferences ("CMC") and Joint Discovery Plans

a. Timing of the CMC

Where a case does not settle at the ENE, the Court will hold a CMC immediately thereafter or, in rare exceptions, up to 60 days following the ENE, consistent with Civil Local Rule 16.1(c)(2)(a).

b. Joint Discovery Plans

As set forth in the Court's order setting an ENE and CMC, parties are required to lodge a Joint Discovery Plan. The Joint Discovery Plan must (1) be lodged as one document in PDF format; (2) address all items enumerated in Rule 26(f)(3) of the Federal Rules of Civil Procedure; and (3) provide the following information:

1. The names of all attorneys who participated in the Rule 26(f) Conference and the manner in which the conference was held (*i.e.*, in person, telephonically, or by videoconference platform);

2. Related cases pending in any state or federal court, inclusive of the related cases' numbers, courts, and assigned judicial officers, if any;

3. Anticipated additional parties, if any;

4. Witness issues, if any;

5. Medical examination issues, if any;

6. Anticipated interventions, if any;

7. Class action issues, if any;

8. A statement confirming whether each party has timely made its initial disclosures pursuant to Rule 26(a) of the Federal Rules of Civil Procedure;

9. A proposed discovery plan as agreed to by the parties, inclusive of:

    a. By name and/or title, all witnesses counsel seeks to depose and a brief explanation to warrant each deposition. If an objection to a witness' deposition is asserted, the objecting party shall state the legal basis for the objection;

    b. For each party, whether counsel anticipates exceeding the maximum number of depositions Rule 30 of the Federal Rules of Civil Procedure permits and, if so, whether counsel will stipulate to the excess number;

    c. Categories of documents as well as specific key documents sought during discovery. If an objection to such document production is asserted, the objecting party shall state the legal basis for the objection;

    d. For each party on whom counsel intends to serve interrogatories, whether counsel anticipates exceeding the maximum number of interrogatories Rule 33 of the Federal Rules of Civil Procedure permits, and, if so, whether counsel will stipulate to the excess number; and

    e. Issues about disclosure, discovery, or preservation of electronically stored information ("ESI"), informing the form(s) in which the ESI is to be produced.

10. What limited discovery may enable the parties to reach a speedy resolution of the case (*e.g.*, deposition of plaintiff, defendant, or a key witness, exchange of limited, key documents, *etc.*), if any;

11. Issues that implicate expert evidence, including whether counsel anticipates issues under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), if any;

12. Threshold legal issues that may be resolved by motions for summary judgment or partial summary judgment;

13. The procedure the parties intend to use regarding claims of privilege;

14. The need for a protective order in the case, if any;

15. Pending motions, if any;

16. The parties' position on trial before a magistrate judge;

17. Whether a jury demand has been made and the timeliness of the demand, if any;

18. Consent to magistrate jurisdiction, if any; and

19. A proposed schedule for:

    a. The filing of the motion to amend pleadings and/or add parties;
    b. The completion of fact discovery;
    c. The designation of expert witnesses;
    d. The designation of supplemental and/or rebuttal expert witnesses;
    e. The completion of expert discovery;
    f. The deadline to file pretrial motions, including dispositive motions;
    g. An MSC; and
    h. A Pre-Trial Conference before the assigned District Judge.

V. Requests to Amend Scheduling Orders

a. Timing of Requests to Amend Scheduling Orders

Requests to amend scheduling orders should be filed no fewer than five (5) calendar days in advance of the operative date or deadline or the earliest operative date or deadline, if more than one date or deadline is implicated. Any requests to amend scheduling orders filed fewer than five (5) calendar requests in advance of the operative date or deadline must address excusable neglect for the untimely request pursuant to Rule 6(b)(1)(B) of the Federal Rules of Civil Procedure.

b. Good Cause Standard

A party seeking the Court's modification of any operative scheduling order must satisfy the good cause standard under Rule 16(b) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 16(b)(4). Parties are cautioned that good cause turns on a threshold showing of diligence in attempting to meet existing deadlines. *See id.*; *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Thus, a request to amend a scheduling order must set forth all steps taken to comply with the operative scheduling order and the fact-specific circumstances demonstrating why the deadlines cannot be met despite the movant's diligence.

c. Mechanisms to Request to Amend Scheduling Orders

Before articulating their request to amend a scheduling order to the Court, movants must first notify all parties to the case of their intended request. Only after the parties have exhaustively met and conferred on the request may the movant proceed with filing their request for relief. The filing should be styled as either a Joint Motion to Amend Scheduling Order or an *Ex Parte* Application to Amend Scheduling Order, as explained under Section V(c)(i)-(ii) below.

i. Joint Motion to Amend Scheduling Order

Where the parties jointly seek the Court's amendment of an operative scheduling order, they shall proceed with filing a Joint Motion to Amend Scheduling Order consistent with Civil Local Rule 7.2 on Stipulations/ Joint Motions.

ii. *Ex Parte* Application to Amend Scheduling Order

Where the parties disagree on the movant's request to amend an operative scheduling order, the movant shall proceed with filing an *Ex Parte* Application to Amend Scheduling Order. Prior to its filing, the *Ex Parte* Application must wholly comply with all provisions set forth in Section VIII of these Civil Chambers Rules, inclusive of the notice provisions applicable to Chambers.

d. No Hearings on Joint Motions or *Ex Parte* Applications to Amend Scheduling Orders

Unless set by separate order of this Court, no hearing shall be set on either a Joint Motion to Amend Scheduling Order or an *Ex Parte* Application to Amend Scheduling Order. Accordingly, parties may proceed with their appropriate filing after fulfilling all procedural requirements without requesting a hearing date from Chambers.

VI. Discovery Disputes

Pro se litigants and counsel in discovery disputes are encouraged to review and fully comply with Rules 26 – 37 and 45 of the Federal Rules of Civil Procedure, Civil Local Rules 26.1, 30.1, 33.1, and 36.1, and these Civil Chambers Rules prior to raising a discovery dispute to the Court.

a. Procedural Requirements to Raise Discovery Disputes

To raise a discovery dispute, parties must first comply with the Court's three procedural requirements, namely: (1) engaging in an exhaustive meet and confer effort prior to raising the dispute; (2) timely providing notice of the dispute to Chambers no later than thirty (30) calendar days from the date the dispute arose; and (3) jointly notifying Chambers of the dispute by submitting a neutral statement of the dispute via letter emailed to Chambers at efile_chu@casd.uscourts.gov. The Court elaborates on each of these procedural requirements below.

i. Exhaustive Meet and Confer Effort

The Court will not entertain any discovery dispute in the absence of an exhaustive meet and confer effort amongst the attorneys-in-charge. As a foundational matter, the meet and confer effort must take place in person, telephonically, via videoconference, or through a combination thereof. To that end, where all attorneys-in-charge are local to this District Court, the meet and confer process must take place in person and/or by videoconference with cameras turned on for the entirety of counsel's discussions. Under no circumstance will written correspondence regarding a discovery dispute satisfy the meet and confer requirement.

ii. Timely Raising Discovery Disputes

Where they reach an impasse following an exhaustive meet and confer effort, parties must timely notify this Court's Chambers of the discovery dispute. Timely notice before this Court constitutes thirty (30) calendar days from the date the event triggering the dispute arose ("triggering event"). The triggering event will differ depending on the source of the discovery dispute.

1. Oral Discovery

For oral discovery, the triggering event is (1) the date the official transcript of the affected portion of the deposition is completed, where the transcript itself is at issue; or (2) the date the relevant deposition is taken, where the deposition is at issue. In the latter instance, counsel may call this Court's Chambers at 619. 557. 5391 for an immediate or expedited ruling on the dispute implicating the deposition itself. If available, the Court will either rule on the dispute immediately or provide further instructions regarding how to proceed. If the Court is not available, counsel shall continue with the deposition. Thereafter, counsel shall exhaustively meet and confer regarding all disputed issues and, if necessary, proceed with raising any remaining

discovery dispute consistent with Civil Local Rule 26.1(a) and this Court's Civil Chambers Rule VI.

2. Written Discovery

For written discovery, the triggering event is the date when the written response to the propounded discovery request(s) is due to be served under the Federal Rules of Civil Procedure.

3. Extensions of Time to Raise Discovery Disputes

At no time are parties permitted to stipulate to an extension of time to raise discovery disputes absent leave of Court. In instances where all parties to a discovery dispute believe they may be able to informally resolve the dispute without judicial intervention, the parties may submit a request for extension of time to raise the discovery dispute consistent with the procedures outlined in Section VI(a)(iii) immediately below.

iii. Joint Notice of Discovery Dispute

To raise a timely discovery dispute, parties must email a Joint Notice of Discovery Dispute to Chambers. Specifically, parties must email a joint letter to Chambers at efile_chu@casd.uscourts.gov to provide notice of the discovery dispute. The joint letter must consist of no more than seven (7) pages and include the following information:

(1) A statement indicating how the parties conducted their meet and confer effort (*e.g.*, in person, telephonically, and/or via videoconference);

(2) An attestation confirming the parties engaged in a meet and confer effort that all parties agree was exhaustive in nature;

(3) A chronology of all procedural events leading up to and including the triggering event to establish the timeliness of the discovery dispute (*e.g.*, the date written discovery was propounded, the deadline to respond to such written discovery, the date the responses to the written discovery were served, *etc.*);

(4) A joint statement of the basic facts of the discovery dispute. Brief statements of legal argument may be included in the joint statement but only to the extent necessary to articulate the basic facts of the discovery dispute;

(5) The names and direct telephone numbers of the *pro se* litigant(s) and/or attorneys handling the discovery dispute; and, finally,

(6) At least three mutually agreeable dates and times within five (5) calendar days for the *pro se* litigants and/or attorneys handling the discovery dispute to participate in a telephonic informal discovery conference with the law clerk assigned to the case.

b. Informal Telephonic Discovery Conference with Chambers

Once parties submit their Joint Notice of Discovery Dispute to Chambers consistent with the above procedures, the law clerk assigned to the case will respond to set an informal telephonic discovery conference. At the time of the conference, all participants who intend to speak on a party's behalf shall be prepared to provide the law clerk the basic facts of the dispute. No oral argument is permitted for purposes of such proceedings. Even so, the law clerk may ask clarifying questions as needed to provide fuller context for the Court's consideration.

c. Proceedings Following Informal Telephonic Discovery Conference with Chambers

Once the law clerk informs the Court regarding the informal telephonic discovery conference, the Court will then determine which course of action to take. Specifically, the Court will determine whether the discovery dispute (1) merits formal briefing, which may be simultaneous or responsive briefing, depending on the circumstances, (2) is appropriate for disposition via a discovery conference or hearing, or (3) a combination thereof. **To this end, no discovery motion shall be filed absent leave of Court.** The Court will strike any prematurely filed discovery motion from the record.

d. Procedures to Prepare and Format Discovery Briefing

Should the Court order briefing on a discovery dispute, the following sets forth the Court's substantive and formatting expectations:

(1) A signed and dated declaration of compliance with the Court's meet and confer requirement, which summarizes, without argument, the results of the parties' meet and confer discussions, including all material representations made and agreements and/or concessions reached;

(2) A specific identification of each discovery dispute;

(3) A statement of each discovery dispute consistent with the following formatting:

   a. The exact wording of the discovery request in dispute;
   b. The exact objection of the responding party;
   c. A statement by the propounding party as to why the discovery is sought; and
   d. The legal basis for the objection by the responding party.

(4) Any and all exhibits relevant to the dispute, submitted as attachments to the discovery briefing; and

   a. Where exhibits implicate written discovery requests and/or objections and responses to same, the parties shall attach as exhibits the (1) cover page for each set of written discovery requests and responses in dispute; (2) the verification page for each set of written discovery requests and responses in dispute; and (3) the specific pages containing the written discovery requests and responses in dispute. In its discretion, the Court may separately request the entirety of the propounded written discovery requests and responses.

(5) Unless otherwise indicated by court order, parties shall file discovery briefing consisting of no more than seven (7) pages, excluding exhibits.

VII. Joint Motions for Entry of Stipulated Protective Order

a. Filing a Joint Motion for Entry of Stipulated Protective Order

All Joint Motions for Entry of Stipulated Protective Order must:

(1) Be filed as a joint motion consistent with Civil Local Rule 7.2 on Stipulations/ Joint Motions;

(2) Include the provision for filing documents under seal, as set forth below in Section VII(b) of these Rules; and

(3) Be accompanied by a proposed order consistent with Section VII(c) of these Rules.

b. Protective Order Provision for Filing Documents under Seal

All Joint Motions for Entry of Stipulated Protective Order must include the following two provisions:

> No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, and on the person who has or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person who has or entity who has custody and control of the document, wishes to oppose the application, they must contact the chambers of the judge who will rule on the application, to notify the judge's staff that an opposition to the application will be filed.
>
> The Court may modify the terms and conditions of this Protective Order for good cause, in the interest of justice, or on its own order at any time in these proceedings.

Where this Court grants an application to file a document under seal, a redacted version of the document must be electronically filed through CM/ECF. A courtesy copy of the unredacted document must also be lodged this Court's Chambers. Please refer to Section 2(j) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual for more information.

c. Proposed Orders for Joint Motions for Protective Orders

All Joint Motions for Entry of Stipulated Protective Order must be accompanied by a proposed order. The proposed order must be in Microsoft Word format and contain all stipulated provisions of the proposed protective order. Parties shall lodge their proposed orders with this Court's Chambers via email at efile_chu@casd.uscourts.gov. For PDF and Microsoft Word versions of this District's Model Protective Order, please visit the Court's website at https://www.casd.uscourts.gov/forms.aspx?list=all.

VIII. *Ex Parte* Proceedings

Ex Parte Applications may be filed only after advance notice is provided via email to this Court's Chambers at efile_chu@casd.uscourts.gov and to opposing counsel or a party opponent appearing *pro se*. Further, applicants are expected to strictly comply with Civil Local Rule 83.3(g)(2) governing *Ex Parte* Applications.

Upon service, the responding party shall have until 5:00 p.m. on the following business day to file a response to the *Ex Parte* Application ("default briefing schedule"). If the responding party does not oppose the *Ex Parte* Application, the responding party shall file a Notice of Non-Opposition in accordance with the timeline set herein. If the responding party requires additional time to file a response to the Application, the responding party must email Chambers to request from the Court an amendment of the default briefing schedule. The responding party must include opposing counsel or a *pro se* party opponent on such email.

No hearing date shall be set on an *Ex Parte* Application unless otherwise indicated by separate order of this Court.

IX. Junior Attorney Participation in Civil Proceedings

The Court encourages junior attorneys to participate in civil conferences and hearings, particularly where such attorneys conducted substantive legal research on a matter before the Court or drafted significant portions of a motion before the Court. The Court is amenable to permitting oral argument from more than one attorney on a party's behalf if doing so would allow the junior attorney to participate in the conference or hearing. At all times, however, it is within the discretion of the attorney-in-charge to determine who will speak for a client before the Court.

X. Other Resources

a. Criminal Matter Inquiries

All inquiries regarding criminal matters should be directed to Judge Chu's courtroom deputy, who may be reached at telephone number 619. 557. 5973 or via email at efile_chu@casd.uscourts.gov.

b. Contacting Other Court Staff

To reach the Clerk's Office, please call 619. 557. 5600. To contact other Court staff, please visit https://www.casd.uscourts.gov/clerksoffice/telephone-list.aspx#tab1.

c. For Technical Assistance with CM/ECF

For technical questions related to the Case Management / Electronic Case Filing System ("CM/ECF"), please call the CM/ECF Help Desk at 866. 233. 7983. Additionally, the Southern District's CM/ECF website can be accessed by visiting https://www.casd.uscourts.gov/cmecf.aspx.

HONORABLE KAREN S. CRAWFORD
U.S. MAGISTRATE JUDGE
CHAMBERS' RULES
CIVIL PRETRIAL PROCEDURES
Updated: 10/24/2019

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

I. General Decorum

The Court expects all counsel to represent their clients in a civil, professional and ethical manner, and to be courteous and respectful at all times, in all settings. Counsel may also expect the Court to treat litigants and their counsel with the highest level of respect and professionalism. Please be familiar with and abide by Civil Local Rule 83.4.

II. Local Rules

Except as otherwise provided herein or as specifically ordered by the Court, all parties are expected to strictly comply with the Local Rules for the United States District Court for the Southern District of California.

III. Communications with Chambers

Chambers' staff includes two law clerks and one courtroom deputy. The law clerks handle inquiries on civil matters, and the courtroom deputy handles inquiries on criminal matters. The telephone number for the law clerks is (619) 446-3964. The telephone number for the courtroom deputy is (619) 557-2923.

If you have a technical question relating to CM/ECF, please contact the CM/ECF Help Desk at (866)233-7983. In addition, there is detailed information about CM/ECF available on the Court's website.

A. Letters, faxes, or emails

Letters, faxes or emails to chambers are prohibited, except as set forth in these guidelines.

B. Lodging Documents

When an Order directs you to "lodge" documents with chambers (usually, your ENE brief

or your MSC statement), if the total number of pages including exhibits is twenty (20) pages or less, you may lodge the document via email at efile_crawford@casd.uscourts.gov. If the submission exceeds twenty pages the document must be delivered directly to chambers (*e.g.*, via an attorney courier service).

C. Telephone Calls

Except for scheduled telephonic conferences, and as provided herein, telephone calls to chambers are permitted only for procedural matters, such as scheduling a conference with the Court. The Court's law clerks are not permitted to give legal advice, discuss the merits of a case, or discuss how or when the Court will rule on disputed matters. Law clerks will not discuss procedural issues with anyone other than counsel for the parties.

IV. Early Neutral Evaluation ("ENE") and Case Management Conferences ("CMC")

The Court will issue a Notice and Order for Early Neutral Evaluation Conference and Case Management Conference containing all requirements for the ENE/CMC. Please read this Order carefully. The Order will require, among other things, the parties to meet and confer, file a Joint Discovery Plan, serve initial disclosures, lodge ENE statements, and attend the ENE/CMC conference.

The ENE is a multi-purpose conference. The conference is informal, off-the record, and confidential. It is an opportunity for the parties to educate Judge Crawford and each other regarding their claims and defenses. The ENE also provides an opportunity to have meaningful settlement discussions before costs and fees become significant factors or impediments to resolving the dispute. The ENE typically is not scheduled until Answers have been filed for all significant defendants.

Unless otherwise ordered, the Court conducts the CMC required by Fed. R. Civ. P. 16 immediately following the ENE, if no settlement has been reached. A candid discussion with Judge Crawford allows her to fashion an appropriate Scheduling Order for the case and to consider how best to approach discovery. After the CMC, the Court will issue a Scheduling Order Regulating Discovery and Other Pre-trial Proceedings ("Scheduling Order").

A. Required Attendance

Pursuant to Local Rule 16.1(c), all parties (including those indemnified by others), claims adjusters for insured defendants, the principal attorney(s) responsible for the litigation, and non-lawyer representatives with full and unlimited authority to negotiate and enter into a binding settlement must be present and legally and factually prepared to discuss and resolve the case at the ENE.

"Full and unlimited authority" means that the individuals attending the ENE must be

authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp*., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with unlimited settlement authority to attend the conference is that the person's view of the case may be altered during a face-to-face conference. *Id.* at 486. A limited or sum certain authority is not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590, 595-597 (8th Cir. 2001).

In the case of a legal entity (e.g. a corporation, LLC, partnership or trust), an authorized representative of the entity (who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the plaintiff's prayer (excluding punitive damage prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior.

A government entity is excused from this requirement so long as the government attorney who attends the ENE conference or settlement conference has (1) primary responsibility for handling the case; and (2) authority to negotiate and recommend settlement offers to the government official(s) having ultimate settlement authority.

The Court will not grant requests to excuse a required party from personally appearing absent ***exceptional circumstances***. Travel distance alone does not constitute an ***exceptional circumstance***. If counsel believes there are ***exceptional circumstances*** to request that a required party be excused from personally appearing, they must confer with opposing counsel prior to making the request. Such requests may then be made by filing a Joint Motion or, where opposing counsel is unavailable, an *ex parte* request outlining the ***exceptional circumstances*** for the request. Any request to excuse a required party from personally appearing must be filed on the docket as a Joint Motion or *ex parte* request at least ***ten (10) days*** before the scheduled ENE.

If any of required representatives for the parties fail to appear at the ENE/CMC, the Court will issue an Order to Show Cause to determine whether sanctions will be imposed.

B. Confidential Statements

Unless otherwise ordered, no later than ***seven (7) days*** before the ENE, the parties shall lodge confidential statements ***of five pages or less*** directly with the chambers of Magistrate Judge Crawford at efile_crawford@casd.uscourts.gov. Exhibits to ENE statements are not required or recommended. Any ENE statement that exceeds 20 pages, including exhibits, must be hand delivered directly to Judge Crawford's chambers.

All confidential ENE statements must include (1) a brief description of the case and the claims asserted; (2) the party's position on liability and damages with controlling legal authority; (3) a specific and current demand for settlement addressing all relief or remedies sought, as well

as the specific basis for each type of relief (if a specific demand for settlement cannot be made at the time the settlement statement is submitted, state the reasons why and explain when the party will be in a position to state a settlement demand); and, (4) a brief description of any previous settlement negotiations or mediation efforts. A general statement that a party will "negotiate in good faith," "offer a nominal cash sum," or "be prepared to make an offer at the conference" is not a specific demand or offer. The statement shall also list all attorney and non-attorney conference attendees for that side, including the name(s) and title(s)/position(s) of the party/party representative(s) who will attend and have settlement authority at the conference.

C. Joint Discovery Plans

Unless otherwise directed, the parties are required to file on CM/ECF a Joint Discovery Plan ***seven (7) days*** before the scheduled ENE/CMC. The Joint Discovery Plan must include the parties' views and proposals for each item identified in Fed. R. Civ . P. 26(f)(3), and specifically address:

1. Whether any parties remain to be served or named in the action. In other words, list any anticipated additional parties that should be named, when the additional parties can or will be added, and by whom they are wanted;

2. Whether the required Rule 26(a) initial disclosures have been made by all parties. If not, describe what arrangements have been made to complete the disclosures and when initial disclosures will be completed;

3. Whether there is limited discovery that may enable each party to make a reasonable settlement evaluation, such as the deposition of plaintiff, defendant, or key witnesses, and the exchange of a few pertinent documents;

4. Whether counsel anticipate serving interrogatories exceeding the number permitted by Fed.R.Civ.P. 33 and, if so, why such discovery is needed, and whether counsel will stipulate to the excess number;

5. What issues in the case will necessitate expert evidence;

6. Whether counsel believe there are threshold legal issues that may need to be resolved by summary judgment or partial summary judgment;

7. Whether a protective order is contemplated to cover the exchange of confidential information and, if so, the date by which the proposed order will be submitted to the Court; and

8. A representation by counsel that they have reviewed the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information ("ESI"), which can be found at on the Court's website (under the tab earmarking Judge Crawford's

Chambers Rules) and have met and conferred fully regarding the preservation and discovery of ESI. Any anticipated issues regarding ESI should be discussed between counsel and raised in the Joint Discovery Plan for discussion during the CMC.

V. Voluntary & Mandatory Settlement Conferences

The Scheduling Order will include a date for a Mandatory Settlement Conference ("MSC"). The MSC is typically set on a date near the completion of expert discovery and before the deadline for the filing of dispositive motions, however, the parties may request the MSC be held earlier.

Additionally, the Court is available to conduct a Voluntary Settlement Conference ("VSC") at any point in the litigation. A request for a VSC can be made by one or more parties by speaking with a law clerk.

The attendance and briefing requirements for the ENE, set forth in Section III. A & B, above, also apply to MSCs and VSCs.

VI. Requests to Continue an ENE, MSC, or VSC, or to Amend the Scheduling Order

The Court prefers any request to continue an ENE, MSC, VSC, or Scheduling Order deadline be made by Joint Motion, even if the parties are not in agreement, no less than ***seven (7) days*** before the affected date. Before filing a Joint Motion for Continuance counsel must engage in a meaningful "meet and confer" conference.

A Joint Motion for a Continuance shall be in the form required by Civil Local Rule 7.2 except that it is not necessary for the parties to submit a proposed order. A Joint Motion for Continuance shall state:

1. The original deadline(s) or date(s);
2. The number of previous requests for continuance;
3. A showing of good cause for the request;
4. Whether counsel met and conferred;
5. Whether the request is opposed and why;
6. Whether the requested continuance will affect other case management dates; and,
7. If the request for a continuance is based on an agreement to engage in private mediation, the parties shall state the date scheduled for such mediation.[1]

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1 A Scheduling Order will not be continually amended to accommodate the parties' desire to limit costs while engaging in private mediation.

Joint Motions for Continuance of Scheduling Order Dates must also include a declaration from counsel detailing the steps taken to comply with the dates and deadlines in the Scheduling Order, the specific reasons why the deadlines cannot be met, and stating whether counsel met and conferred before filing the Joint Motion. Counsel are reminded they must "take all steps necessary to bring an action to readiness for trial." Civil Local Rule 16.1(b). The dates and times set in the Scheduling Order will not be modified except for good cause shown. Fed. R. Civ. P. 16(b)(4). Requests to amend the Scheduling Order may be denied if the amendments necessitate an extension of the final pre-trial conference and/or trial date.

The filing of a Joint Motion for Continuance does NOT permit the parties to disregard the current dates and deadlines. Unless and until the Court grants the Joint Motion, the parties must continue to comply with all dates and deadlines set forth in the Scheduling Order.

VII. Notification to Court of Case Resolution

If the parties reach a settlement without the Court's assistance (e.g., outside of the ENE, MSC or VSC setting), counsel must promptly file a Notice of Settlement and call chambers to advise of the settlement.

VIII. Discovery Disputes

A. Meet and Confer Requirements

Prior to bringing any dispute to the attention of the Court, ***lead counsel (or attorneys with full authority to make decisions and bind the client without later seeking approval from a supervising attorney, house counsel, or some other decision maker)***, are to promptly meet and confer "***concerning all disputed issues***." Civil Local Rule 26.1(a). If counsel are located in the same district, the meet and confer must be in person. If counsel are located in different districts, then telephone or video conference may be used for meet and confer discussions. In no event will meet and confer letters, facsimiles or emails satisfy this requirement.

The Court expects strict compliance with the meet and confer requirement. It is the experience of the Court that the vast majority of disputes can be resolved without the necessity of court intervention by means of this process provided counsel thoroughly meet and confer in good faith to resolve all disputes.

B. Deadlines for Raising Discovery Disputes

As outlined more fully in the next section, all discovery disputes must be brought to the Court's attention ***by telephone*** within **30 days** of the event giving rise to the dispute and only after counsel have ***thoroughly and completely*** met and conferred. The 30-day deadline may be extended, but only by court order, i.e., counsel cannot unilaterally extend the deadline. Also,

ongoing meet and confer efforts, rolling document productions or supplemental responses do not extend the deadline. Counsel shall file Joint Motion for Extension of Time to request an extension of the 30-day deadline prior to the passing of the deadline.

The Court uses these parameters to determine the date of the event giving rise to the dispute:

1. **Oral Discovery:** the event giving rise to the discovery dispute is the receipt of the transcript from the court reporter of the affected portion of the deposition.

2. **Written Discovery:** the event giving rise to the discovery dispute is the service of the initial response, or the passage of the due date without a response or document production.

3. **Effect of Meet and Confer Efforts:** The Trigger Date is not the date that counsel reach an impasse in meet and confer efforts.

C. Conference Call with Chambers

Discovery motions may not be filed without prior leave of Court. If the parties fail to resolve their dispute through the meet and confer process, then counsel for all parties are required to determine a mutually agreeable time to jointly call chambers. Prior to calling chambers, counsel must agree on the issue(s) in dispute and be prepared to succinctly explain the dispute and the parties' respective positions.

Upon reaching a law clerk, counsel shall be prepared to: 1) verify the meet and confer process has been exhausted; 2) describe without argument the specific nature of issue(s) in dispute and the parties' respective positions; and 3) provide three mutually agreeable dates and times of availability within a seven (7) day window for an in-person or telephonic hearing with the Court. Based on the nature of the dispute, the Court will determine whether to engage in an informal discovery dispute resolution conference (telephonically or in person) or have the parties proceed directly to filing a Joint Motion for Determination of Discovery Dispute. The parties should be prepared to file a Joint Motion on a shortened timeframe after the conference call with the law clerk.

D. Disputes Arising During a Deposition

If a dispute arises during a deposition, you may call Judge Crawford's chambers with all counsel on the line and be prepared to provide a brief description of the dispute. If the Court is unable to review the matter at that moment, you are to have the subject portion of the deposition transcript marked and proceed with the deposition in other areas of inquiry until the Court can get back to you. If the matter cannot readily be resolved by the Court telephonically, or the Court is not available, the Court may require the parties to file a Joint Motion for Determination of Discovery Dispute following the close of the deposition (the deposing party may leave the record "open" for this purpose).

E. Contents of Joint Discovery Motions

1. **Joint Motion Procedure.** If leave of Court is granted for the filing of a discovery motion, counsel must file a joint statement entitled "Joint Motion for Determination of Discovery Dispute." The Joint Motion for Determination of Discovery Dispute must include:

    a. A Declaration of Compliance with the in-person meet and confer requirement;

    b. A Joint Memorandum of Points and Authorities (not to exceed 5 pages per side/10 pages total) that ***organizes the legal arguments according to dispute***; and,

    c. Any necessary and relevant exhibits (e.g., for disputes involving deposition testimony or other oral discovery, an exhibit or exhibits that include all disputed portions of the transcript.) ***Counsel shall not include copies of correspondence between counsel unless it is evidence of an agreement alleged to have been breached.***

2. **Briefing of Joint Motion.** ***The purpose of the Joint Motion requirement is for parties to engage in a collaborative effort to provide the Court with a singular brief that synthesizes the parties' respective positions in a clearly organized and succinct format.*** If, for example, the moving party's initial draft addresses issues A & B, and the responding party's draft addresses issues A, B & C, the Court expects the moving party's portion to be modified to address all the arguments, and for the responding party to be given an opportunity to evaluate and address any new arguments made by the moving party. The purpose of the meet and confer/Joint Motion requirement is to ensure that if judicial intervention is needed, the parties provide the Court with synthesized briefing... meaning that each side has the opportunity to offer a counter argument as to each issue. In some respect the preparation of the Joint Motion for Determination of Discovery Dispute can be viewed as an extension of the meet and confer process, as it can be an opportunity for counsel to reflect on and further evaluate the other side's position in order to identify areas where common ground can be reached, and to provide responsive arguments and counter-arguments on issues where common ground cannot be reached.

    The Joint Motion need not address discovery requests in their numerical sequence. When a dispute relates to multiple discovery requests with common or overlapping arguments, counsel shall endeavor to organize and categorize

their discussion by dispute, as opposed to setting forth the discovery requests numerically and referring back to arguments made earlier in their discussion.

Sample Format for: Joint Motion for Determination of Discovery Dispute

Plaintiff's Request No. 1: Any and all documents referencing, describing or approving the Metropolitan Correctional Center as a treatment facility for inmate mental health treatment by the Nassau County local mental health director or other government official or agency.

Defendant's Response to Request No. 1: Objection. This request is overly broad, irrelevant, burdensome, vague and ambiguous and not limited in scope as to time.

Plaintiff's Reason to Compel Production: This request is directly relevant to the denial of Equal Protection for male inmates. Two women's jails have specifically qualified Psychiatric Units with certain license to give high quality care to specific inmates with mental deficiencies. Each women's psychiatric Unit has specialized professional psychiatric treatment staff (i.e., 24 hour psychiatric nurses full time, psychiatric care, psychological care, etc.). Men do not have comparable services. This request will document the discrepancy.

Defendant's Basis for Objections: This request is not relevant to the issues in the case. Plaintiff does not have a cause of action relating to the disparate psychiatric treatment of male and female inmates. Rather, the issue in this case is limited to the specific care that Plaintiff received. Should the Court find that the request is relevant, Defendant requests that it be limited to a specific time frame.

Unless specifically requested by the Court, responses or replies to Joint Motions will not be accepted or considered without prior approval from the Court.

3. **Reasonable Opportunity to Respond**. A party seeking to bring a discovery dispute before the Court must provide the opposing party a reasonable opportunity to contribute to the Joint Motion for Determination of Discovery Dispute. ***An ex parte motion or application to compel is only appropriate***

under circumstances where the opposing party refuses to participate in contributing to a joint motion after a reasonable opportunity has been provided, or if the motion to compel is directed to a non-party. This Court considers a ***minimum of seven (7) days*** prior to the anticipated filing date of the Joint Motion for Determination of Discovery Dispute to be a reasonable time period for a party to participate meaningfully in the preparation of a Joint Motion. This means that the party initiating a Joint Motion to resolve a discovery dispute must provide opposing counsel with a comprehensive draft of the Joint Motion and any exhibits or supporting declarations ***at least seven (7) days*** prior to the anticipated filing date. *Ex parte* motions or applications to compel discovery that do not contain a declaration stating the opposing party has been given a meaningful opportunity to participate in a Joint Motion will be rejected by the Court.

4. **Considerations Pertaining to Written Discovery.** Counsel should keep the following legal principles in mind when propounding written discovery, as well as when meeting and conferring and drafting a Joint Motion for Determination of Discovery Dispute involving written discovery requests:

    "While the party seeking to compel discovery has the burden of establishing that its request satisfies relevancy requirements, the party opposing discovery bears the burden of showing that discovery should not be allowed, and of clarifying, explaining, and supporting its objections with competent evidence." *Lofton v. Verizon Wireless VAWJ LLC*, 308 F.R.D. 276, 281 (N.D. Cal. 2015).

    "Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all." *Walker v. Lakewood Condo. Owners Ass'n*, 186 F.R.D. 584, 587 (C.D. Cal. 1999). Accordingly, boilerplate objections, such as “overly burdensome” and “disproportionate to the needs of the case,” will not be considered in resolving the dispute unless the reasons for the objections are obvious or have been explained and expanded in the Joint Motion or in a supporting declaration.

    Since a party claiming a privilege must "expressly make the claim" and provide enough information to "enable other parties to assess the claim" (Fed.R.Civ.P. 26 26(b)(5)(A)(i)&(ii)), the Court will also not consider an unsupported privilege objection. Likewise, bare, unsupported objections referring to contractual privacy obligations will not be considered without some proof of the obligations, such as a supporting declaration.

> Discovery requests that are not limited by time and scope are generally objectionable as overly broad. When a responding party contends that a discovery request is overly broad, the Court expects the propounding party to attempt to narrow the scope of the request during meet and confer efforts. The Court will not "rewrite a party's discovery request to obtain the optimum result for that party. That is counsel's job." *Bartolome v. City and County of Honolulu*, WL 2736016, at 14 (D. Hawaii 2008).

IX. <u>Privilege Logs</u>

Any party withholding documents on the basis of a claimed protection or privilege must identify the withheld documents in a manner such that the requesting party can reasonably identify and challenge the withholding of the documents. A party withholding any documents on the basis the documents are privileged or otherwise protected from production, shall number each document to enable later reasonable identification, prepare an index of documents (without disclosing the substance of the document), and set forth any objection related to production of any particular document. At a minimum, the index shall include the following information:

1. Date of document
2. Author
3. Primary addressee (and the relationship of that person(s) to the client and/or author of the document)
4. Secondary addressee(s) (and the relationship of that person(s) to the client and/or author of the document)
5. Type of document (e.g., internal memo, letter with enclosures, draft affidavit, etc.)
6. Client (i.e., party asserting privilege)
7. Attorneys
8. Subject matter of document or privileged communication
9. Purpose of document or privileged communication (i.e., legal claim for privilege)
10. Whether the document or communication is withheld on the basis of work product, attorney client privilege, or some other asserted privilege

12. Identify any attachments

11. Identify each document by number or lettering system

The party withholding documents must also identify any documents it is willing to disclose without objection and deliver such documents to the requesting party forthwith.

X. ***Ex Parte* Proceedings**

As outlined above, the Court prefers that most requests, such as those to compel discovery, amend the Scheduling Order, continue a date or deadline, or enter a stipulated protective order be submitted as a Joint Motion. *Ex parte* applications or motions are generally only appropriate when opposing counsel cannot be reached or declines to participate in the preparation of a Joint Motion. **The Court does not have regular *ex parte* days or hours.** All *ex parte* applications must be filed electronically on CM/ECF and are to include a short description of the dispute and the relief sought, as well as **a separate affidavit indicating reasonable and appropriate notice to the opposition and meet and confer efforts made to resolve the dispute without the Court's intervention**. After service of the *ex parte* application, opposing counsel will ordinarily be given until 5:00 p.m. the next business day to respond. If more time is needed, opposing counsel must call the Court's law clerk at (619) 446-3964 to request additional time to respond. After receipt of both the application and the opposition, the Court will determine if a reply is warranted. Unless otherwise directed by the Court, a decision will be issued in most cases without a hearing or reply.

XI. **Stipulated Protective Orders**

Any stipulated protective order submitted for the Court's signature must contain these **two** provisions:

> Nothing shall be filed under seal, and the Court shall not be required to take any action, without separate prior order by the Judge before whom the hearing or proceeding will take place, after application by the affected party with appropriate notice to opposing counsel. The parties shall follow and abide by applicable law, including Civ. L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j, and the chambers' rules, with respect to filing documents under seal.
>
> The Court may modify the protective order in the interests of justice or for public policy reasons.

All stipulated protective orders shall be submitted as a Joint Motion. ***The parties shall also e-mail the proposed protective order to the Court at efile_crawford@casd.uscourts.gov in Word format.***

XII. **Procedure for Filing Documents Under Seal**

A. No document may be filed under seal, *i.e.*, closed to inspection by the public, except pursuant to a court order that authorizes the sealing of the particular document, or portions of it. A sealing order may issue only upon a showing that

the information is privileged or protectable under the law. The request must be narrowly tailored to seek sealing only of sealable material.

B. The parties shall follow and abide by applicable law, including Civil Local Rule 79.2 and ECF Administrative Policies and Procedures, Section II.j, with respect to filing documents under seal.

C. The party seeking to file under seal must electronically file a "Motion to File Documents Under Seal" and electronically lodge the said documents using a new event called "Sealed Lodged Proposed Document." The System will inform the party that the documents will be sealed and only available to court staff. The Clerk's Office will indicate on the public docket that proposed sealed documents were lodged. A party need only submit a courtesy copy of the documents to chambers if the documents exceed 20 pages in length. If the Court grants the motion to seal, the docket entry and documents will be sealed and designated on the docket as filed on the order date. If the Court denies the motion to seal, the lodged documents will remain lodged under seal absent an order to the contrary.

D. The parties shall simultaneously file a redacted version of the document sought to be filed under seal. The document shall be titled to show that it corresponds to an item filed under seal, *e.g.*, "Redacted Copy of Sealed Declaration of John Smith in Support of Motion for Summary Judgment."

HONORABLE MITCHELL D. DEMBIN
UNITED STATES MAGISTRATE JUDGE
CHAMBERS RULES
CIVIL PRETRIAL PROCEDURES

Please note: The Court provides this information for general guidance to counsel and litigants. The Court may modify these procedures as appropriate in any case upon request or on its own.

I. Applicability of Local Rules

Except as otherwise provided herein or as specifically ordered by the Court, all parties must comply with the Local Rules of the United States District Court for Southern District of California.

II. Communications with Chambers

A. **Letters, Faxes and Emails.** Letters, faxes, and emails to chambers are discouraged unless specifically requested or required by the Court. If letters, faxes, or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel should not be sent to the Court.

B. **Telephone Calls.** With the exception of scheduled telephonic conferences, and as provided at section V.B. below, telephone calls to chambers are permitted only for non-substantive matters such as scheduling and calendaring. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Appropriate inquiries may be directed to the law clerk assigned to your case. The chambers telephone number is (619) 446-3972.

III. Courtesy Copies

Courtesy copies of filings that exceed twenty (20) pages in length must be submitted directly to Chambers within twenty-four (24) hours

of filing. This includes multiple filings in a single court day that together exceed 20 pages in length (i.e., moving papers consisting of a Notice of Motion (3 pages), a Memorandum of Points and Authorities (12 pages), an Exhibit (10 pages), and a Certificate of Service (2 pages)). Please consult the Electronic Case Filing Administrative Policies and Procedures Manual, available on the Court's internet site, for further information regarding the courtesy copy requirement.

IV. Early Neutral Evaluation ("ENE") and Case Management Conference ("CMC")

The ENE is a multi-purpose conference. The conference is informal, off-the-record and confidential. It is an opportunity for the parties to educate the Magistrate Judge and each other regarding their claims and defenses. A candid discussion allows the Magistrate Judge to fashion an appropriate scheduling order for the case and to consider how best to approach discovery. The ENE also provides an opportunity to have a meaningful discussion regarding settlement, with the assistance of the Magistrate Judge, before costs and fees become significant factors or impediments in resolving the dispute. The ENE typically is not scheduled until Answers have been filed for all significant defendants.

This Court typically conducts the CMC required under Fed. R. Civ. P. 16 immediately following the ENE if no settlement has been obtained at the ENE and will issue a Scheduling Order following the CMC.

A. Required Actions Prior to the ENE/CMC

1. The Order setting the ENE/CMC will require counsel to meet and confer, as required by Fed. R. Civ. P. 26(f), and prepare a Joint Discovery Plan consistent with Rule 26(f) and these Chambers Rules as provided below. The Order setting the ENE/CMC also will require the parties to serve their initial disclosures under Rule 26(a) in advance of the ENE/CMC.

2. An ENE brief should be lodged with chambers no later

than five (5) days before the conference either by messenger or by email to the Court at efile_dembin@casd.uscourts.gov. Each party may choose for their brief to be confidential (court only) or may share it with their party opponent. Regardless, each brief must include the following:

a. A brief description of the essential facts of the case and the elements of the claims or defenses asserted;

b. A specific and current demand for settlement addressing all relief or remedies sought. If a specific demand for settlement cannot be made at the time the brief is submitted, the reasons must be stated along with a statement as to when the party will be in a position to state a demand; and,

c. A brief description of any previous settlement negotiations or mediation efforts.

3. The Joint Discovery Plan must be lodged with chambers no later than five (5) days prior to the ENE/CMC. The Joint Discovery Plan must be a single document and specifically must address each item identified in Fed. R. Civ. P. 26(f)(3). In addition, the discovery plan specifically must address:

a. Whether conducting limited discovery is necessary for each party reasonably to evaluate settlement, such as the deposition of plaintiff, defendant, or key witnesses, and the exchange of a few pertinent documents;

b. Any issues regarding preservation of electronically stored information and the procedure the parties plan to use regarding production of such information. The parties are encouraged to use the attached ESI Rule 26(f) Checklist, developed in the Northern District of

California, to guide their discussions;

c. The procedure the parties plan to use regarding claims of privilege, including whether an order under Fed. R. Evid. 502(d) will be sought; and,

d. Whether a protective order will be sought and whether any issues are anticipated regarding the protective order.

B. Appearances Required at ENE

The Court requires all named parties, lead counsel, and any other person(s) whose authority is required to negotiate and enter into settlement to appear **in person** at the ENE and other settlement conferences. Please see the order scheduling the conference for more information. The Court will **not** grant requests to excuse a required party from personally appearing absent good cause. Distance of travel alone does **not** constitute good cause. Counsel requesting that a required party be excused from personally appearing must confer with opposing counsel prior to making the request. The responsible counsel must contact the law clerk assigned to the case at (619) 446-3972 as soon as counsel is certain that he or she will be seeking relief from appearance of a party or party representative. Following telephonic contact with chambers, counsel can expect to be instructed to file an *ex parte* or Joint Motion, as appropriate, which will be granted only upon good cause shown. Based upon the ENE briefs, the Court may exercise its discretion and convert the ENE to a telephonic conference.

C. Continuing the ENE

Counsel seeking to reschedule an ENE or other settlement conference must confer with opposing counsel prior to making the

request. The responsible counsel must contact the law clerk assigned to the case at (619) 446-3972 as soon as counsel is certain that he or she will be requesting a continuance. **Absent compelling circumstances, a request to continue must be made at least seven (7) days prior to the scheduled conference.** Following telephonic contact with chambers, counsel can expect to be instructed to file an *ex parte* or Joint Motion, as appropriate, which will be granted only upon good cause shown. In its discretion, rather than continue the ENE, the Court may convert the ENE to a telephonic conference.

D. Amending the Scheduling Order

As provided at Fed. R. Civ. P. 16(b)(4), modification of the Scheduling Order requires the approval of the Court and good cause. The Court will construe and administer the Federal Rules of Civil Procedure "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Counsel are reminded that they must "take all steps necessary to bring an action to readiness for trial." Civ. L. R. 16.1(b). Counsel must meet and confer prior to the filing of any motion to amend the Scheduling Order. The Court prefers any motion to amend the schedule be brought as a Joint Motion reflecting the positions of the parties. The motion shall include a declaration by counsel detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why deadlines cannot be met.

E. Notice of Settlement

If the case is settled in its entirety, counsel promptly must file a Notice of Settlement or an appropriate Motion to Dismiss. If a scheduled date with this Court is imminent, counsel also must call chambers at (619) 446-3972 promptly. Once a Notice of Settlement is filed, the Court will schedule a telephonic

Settlement Disposition Conference which will be taken off calendar with the filing of the appropriate Motion to Dismiss.

V. Discovery Disputes

A. Meet and Confer Requirements

Counsel must meet and confer on all issues **before** contacting the court. If counsel are located in the same district, the meet and confer **must be in person**. If counsel are located in different districts, then telephone or video conference may be used. Exchanging letters, facsimiles or emails **does not** satisfy the meet and confer requirement. A party found by the Court to have failed to participate or to participate meaningfully in a required meet and confer session, may be sanctioned.

B. Disputes During Depositions

If a dispute arises during the course of a deposition regarding an issue of privilege, enforcement of a court-ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), which constitute the only legitimate reasons to instruct a witness not to answer, counsel are to meet and confer prior to seeking any ruling from the Court. *See* Fed. R. Civ. P. 30(c)(2). If the matter is not resolved prior to seeking a ruling, counsel may call chambers at 619-446-3972 and seek a ruling. If the Court is unable to review the matter at that moment, counsel are to proceed with the deposition in other areas of inquiry and the Court will respond as soon as practicable. If the matter cannot readily be resolved by the Court, the Court may require the parties to file a joint motion as provided at subparagraph C below.

C. Disputes Regarding Written Discovery Requests:

1. Joint Motion Required

If the dispute concerns written discovery requests (e.g. interrogatories, requests for production) and a party will be moving to compel or moving for a protective order, the parties shall submit a **"Joint Motion for Determination of Discovery Dispute."** Counsel need not contact chambers in advance of filing a Joint Motion. It is not the Court's practice to consider a discovery dispute, other than one occurring during a deposition, without a Joint Motion being filed. The Court will not provide a hearing date in advance of reviewing the briefs, as provided below.

2. Timing of Discovery Motions - The 30-day Rule

Any motion related to discovery disputes must be filed no later than thirty (30) days after the date upon which the event giving rise to the dispute occurred. For oral discovery, the event giving rise to the dispute is the completion of the transcript of the relevant portion of the deposition. For written discovery, the event giving rise to the discovery dispute is the date of service of the response, **not** the date on which counsel reach an impasse in meet and confer efforts. If the meet and confer process or attempts to supplement disputed responses will extend the dispute beyond 30 days, a motion, preferably a joint motion, to extend the deadline must be filed.

3. Joint Motion - Opportunity to Participate

The aggrieved party must provide the opposing party a reasonable opportunity to contribute to the Joint Motion. Reasonableness depends upon the extent and complexity of

the dispute. A <u>minimum</u> of seven (7) business days prior to the anticipated filing date of the Joint Motion is reasonable, but only barely, for a party to participate meaningfully in the preparation of the joint motion.

4. **Contents of the Joint Motion**

The Joint Motion is to include the following:

a. The Interrogatory, Request for Admission or Request for Production in dispute;

b. The verbatim response to the request or question by the responding party;

c. A statement by the propounding party as to why a further response should be compelled; and,

d. A precise statement by the responding party as to the basis for all objections and/or claims of privilege. Counsel would be wise to avoid boilerplate objections. To the extent the dispute pertains to requests for production of documents, the Court expects full compliance with the requirements of Rule 34, Fed. R. Civ. P.

e. The joint motion shall be accompanied by: (1) a declaration of compliance with the meet and confer requirement; and, (2) points and authorities (not to exceed five (5) pages per side). In the event that the entire motion package, including exhibits, exceeds twenty-five (25) pages, a courtesy copy must be delivered to chambers.

f. The joint motion shall **not** be accompanied by

copies of correspondence or electronic mail between counsel unless it is evidence of an agreement alleged to have been breached.

D. *Ex Parte* Motions in Discovery Disputes

An *ex parte* motion to compel only is appropriate when the opposing party, after being provided a reasonable opportunity to participate, refuses to participate in the joint motion. The *ex parte* motion must contain a declaration from counsel regarding the opportunity provided to opposing counsel to participate in a joint motion. *Ex parte* motions to compel discovery from a party that do not contain a declaration certifying that at least the minimum reasonable opportunity to participate was provided to the opposing party will be rejected by the Court. No later than five (5) business days following the filing an *ex parte* discovery motion directed at a party, that party, if it intends to oppose the motion, must file a Notice of Intent to Respond. The Notice must contain a declaration of counsel explaining why counsel did not participate in a joint motion. The Court will issue a briefing schedule, if warranted, after receipt of the Notice.

E. Discovery Disputes and Non-Parties

If a motion to compel discovery is directed at a non-party, the Court prefers that the joint motion procedure be employed as it likely will lead to a faster resolution. The Court understands that in some circumstances involving third-party discovery practice, the motion may have to be filed *ex parte*. The Court will then set a briefing schedule.

F. Hearings on Discovery Motions

After reviewing the Joint Motion, the Court will decide whether to decide the matter on the papers, conduct a discovery

conference or hold a formal hearing.

VI. *Ex-Parte* Proceedings

The Court does not have regular *ex parte* hearing days or hours. Appropriate *ex parte* applications which, as discussed above, generally do not include discovery disputes, may be brought after contacting chambers and speaking with a law clerk. The purpose for the contact with a law clerk is twofold: 1) To ensure that the motion should be filed with this Court, rather than the District Court; and, 2) To confirm that the motion properly may be brought *ex parte*. Following the conversation with the law clerk, the application describing the dispute and the relief sought must be filed electronically through ECF. **Regarding discovery disputes between the parties, counsel must follow the procedures addressed at Section IV above**. Otherwise, e*x parte* motions must be accompanied by a declaration demonstrating reasonable and proper notice to the opposition.

No later than five (5) business days following service of the *ex parte* application, opposing counsel must contact chambers and state whether an opposition will be filed and an estimate of how much time will be needed to prepare the opposition. The Court will issue a briefing schedule as appropriate. In the event that the motion or response, including exhibits, exceeds twenty-five (25) pages, a courtesy copy must be delivered to chambers. After reviewing the submissions, the Court will determine whether to decide the matter on the papers or to have a hearing. If the Court requires a hearing, the parties will be contacted to set a date and time.

VII. Stipulated Protective Orders

Any protective order submitted for the Court's signature must contain the following **two** provisions:

"*(1) No document shall be filed under seal unless counsel*

secures a court order allowing the filing of a document, or portion thereof, under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application to notify the Court that an opposition to the application will be filed.

(2) The Court may modify the protective order in the interests of justice or for public policy reasons on its own initiative."

The Court recommends that the stipulated protective order contain a provision regarding the disposition of confidential or sealed documents and information after the case is closed.

All stipulated protective orders must be filed as a joint motion. The parties must email directly to chambers a proposed order containing the text of the proposed protective order suitable for signature by the Court. The proposed order should be emailed to efile_dembin@casd.uscourts.gov.

VIII. Stipulated Orders Governing Electronically Stored Information

Proposed orders governing electronically stored information must be consistent with the Federal Rules of Civil Procedure and the learned views expressed in the Sedona Principles. For example, Federal Rule of Civil Procedure 34 governs request for production of documents and does not differentiate between information stored on paper or on an electronic medium. It requires the requesting party to request "information." Fed. R. Civ. P. 34(a). The producing party must produce the requested information or object to the request. Fed. R. Civ. P. 34(b)(2)(B). Electronically stored information is addressed in the Rule

to the extent that a party may object to the requested form of production of electronically stored information. Nothing in Rule 34 requires a requesting party to identify custodians or search terms. Neither does it require the producing party to seek approval of the requesting party of its search methodology.

This Court subscribes to the view expressed in Principle No. 6 of the Sedona Principles:

> Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.

The Sedona Principles, *Third Edition*, 19 SEDONA CONF. J. 1, Principle 6, 118 (2018). The Court also subscribes to Principles 1 and 3 which provide that electronic discovery is generally subject to the same discovery requirements as other relevant information and that the parties should seek to reach agreement regarding production of electronically stored information.

Moreover, the world of electronic discovery has moved well beyond search terms. While search terms have their place, they may not be suited to all productions. Technology has advanced and software tools have developed to the point where search terms are disfavored in many cases. *See, e.g., da Silva Moore v. Publicis Groupe*, 287 F.R.D. 182, 189-91 (S.D.N.Y. 2012).

The Court will not decide whether proposed custodians are appropriate, on the use of requested search terms, or on the use of specific search methodologies. Instead, a party must request information, regardless of how or where it is maintained by producing party. The producing party must address as required by Rule 34. That is discovery: a party requests information and the burden is on the producing party to locate and produce it or object legitimately to production. Nonetheless, cooperation is important; if producing party fails to produce relevant, material information by using inappropriate

methodologies or failing to secure and produce such information from custodians, the sanctions can be severe.

IX. Procedure for Filing Documents Under Seal

There is a presumptive right of public access to court records based upon common law and First Amendment grounds. Accordingly, no document may be filed under seal, i.e., closed to inspection by the public, except pursuant to a Court order that authorizes the sealing of the particular document, or portions thereof. A sealing order may issue only upon a request that establishes that the document, or portions thereof, is privileged or otherwise subject to protection under the law. The request must be narrowly tailored to seek sealing only of sensitive personal or confidential information. An unredacted version of the document, identifying the portions subject to the motion to seal, must be lodged with the motion to seal. A redacted version of the document must be publicly filed simultaneously. Of course, if the motion to seal covers the entire document, a redacted version need not be filed in advance of the Court's ruling.

X. General Decorum

The Court insists that all counsel and parties be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Professionalism and civility is the rule and not the exception. Personal attacks on counsel or opposing parties will not be tolerated. Counsel are expected to be punctual for all proceedings and are reminded to follow Civil L. R. 83.4, in their practice before this Court.

United States District Court
Northern District of California

CHECKLIST FOR RULE 26(f) MEET AND CONFER
REGARDING ELECTRONICALLY STORED INFORMATION

In cases where the discovery of electronically stored information ("ESI") is likely to be a significant cost or burden, the Court encourages the parties to engage in on-going meet and confer discussions and use the following Checklist to guide those discussions. These discussions should be framed in the context of the specific claims and defenses involved. The usefulness of particular topics on the checklist, and the timing of discussion about these topics, may depend on the nature and complexity of the matter.

I. Preservation

- ❒ The ranges of creation or receipt dates for any ESI to be preserved.
- ❒ The description of data from sources that are not reasonably accessible and that will not be reviewed for responsiveness or produced, but that will be preserved pursuant to Federal Rule of Civil Procedure 26(b)(2)(B).
- ❒ The description of data from sources that (a) the party believes could contain relevant information but (b) has determined, under the proportionality factors, is not discoverable and should not be preserved.
- ❒ Whether or not to continue any interdiction of any document destruction program, such as ongoing erasures of e-mails, voicemails, and other electronically-recorded material.
- ❒ The names and/or general job titles or descriptions of custodians for whom ESI will be preserved (e.g., "HR head," "scientist," "marketing manager," etc.).
- ❒ The number of custodians for whom ESI will be preserved.
- ❒ The list of systems, if any, that contain ESI not associated with individual custodians and that will be preserved, such as enterprise databases.
- ❒ Any disputes related to scope or manner of preservation.

II. Liaison

- ❒ The identity of each party's e-discovery liaison.

III. Informal Discovery About Location and Types of Systems

- ❒ Identification of systems from which discovery will be prioritized (e.g., email, finance, HR systems).
- ❒ Description of systems in which potentially discoverable information is stored.
- ❒ Location of systems in which potentially discoverable information is stored.
- ❒ How potentially discoverable information is stored.
- ❒ How discoverable information can be collected from systems and media in which it is stored.

IV. Proportionality and Costs

- ❒ The amount and nature of the claims being made by either party.
- ❒ The nature and scope of burdens associated with the proposed preservation and discovery of ESI.
- ❒ The likely benefit of the proposed discovery.
- ❒ Costs that the parties will share to reduce overall discovery expenses, such as the use of a common electronic discovery vendor or a shared document repository, or other cost-saving measures.

- ❒ Limits on the scope of preservation or other cost-saving measures.
- ❒ Whether there is relevant ESI that will not be preserved pursuant to Fed. R. Civ. P. 26(b)(1), requiring discovery to be proportionate to the needs of the case.

V. Search

- ❒ The search method(s), including specific words or phrases or other methodology, that will be used to identify discoverable ESI and filter out ESI that is not subject to discovery.
- ❒ The quality control method(s) the producing party will use to evaluate whether a production is missing relevant ESI or contains substantial amounts of irrelevant ESI.

VI. Phasing

- ❒ Whether it is appropriate to conduct discovery of ESI in phases.
- ❒ Sources of ESI most likely to contain discoverable information and that will be included in the first phases of Fed. R. Civ. P. 34 document discovery.
- ❒ Sources of ESI less likely to contain discoverable information from which discovery will be postponed or avoided.
- ❒ Custodians (by name or role) most likely to have discoverable information and whose ESI
- ❒ will be included in the first phases of document discovery.
- ❒ Custodians (by name or role) less likely to have discoverable information and from whom discovery of ESI will be postponed or avoided.
- ❒ The time period during which discoverable information was most likely to have been created or received.

VII. Production

- ❒ The formats in which structured ESI (database, collaboration sites, etc.) will be produced.
- ❒ The formats in which unstructured ESI (email, presentations, word processing, etc.) will be produced.
- ❒ The extent, if any, to which metadata will be produced and the fields of metadata to be produced.
- ❒ The production format(s) that ensure(s) that any inherent searchablility of ESI is not degraded when produced.

VIII. Privilege

- ❒ How any production of privileged or work product protected information will be handled.
- ❒ Whether the parties can agree upon alternative ways to identify documents withheld on the grounds of privilege or work product to reduce the burdens of such identification.
- ❒ Whether the parties will enter into a Fed. R. Evid. 502(d) Stipulation and Order that addresses inadvertent or agreed production.

HONORABLE WILLIAM V. GALLO
U.S. MAGISTRATE JUDGE
CIVIL CHAMBERS RULES

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case. Accordingly, any Order issued by the Court that deviates from these Rules supersedes these Rules.

I. Communications With Chambers

A. Letters, faxes, or emails. Letters, faxes, or e-mails to chambers are disfavored unless specifically requested by the Court. If letters, faxes, or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel should not be sent to the Court.

B. Telephone Calls. Except as noted in Rule IV(B), telephone calls to chambers are permitted only for matters such as scheduling and calendaring. *Ex parte* communications are prohibited except where the purpose of the call is purely administrative-*e.g.*, to provide a telephone number for a telephonic status conference-or in exigent circumstances. In all other circumstances, counsel shall call the Court jointly. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Call Judge Gallo's chambers at (619) 557-6384 and address your scheduling inquiries to the Research Attorney assigned to the case.

C. Lodging Documents. When an Order directs you to "lodge" documents with the Court, either send it via e-mail to efile_Gallo@casd.uscourts.gov, or deliver the document to Judge Gallo's chambers. Ordinarily, documents under 20 pages in total length, including exhibits, should be e-mailed in PDF format *as one PDF file*.

II. Early Neutral Evaluation ("ENE") Conferences or Other Settlement Conferences ("SC")

A. Statements Required. The parties shall submit directly to Judge Gallo's chambers an ENE or SC Statement of **five (5)** double spaced pages or less, excluding exhibits, using 14-point font which, outlines the nature of the case, the claims, the defenses, and the parties' positions regarding settlement of the case. Exhibits, if submitted, shall not contain argument. Statements in excess of **five (5) pages**, exclusive of non-argumentative exhibits, will not be considered unless the Court has authorized an oversized statement.

It is the Court's view that resolution of lawsuits is generally facilitated when parties share information. Accordingly, the parties are required to exchange their ENE or SC Statements with all other parties and to lodge a confidential or non-confidential Statement with the Court. The confidential Statements lodged with the Court may contain confidential information about the settlement process or the party's settlement position that has not been

shared with opposing parties. The Court's Order that schedules the ENE or SC will set the deadline for exchanging and lodging Statements.

B. **Lodging of Statements.** The ENE or SC Statements should be e-mailed to Judge Gallo's chambers: efile_Gallo@casd.uscourts.gov. Ordinarily, Statements and included exhibits under 20 pages in total length should be e-mailed in PDF format *as one PDF file*.

C. **Time Allotment.** The Court generally allots two (2) hours for ENEs and SCs. Counsel should be prepared to be succinct and to the point. Requests for additional time must be made in writing and included in the party's ENE or SC Statement and accompanied by a short explanation.

D. **Pre-ENE or pre-SC Status Conference.** In addition to holding an ENE and SC, the Court may also hold an attorneys-only telephonic pre-ENE or SC status conference with each party separately. The intended purpose of this conversation is for the Court's benefit in assessing, in advance of the ENE or SC, settlement prospects and each party's concerns, challenges, and whether the Court can assist in alleviating these. These conversations will be confidential and off the record.

The scheduling Order that sets the ENE or SC will also set the deadline by which the parties shall filed their ENE or SC Statements as well as the date and time of the pre-ENE or SC telephonic status conference.

E. **Personal Attendance Required.** The Court requires all named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement to appear **in person** at the ENE and SCs. Please see the order scheduling the conference for more information. The Court will **not** grant requests to excuse a required party from personally appearing, absent extraordinary circumstances. Distance or cost of travel alone do **not** constitute an "extraordinary circumstance." If counsel still wish to request that a required party be excused from personally appearing, they must confer with opposing counsel prior to making the request. Such requests may then be made by submitting the request **in writing** at least **fourteen (14)** days before the scheduled ENE or SC. The request must be **filed** on the docket through CM/ECF.

F. **Pre-ENE or pre-SC Settlement.** If the case is settled in its entirety before the scheduled date of the ENE or SC, counsel must file a Notice of Settlement and notify Judge Gallo's chambers as soon as possible, but no later than 24 hours before the scheduled ENE or SC.

III. **Case Management Conferences ("CMC")**

A. Ordinarily, the Court conducts its CMCs immediately after the ENE if the ENE does not result in a settlement. The Order setting the ENE will specify deadlines for tasks related to the CMC. However, on rare occasions, and at the Court's sole discretion, the Court may hold a telephonic CMC approximately 45 days after the ENE. The Order setting the ENE will specify whether the CMC will be held immediately after the ENE or at a later date.

B. **Discovery Plans.** The parties are required to submit a Joint Discovery Plan as directed by the ENE scheduling order. The Joint Discovery Plan must be one document and must explicitly cover the parties' views and proposals for each item identified in Federal Rule of Civil Procedure 26(f)(3). **For additional information about discovery responses, please see Appendix A to these Chambers Rules.**

Please note: At a minimum, the discovery plan <u>must</u> identify and include the following mandatory items:

1. Identify the counsel who attended the Rule 26(f) conference, and the manner in which it was held (*i.e.*, in person or telephonic);

2. List the cases, if any, related to this one that are pending in any state or federal court with the case number and court;

3. List anticipated additional parties that should be included, when they can or will be added, and by whom they are wanted;

4. List anticipated interventions;

5. Describe class-action issues;

6. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures, and when initial disclosures will be completed;

7. Describe the proposed agreed discovery plan, including:

    a. By name and/or title, all witnesses counsel plans to depose in the case and a brief explanation as to why counsel wants to depose the witness. If counsel do not agree to the deposition of a specific witness, counsel must explain the legal basis for the objection;

    b. Whether counsel anticipate exceeding the maximum number of depositions set forth in Federal Rule of Civil Procedure 30 and, if so, whether counsel will stipulate to the excess number.

    c. Specific documents or categories of documents that counsel wants produced during discovery. If counsel disagree about the production of documents or categories of documents, the plan must articulate a specific and valid legal basis for the objection;

    d. When and to whom counsel anticipate it may send interrogatories;

e. Whether counsel anticipate serving interrogatories in excess of the number permitted by Federal Rule of Civil Procedure 33 and, if so, whether counsel will stipulate to the excess number.

f. Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.

8. Prompt settlement or resolution.

a. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting;

b. Describe what each party has done or agreed to do to bring about a prompt resolution;

c. What limited discovery may enable them to make a reasonable settlement evaluation (*e.g.*, deposition of plaintiff, defendant, or key witness, and exchange of a few pertinent documents.);

9. State whether alternative dispute techniques are reasonably suitable and when such a technique may be effectively used in this case;

10. What issues in the case implicate expert evidence, including whether counsel anticipates any issues under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993);

11. Threshold legal issues that may be resolved by summary judgment or partial summary judgment;

12. The procedure the parties plan to use regarding claims of privilege;

13. Whether a protective order will be needed in the case;

14. List any pending motions;

15. Indicate other matters peculiar to this case, including discovery that deserves the special attention of the Court at the conference;

16. Magistrate judges may hear jury and non-jury trials. Indicate the parties' joint position on trial before a magistrate judge;

17. State whether a jury demand has been made and if it was made on time;

18. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party;

19. A proposed schedule for:
    a. the filing of motions to amend pleadings and/or add parties;
    b. the completion of fact and expert witness discovery;
    c. the designation and supplemental designation of expert witnesses;
    d. the service of expert witness reports and rebuttal expert witness reports;
    e. the date by which all motions, including dispositive motions, shall be filed;
    f. a date for a Settlement Conference; and
    g. a date for a Pretrial Conference before the assigned District Judge.

C. **Requests to Amend the Case Management Conference Order.** The dates and times set in the Case Management Conference Order **will not** be modified except for good cause shown. Fed. R. Civ. P. 16(b)(4). Counsel are reminded of their duty of diligence and that they must "take all steps necessary to bring an action to readiness for trial." Civil Local Rule 16.1(b). Any requests for extensions must be made by filing a joint motion. The joint motion shall include a declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why deadlines cannot be met.

IV. Discovery Disputes

Refer to Appendix A and B for the Court's guidance and expectations in resolving disputes.

A. Pursuant to the requirements of Civil Local Rule 26.1(a), lead counsel or attorneys with full authority to make decisions and bind the client without later seeking approval from a supervising attorney, house counsel, or some other decision maker, are to promptly meet and confer regarding all disputed issues. If counsel practice in the same county, they **shall** meet in person; if counsel practice in different counties, they **shall** confer by telephone. Under no circumstances may counsel satisfy the "meet and confer" obligation by only written correspondence. Counsel must proceed with due diligence in scheduling and conducting an appropriate meet and confer conference as soon as the dispute arises.

B. The Court expects strict compliance with the meet and confer requirement. It is the experience of the Court that the vast majority of disputes can be resolved without the necessity of court intervention by means of this process **provided** counsel **thoroughly** meet and confer in **good faith** to resolve all disputes. If the dispute cannot be resolved through good faith meet and confer efforts, counsel shall jointly call chambers to notify the Court of a discovery dispute within **thirty (30) calendar days** of the date upon which the event giving rise to the dispute occurred. (See IV.F. below for guidance on calculating the **30 day deadline**).

C. When counsel jointly call chambers to notify the Court of a discovery dispute, counsel shall be prepared to provide the Court's Research Attorney the basic facts of the dispute. Counsel

may not present argument at this time—only the facts of the dispute. The Research Attorney will inform the Court of the facts of the dispute. The Court will then determine whether the dispute merits formal briefing, submission of simultaneous briefs, or a joint motion for determination of discovery dispute, and whether to schedule an informal telephonic discovery conference, an in-person discovery hearing, or to rule on the papers.

If the Court requires the parties to file briefing, the motions/briefs shall include:

1. A declaration of compliance with the meet and confer requirement which summarizes, without argument, the results of their meet and confer discussions, including all agreements, understandings, promises and concessions, and specifically identifying any issues that remain for determination by the Court. Counsel **shall not** attach copies of any meet and confer correspondence to the declaration or briefing;

2. A specific identification of each dispute;

3. A statement of the dispute(s) which follows the format below (see sample in subsection H. below):
    a. The exact wording of the discovery request in dispute;
    b. The exact objection of the responding party;
    c. A statement by the propounding party as to why the discovery is needed, including any legal basis to support the position;
    d. The legal basis for the objection by the responding party.

4. Exhibits shall not contain argument.

5. Please see Section 2(e) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual[1] to determine whether a courtesy copy of the Joint Motion needs to be delivered to chambers. If a courtesy copy is required, it shall be delivered directly to the Court's chambers in a binder with all motions, declarations and exhibits appropriately indexed and tabbed.

D. If the dispute arises during a deposition, counsel may call Judge Gallo's chambers at (619) 557-6384 for an immediate ruling on the dispute. If Judge Gallo is available, he will either rule on the dispute or give counsel further instructions regarding how to proceed. If Judge Gallo is unavailable, counsel shall mark the deposition at the point of the dispute and continue with the deposition. Thereafter, counsel shall meet and confer regarding all disputed issues pursuant to the requirements of Civil Local Rule 26(1)(a). If counsel have not resolved their disputes through the meet and confer process, they shall proceed as noted in paragraphs B and/or C above.

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[1] This Manual can be found online at the Court's website www.casd.uscourts.gov.

E. The Court will **not accept** motions pursuant to Federal Rules of Civil Procedure 16, 26 through 37 and 45 until counsel have met and conferred to resolve the dispute <u>and</u> participated in an informal teleconference with the Court. Strict compliance with these procedures is mandatory before the Court will accept any discovery motions.

F. For **oral discovery**, the event giving rise to the discovery dispute is the completion of the transcript of the affected portion of the deposition.

For **written discovery**, the event giving rise to the discovery dispute is the date when the response was actually served or when legally due to be served.

For example, the thirty-day clock begins to run on the day:

1. Interrogatory responses or document production were due, if responses or production were untimely;
2. Insufficient interrogatory responses or document production were timely served; or
3. Timely objections are served.

G. The Court will either issue an order following the filing of the joint motion, schedule another telephonic discovery conference, or hold a hearing.

1. If the Court rules, with or without a hearing, the party prevailing overall, as determined by the Court, may be awarded its costs and expenses after the non-prevailing party has been given the opportunity to be heard. The costs will likely include, but not be limited to, (1) the time required to file pleadings, prepare for, travel to, and attend the required meeting, and, if necessary, the time required to prepare for, travel to, and attend the hearing; and (2) the actual cost of court reporting, travel, sustenance, and accommodations for all of the above. The costs will be paid by the non-prevailing attorney and not charged to the client unless counsel provides written proof that the client insisted on going forward against counsel's advice.

2. In the event that the discovery dispute involved a truly justiciable issue, the Court will not impose sanctions. The Court, in its discretion, will decide whether that criterion has been met.

3. **Bottom line: The Court is not a discovery dispute hotline to be called every time the parties have a disagreement and have not put in the effort to resolve it on their own. Before counsel involves the Court to rule on a dispute, counsel must be sure to have exhausted every reasonable possibility of resolving it. Counsel are hereby forewarned that involving the Court unnecessarily or without adequately meeting and conferring may result in the imposition of severe sanctions.**

H. Sample Format: Joint Motion for Determination Of Discovery Dispute

Request No. 1: Any and all documents referencing, describing or approving the Metropolitan Correctional Center as a treatment facility for inmate mental health treatment by the Nassau County local mental health director or other government official or agency.

Response to Request No. 1: Objection. This request is overly broad, irrelevant, burdensome, vague and ambiguous, and not limited in scope as to time.

Plaintiff's Reason to Compel Production: This request is directly relevant to the denial of Equal Protection for male inmates. Two women's jails have specifically qualified Psychiatric Units with certain license to give high quality care to specific inmates with mental deficiencies. Each women's psychiatric Unit has specialized professional psychiatric treatment staff (*i.e.*, 24 hour psychiatric nurses full time, psychiatric care, psychological care, etc.). Men do not have comparable services. This request will document the discrepancy (include relevant Points and Authorities).

Defendant's Basis for Objections: This request is not relevant to the issues in the case. Plaintiff does not have a cause of action relating to the disparate psychiatric treatment of male and female inmates. Rather, the issue in this case is limited to the specific care that Plaintiff received. Should the Court find that the request is relevant, defendant requests that it be limited to a specific time frame (include relevant Points and Authorities).

V. <u>Stipulated Protective Order Provisions for Filing Documents Under Seal</u>

All stipulated protective orders submitted to the Court must include the following provision:

> No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application, to notify the judge's staff that an opposition to the application will be filed.

If an application to file a document under seal is granted by Judge Gallo, a redacted version of the document shall be e-filed. A courtesy copy of the unredacted document shall be delivered to Judge Gallo's chambers.

All stipulated protective orders submitted to the Court must be filed as a joint motion and must include a proposed order. Please refer to Sections 2(f)(4) and 2(h) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual for more information.

VI. ***Ex Parte* Proceedings**

Appropriate *ex parte* applications may be made at any time after first contacting Judge Gallo's Research Attorney assigned to the case. The application must be e-filed and should include a description of the dispute, the relief sought, and a declaration that indicates reasonable and appropriate notice to opposing counsel, in accordance with Civil Local Rule 83.3.g. The Court does not have regular *ex parte* hearing days or hours.

After service of the *ex parte* application, opposing counsel will ordinarily be given until **5:00 p.m. on the next business day** to respond. If more time is needed, opposing counsel must call Judge Gallo's Research Attorney assigned to the case to request to modify the schedule. After receipt of the application and opposition, the Court will review them, and a decision may be made without a hearing. If the Court requires a hearing, the parties will be contacted to set a date and time for the hearing.

VII. **Requests to Continue**

The Court disfavors continuances, but is amenable to such requests if good cause is shown. Good cause includes, among other things, a showing that the parties have been diligent and have not been dilatory. Parties should not assume the Court will grant motions to continue as a matter of course. For example, if the parties seek continuance of a discovery cut-off, they should not operate under the assumption that such requests are routinely granted and proceed to schedule a deposition after the discovery cut-off as a result. Finally, parties should seek continuances at their absolute earliest possible opportunity upon discovering the need for the continuance.

Whether made by joint motion or by *ex parte* application, any request to continue an Early Neutral Evaluation Conference, Settlement Conference, Case Management Conference, or Case Management Conference Order deadline shall be made in writing no less than **seven (7) calendar days** before the affected date. The request shall state:

1. The original date or deadline;
2. The number of previous requests for continuance;
3. A showing of good cause for the request;
4. Whether the request is opposed and why; and
5. Whether the requested continuance will affect other dates in the Case Management Conference Order.

Joint motions for continuance shall be made in the form required by Civil Local Rule 7.2.

VIII. **General Decorum**

The Court expects all counsel and parties to be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Counsel may expect such from the Court and the Court expects such from counsel. Professionalism and civility—in court appearances, communications with chambers, and written submissions—are of

paramount importance to the Court. Personal attacks on counsel or opposing parties will not be tolerated under any circumstances.

Counsel are to read and be familiar with the tenets espoused in Civil Local Rule 83.4, which shall be the guiding principles of conduct in this Court. Counsel are expected to be punctual for all proceedings.

IX. Participation By Junior Attorneys

Participation by Junior Attorneys. The Court encourages the participation of less experienced attorneys in all proceedings, particularly where that attorney played a substantial role in drafting the underlying filing or matter. The Court is amenable to permitting more than one lawyer to argue for one party if this creates an opportunity for a junior lawyer to participate. Nevertheless, all attorneys appearing before the Court must have authority to bind the party they represent consistent with the proceedings (for example, by agreeing to a discovery or briefing schedule), and should be prepared to address any matters likely to arise at the proceeding. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

X. Technical Questions Relating to CM/ECF

If you have a technical question relating to CM/ECF, please contact the CM/ECF Help Desk at (866) 233-7983.

XI. Inquiries Regarding Criminal Matters

All inquiries regarding criminal matters shall be directed to Judge Gallo's Courtroom Deputy at (619) 557-7141. Please see Judge Gallo's Criminal Pretrial Procedures.

APPENDIX A

Resolution of Discovery Disputes and Expectations

The Court is well aware that abuse of the legal process most often occurs during discovery, and that lawyers do things during discovery that they would not dream of doing if a judge were present. An attorney or client who engages in bad behavior, is not civil, refuses to extend common courtesy, or engages in bullying tactics, can expect a response in kind. This Court will not consider half-baked arguments, lame excuses, delays caused by the client, mudslinging, passing the buck, pointing fingers, ad hominem attacks, blaming support staff, or, particularly, lack of time. If counsel's caseload prevents devoting sufficient and adequate attention to the litigation before this Court, then counsel should reduce his/her caseload. An attorney's "busy" schedule is not a valid and justifiable reason for untimely responses, nor does it excuse unprofessional conduct. Claims of ethical violations are not taken lightly. Counsel who make such an accusation better be prepared to prove it.

In the Court's experience, the great majority of discovery disputes arise when one or both sides exhibit (1) a failure to grasp, or disdain for, the law, the rules, or the facts; (2) lack of professionalism; (3) lack of civility; (4) a refusal to extend common courtesy to a fellow professional (and therefore to the Court); (5) bad faith; or (6) some or all of the above. Indeed, it is very rare for this Court to see a truly justiciable discovery issue requiring thoughtful consideration and resolution by the Court if the parties have met and genuinely conferred in good faith to resolve the dispute.

The Court also does not favor either fishing expeditions or questions and requests which are unlimited in time or place. Neither does the Court favor totally unsupported objections to discovery based on the usual boilerplate assertions that the request is overbroad or unduly burdensome, or that the information sought is irrelevant, privileged, or is unlikely to lead to the discovery of admissible evidence. **Support your objection with facts or it will be overruled.** (See Appendix B, Section (A)(1) for guidance on boilerplate objections.) **If you have answered a discovery request "subject to" or after "reserving" an objection (or similar phrase), you have waived your objection.** (See Appendix B, Section (A)(2) for guidance on conditional responses.) You should not assume that the Court will buy your argument that a common English word is "vague" or "ambiguous."

APPENDIX B

A. December 2015 Amendments to the Federal Rules of Civil Procedure

The recently amended Federal Rules of Civil Procedure have now codified what has long been expected practice. Everyone – the Court, the attorneys, and the parties – are all charged with the responsibility to engage in civil discovery practices that are meant to achieve "the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. The scope of discovery is generally broad enough to allow the parties to obtain discovery "regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Such discovery "need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). Objections to discovery requests must state with specificity the grounds for objecting to the request. Fed. R. Civ. P. 33(b)(3) and 34(b)(2)(B).

The Court expects all counsel to adopt these best practices rule amendments when engaging in civil discovery. Making only relevant, proportional discovery requests will further the laudatory goals of Rule 1, which is in everyone's interests. Moreover, as the 2010 Duke University Law School Conference recognized, "cooperation among litigants can reduce time and expense of civil litigation without compromising vigorous and professional advocacy." "Effective advocacy is consistent with – and indeed depends upon – cooperation and proportional use of procedure." Fed. R. Civ. P. 1, Advisory Committee Notes.

B. Waiver of Discovery Objections

1. Boilerplate Objections

The Court observes that many responses to discovery requests state boilerplate objections such as vague, ambiguous, over broad, seeks attorney-client privileged information, seeks work product, premature, discovery in this matter is ongoing and all the facts in issue have not been discovered, misstates the law, and it is the other party's burden to prove a particular claim or defense.

Where the responding party provides a boilerplate or generalized objection, the "objections are inadequate and tantamount to not making any objection at all." *Walker v. Lakewood Condo. Owners Ass'ns*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); *Sherwin-Williams Co. v. JB Collision Servs., Inc.*, 2014 WL 3388871, at *2 (S.D. Cal. Jul. 9, 2014); *See also Ritacca v. Abbott Labs.*, 203 F.R.D. 332, 335 n.4 (N.D. Ill. 2001) ("As courts have repeatedly pointed out, blanket objections are patently improper, . . . [and] we treat [the] general objections as if they were never made."). The responding party must clarify, explain, and support its objections. *Anderson v. Hansen*, 2012 WL 4049979, at 8 (E.D. Cal. Sept. 13, 2012). "The grounds for objecting to a request must be stated . . . and as with other forms of discovery, it is well established that boilerplate objections do not suffice." *Id.* (discussing boilerplate objections asserted in response to requests for admission).

2. <u>Conditional Responses</u>

You either have a sustainable objection or you do not. You cannot have it both ways. Additionally, discovery responses often contain language stating "subject to and without waiving these objections, [Plaintiff/Defendant] responds as follows:," and "[Plaintiff/Defendant] will produce non-privileged responsive documents within its custody and control." Conditional responses and/or the purported reservation of rights by Plaintiffs or Defendants are improper and ultimately have the effect of waiving Plaintiff's or Defendant's objections to the discovery requests. *Sprint Commc'ns Co. v. Comcast Cable Commc'ns, LLC*, 2014 WL 545544, at *2 (D. Kan. Feb. 11, 2014) ("*Sprint I*"), modified 2014 WL 1569963 (D. Kans. 2014) ("*Sprint II*"); *Sherwin-Williams*, at *2; *Fay Avenue Props., LLC v. Travelers Property Casualty Co. of Am.*, 2014 WL 2965316, at *1 (S.D. Cal. Jul. 1, 2014); *Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964) (holding that "[w]henever an answer accompanies an objection, the objection is deemed waived, and the answer, if responsive, stands."); *see also* Wright, Miller & Marcus, Federal Practice and Procedure: Civil § 2173: "A voluntary answer to an interrogatory is also a waiver of the objection."

The Court recognizes that it is common practice among attorneys to respond to discovery requests by asserting objections and then responding to the discovery requests "subject to" and/or "without waiving" their objections. This practice is confusing and misleading. Moreover, it has no basis in the Federal Rules of Civil Procedure. *Sprint I*, at *2; *Sherwin-Williams*, at *2; *Fay Avenue*, at *1.

These responses are confusing and misleading because, for example, when a party responds to an interrogatory that is "subject to" and "without waiving its objections," the propounder of the interrogatory is "left guessing as to whether the responding party has fully or only partially responded to the interrogatory." *Estridge v. Target Corp.*, 2012 WL 527051, at *1-2 (S.D. Fla. Feb. 16, 2012); *Sherwin-Williams*, at *2; *Fay Avenue*, at *1. Similarly, with respect to requests for production of documents, a response "subject to" and "without waiving objections," leaves the requesting party to guess whether the producing party has produced all responsive documents, or only some responsive documents and withheld others on the basis of the objections. *Sprint I*, at *2; *Rodriguez v. Simmons*, 2011 WL 1322003 at *7 (E.D. Cal. Apr. 4, 2011).

Consequently, responses to discovery requests that are "subject to" and "without waiving objections," are improper, the objections are deemed waived, and the response to the discovery request stands. *Estridge*, at *2 (citing *Tardif v. People for the Ethical Treatment of Animals*, 2011 WL 1627165, at *2 (M.D. FL 2011); *Pepperwood of Naples Condo. Assn. v. Nationwide Mut. Fire Ins. Co.*, 2011 WL 4382104, at *4-5 (M.D. FL 2011); *Consumer Elecs. Ass'n v. Compras And Buys Magazine, Inc.*, 2008 WL 4327253, at *3 (S.D. Fla. 2008) ("subject to" and "without waiving objections" "preserve . . . nothing and serve . . . only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered."); *Sherwin-Williams*, at *3; *Fay Avenue*, at *2.

"If [a party has] responsive documents, but wish[es] to withhold them on privacy (or privilege) grounds, [the opposing party] should be made aware of this fact and the parties should continue their meet and confer obligations to ensure redaction, a protective order, *in camera review*, or other (privilege or) privacy-guarding measures are implemented to properly balance the need for discovery against the need for (privilege or) privacy." *Id.* at *7, n. 9 (citation omitted) (emphasis in original); *Fay Avenue*, at *2.

Moreover, when a party responds to a request for production of documents, it has three options under Federal Rule of Civil Procedure 34: (1) serve an objection to the requests as a whole, (Federal Rule of Civil Procedure 34(b)(2)(B)); or (2) serve an "objection to part of the request, provided it specifies the part to which it objects and respond to the non-objectionable portions, (Federal Rule of Civil Procedure 34(b)(2)(C)); or (3) serve a response that says that all responsive documents will be produced. What a party cannot do is combine its objections into a partial response without any indication that the response was actually a partial response. *Haeger v. Goodyear Tire & Rubber Co.*, 906 F. Supp. 2d 938, 976 (D. Ariz. 2012); *Fay Avenue*, at *2.

Further, conditional responses to discovery requests violate Federal Rule of Civil Procedure 26. Rule 26(g)(1)(B)(i)-(iii) requires responders to discovery requests to certify that the discovery responses are consistent with the Federal Rules of Civil Procedure, "not imposed for any improper purpose," and are "neither unreasonable nor unduly burdensome." Moreover, the 1983 Committee comments to Rule 26(g) state that "Rule 26 imposes an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rule 26 through 37." Providing conditional responses to discovery requests is improper. *Sprint II*, at *3; *Sherwin-Williams*, at *2; *Fay Avenue*, at *1.

C. <u>Reference to Documents In Discovery Requests</u>

A party may answer an interrogatory by specifying records from which the answer may be obtained and by making the records available for inspection. Fed. R. Civ. P. 33(d)(2). But the records must be specified "in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could." Fed. R. Civ. P. 33(d)(1). Responses to interrogatories that do not specify where in the records the answers could be found do not comply with Rule 33(d)(1). Rule 33 was amended in 1980 "to make clear that a responding party has the duty to specify, by category and location, the records from which the answers to the interrogatories can be derived." *Rainbow Pioneer No. 44-18-04A v. Haw. Nev. Inv. Co.*, 711 F.2d 902, 906 (9th Cir. 1983) (discussing former Federal Rule of Civil Procedure 33(c)); *West v. Ultimate Metals Co.*, 2014 WL 466795, at *2 (N.D. Cal. 2014); *Tourgeman v. Collins Fin. Servs., Inc.*, 2010 WL 2181416, at *6 (S.D. Cal. 2010). Former Federal Rule of Civil Procedure 33(c) is the same as the current Federal Rule of Civil Procedure 33(d). *Cambridge Elecs. Corp. v. MGA Elecs.*, 227 F.R.D. 313, 323 (C.D. Cal. 2004); *Fay Avenue* at *2.

D. <u>Contention Interrogatories</u>

Contention interrogatories ask the receiving party to state the factual bases for its allegations. The purpose of contentions interrogatories "is not to obtain facts, but rather to narrow the issues that will be addressed at trial and to enable the propounding party to determine the proof

required to rebut the respondent's position." *Folz v. Union Pac. Railroad Co.*, 2014 WL 357929, at *1 (S.D. Cal. 2014) (citing *Lexington Ins. Co. v. Commonwealth Ins. Co.*, 1999 WL 33292943, at *7 (N.D. Cal. 1999)). Courts recognize that contention interrogatories, when served after substantial discovery is complete, may be appropriate. *Folz*, 2014 WL 357929, at *2 (citing *Tennison v. City and County of San Francisco*, 226 F.R.D. 615, 618 (N.D. Cal. 2005)). At some point in time, parties answering contention interrogatories will have to fully respond to the contention interrogatories. *Folz*, 2014 WL 357929, at *1.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CIVIL PRETRIAL PROCEDURES
MAGISTRATE JUDGE ALLISON H. GODDARD
(Updated 5/27/2021)

The Court provides this information for general guidance to counsel and litigants. The Court may modify these procedures as appropriate in any case upon request or on its own.

Civility and Professionalism. All counsel who appear before the Court must review CivLR 2.1 and, at all times, act in compliance with the Code of Conduct set forth in that rule.

Communications with Chambers. Counsel may communicate with the Court by emailing efile_goddard@casd.uscourts.gov. This is a privilege that may be terminated at the Court's discretion in the event of excessive or inappropriate email communications. Attorneys who have appeared in the case may contact the Court by telephone for non-substantive matters such as scheduling and calendaring. Court personnel are prohibited from giving legal advice or discussing the merits of a case.

Early Neutral Evaluation Conferences. The Court will schedule an ENE at the outset of the case, typically after all parties have answered. The ENE is informal and confidential. Counsel must carefully review the order scheduling the ENE for more information, including directions regarding briefing and requirements for personal attendance by the parties.

Case Management Conferences. The Court typically conducts the CMC required under Fed. R. Civ. P. 16 and CivLR 16.1 immediately following the ENE if no settlement is reached. Prior to the initial CMC, the parties must lodge a Joint CMC Statement with the Court at efile_goddard@casd.uscourts.gov that complies with the Court's Requirements for Joint Case Management Statements (https://www.casd.uscourts.gov/Judges/goddard/docs/Goddard%20Joint%20Case%20Management%20Statement%20Rules.pdf). The Court may schedule additional status conferences following the initial CMC. The parties are not required to file a joint report in advance of a status conference unless specifically ordered by the Court.

Scheduling Order. The Court will issue a Scheduling Order following the CMC. Modification of the Scheduling Order requires the approval of the Court, which will only be granted on a showing of good cause.

Experience Opportunities for Attorneys With Fewer Than Ten Years of Practice. The Court encourages parties to allow attorneys with fewer than ten years of experience to argue matters before the Court. To that end, the Court will hold a hearing (either remotely or in person, at the Court's discretion) on any motion if one party notifies the Court in advance that an attorney with fewer than ten years of experience will be arguing at least a portion of the motion on behalf of that party. The party will be able to have more than one attorney argue their side of the motion if one of the attorneys arguing has fewer than ten years of experience.

Remote Appearances. The Court will notify the parties if any hearing or conference will take place by telephone or videoconference, and provide directions for connection. Counsel should appear and conduct themselves during any remote appearance as if they are present in the courtroom, including avoiding extraneous background noise, ensuring a clear connection, and dressing in appropriate courtroom attire.

Motions to Seal. There is a presumptive right of public access to court records based upon common law and the First Amendment. The Court will scrutinize any request to file information under seal, and a request will only be granted if a specific showing is made that justifies sealing. Generic and vague references to "competitive harm" will almost always be insufficient to justify sealing.

Joint Motions. Any administrative request to the Court (i.e., extension of time, continuance of ENE, etc.) should be made to the Court by joint motion. If only one party is making the request and the other party or parties do not oppose, they should indicate that in the joint motion. If the other party or parties oppose the request, they should set forth their position in the joint motion. *Ex parte* applications are disfavored, and any unopposed request should be filed as a joint motion rather than an *ex parte* application. Counsel who force an *ex parte* application by refusing to participate in the filing of a joint motion will be subject to sanctions.

Requests for Continuances. All requests for continuances must be made by a joint motion no less than seven calendar days before the affected date. The request must state:

1. The original deadline or date;

2. The number of previous requests for continuances;
3. A showing of good cause for the request;
4. Whether the request is opposed and why;
5. Whether the requested continuance will affect other case management dates; and
6. A declaration from the counsel seeking the continuance that describes the steps taken to comply with the existing deadlines, and the specific reasons why the deadlines cannot be met.
7. Should the parties request a continuance based on the plan to pursue private mediation, in addition to the joint motion outlined above, the parties shall also lodge (not file) a Joint Mediation Plan via email at efile_goddard@casd.uscourts.gov on the same date they filed the joint motion. The joint plan must state:

    A. The firm date of mediation;
    B. The identity of the mediator;
    C. A complete list of informal discovery the parties agree to exchange before mediation; and
    D. A firm deadline by which the parties will exchange the informal discovery.

Discovery Disputes. The parties must meet and confer in an attempt to resolve any discovery disputes before contacting the Court. After meet and confer attempts have failed, the movant must e-mail chambers at efile_goddard@casd.uscourts.gov seeking a conference (either by telephone or videoconference) with the Court to discuss the discovery dispute. The email must include: (1) at least three proposed times mutually agreed upon by the parties for the telephonic conference; (2) a ***neutral*** statement of the dispute; and (3) one sentence describing (not arguing) each parties' position. The movant must copy opposing counsel on the email.

No discovery motion may be filed until the Court has conducted its pre-motion conference, unless the movant has obtained leave of Court. The Court may strike any discovery motion that is filed without complying with this process.

The Court encourages parties to allow attorneys with fewer than ten years of experience to argue a discovery dispute during the pre-motion conference. The Court will allow multiple attorneys for a party to be heard on a dispute if at least one of the attorneys has fewer than ten years of experience.

This process does not apply where a party is in custody and is proceeding *pro se*. In that case, counsel may contact chambers by telephone to obtain a hearing date on a noticed discovery motion.

If a dispute arises during the course of a deposition, counsel must meet and confer prior to seeking any ruling from the Court. After meet and confer attempts have failed, counsel may call chambers to seek a ruling. If the Court is unable to review the matter at that moment, counsel should proceed with the deposition in other areas of inquiry and the Court will respond as soon as practicable.

Deadline to Raise Discovery Disputes With the Court. The parties must bring any discovery dispute to the Court's attention (either by email or filing a motion as outlined above) no later than 45 days after either (1) the date of service of the written discovery response that is in dispute; or (2) the date that the portion of the deposition transcript in dispute is completed. Failure to meet this deadline will bar a party from filing a corresponding discovery motion. The parties must file a joint motion demonstrating good cause if they seek to extend this deadline. The parties cannot extend this deadline by any agreement that is not approved by the Court.

Stipulated Protective Orders. Any protective order submitted for the Court's signature must contain the following two provisions:

1. No document shall be filed under seal unless counsel secures a court order allowing the filing of a document, or portion thereof, under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, they must contact the chambers of the judge who will rule on the application to notify the Court that an opposition to the application will be filed.

2. The Court may modify the protective order *sua sponte* in the interests of justice or for public policy reasons.

The Court recommends that the stipulated protective order contain a provision regarding the disposition of confidential or sealed documents and information after the case is closed.

All stipulated protective orders must be filed as a joint motion. The parties must email a copy of the proposed order in Word format to efile_goddard@casd.uscourts.gov.

Notice of Settlement. If the parties reach a settlement, counsel must promptly file a Notice of Settlement or an appropriate Motion to Dismiss. If a scheduled date with the Court is imminent, counsel must also contact chambers to advise of the settlement. Once a Notice of Settlement is filed, the Court will schedule a telephonic Settlement Disposition Conference, which will be taken off calendar once the case has been dismissed.

Chambers Rules

Hon. David D. Leshner, United States Magistrate Judge

The Court provides the following information as general guidance to counsel and parties. The Court may vary these procedures as appropriate in any case.

I. General Rules

For questions about any criminal matters and any transcript requests, please contact courtroom deputy Melissa Exler at melissa_exler@casd.uscourts.gov or (619) 446-3764. For questions about civil matters (other than transcript requests), please contact Judge Leshner's chambers at efile_leshner@casd.uscourts.gov or (619) 837-6526.

Telephone calls and emails to chambers are permitted only for administrative matters such as scheduling and calendaring, and to bring discovery disputes to the Court's attention pursuant to these Rules. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Only counsel with knowledge of the case should contact chambers.

Letters and faxes to chambers are prohibited, except as set forth in these Rules or otherwise requested by the Court.

II. Criminal Rules

The parties must lodge all plea-related documents no later than noon the day before any change of plea hearing. Where plea-related documents are not timely lodged, the change of plea will be taken off calendar and rescheduled for another day.

III. Civil Rules

A. Meet and Confer Requirement

Before bringing ***any*** matter to the Court for resolution, lead counsel (or attorneys with full authority to make decisions on the matter in dispute) must promptly meet and confer. If the matter is subject to Civil Local Rule 26.1a, the parties must meet in person "concerning all disputed issues." If counsel are unable to safely satisfy Civil Local Rule 26.1.a.'s in-person meet and confer requirement due to the COVID-19 pandemic, counsel must meet and confer by telephone or videoconference. If the matter is not subject to Civil Local Rule 26.1a (*e.g.*, a proposed motion to amend the scheduling order), the parties must meet and confer by telephone or videoconference.

B. Disputes During Depositions

If a dispute arises during a deposition, the parties must suspend the deposition and immediately meet and confer. If the dispute is not resolved after meeting and conferring, the parties may call chambers for an immediate ruling on the dispute. If Judge Leshner is available, he will either rule on the dispute or give instructions on how to proceed. If Judge Leshner is not available, the parties must mark the deposition at the point of the dispute and continue with the deposition. Upon

completion of the deposition, the parties must once again meet and confer and, if the dispute is still not resolved, follow the procedures set out in sections C and D below.

C. Discovery Disputes

After meet and confer attempts have been exhausted, the movant must e-mail chambers at efile_leshner@casd.uscourts.gov seeking a conference with the Court to discuss the discovery dispute. The email must include: (1) at least three proposed dates and times mutually agreed upon by the parties for the conference; (2) a neutral statement of the dispute; and (3) one sentence describing (not arguing) each party's position. The movant must copy all counsel on the email.

All discovery disputes, including those concerning electronically stored information (ESI), are subject to these rules. The parties are expected to consult and comply with the Checklist for Rule 26(f) Meet and Confer Regarding Electronically Stored Information, available on the Court's website.

No discovery motion may be filed until the Court has conducted its pre-motion conference unless the movant has obtained leave of Court. Where briefing has been ordered by the Court, counsel should attach only those exhibits that are necessary to the resolution of the parties' dispute. Generally speaking, this does not include counsel's meet-and-confer correspondence.

D. Timing For Raising Discovery Disputes

The parties must initiate the procedure described in section C above **within 30 days** of the event giving rise to the dispute. For disputes regarding depositions, the event giving rise to the dispute is the completion of the deposition. For disputes regarding written discovery, the event giving rise to the dispute is the date the initial response was served, or, if a party fails to respond, the date the response was due.

The parties may not unilaterally extend these deadlines by stipulation or by service of amended or supplemental responses. Any extension requires leave of Court upon a showing of good cause.

E. Motions to Extend, Amend, Continue or Vacate Dates or Deadlines

Requests to extend, amend, continue, or vacate dates and deadlines should be brought as a single motion, whether or not the parties are in agreement. The motion must state good cause for the extension and the basis for any party's opposition (if opposed) and must be signed by all counsel. Motions filed on the date of the deadline sought to be modified will be denied unless it is apparent on the face of the motion that the request could not have been made earlier for reasons not within counsel's control.

F. Protective Orders

All stipulated protective orders must be filed as a joint motion. The parties must email a copy of the proposed protective order in Word format to efile_leshner@casd.uscourts.gov.

The parties are encouraged to use the Court's model protective order, which is included in the Court's Civil Local Rules. If the parties jointly seek a protective order that differs from the Court's model order, the joint motion must explain the basis for the proposed changes, and the parties must

attach to the Joint Motion a redlined copy of the proposed protective order highlighting the changes from the Court's model.

G. Motions to Seal

The public enjoys a presumptive right of access to court records, and any motion to file information under seal must be supported by a specific showing that the material is protectable under the law. Any application to file a document under seal must be served on the person or entity that has custody and control of the document, if that person or entity has not already appeared in the action.

Where the party requesting sealing is not the designating party (i.e., the request to seal is made because another party has designated information "confidential"), the designating party must file a joinder in the motion to seal within 4 business days of service and must make the required showing that the information is protectable under the law. **The fact that the information or document has been designated confidential pursuant to a stipulated protective order, standing alone, is not a sufficient basis for sealing.** Any opposition to a motion to seal must also be filed within 4 business days of service.

H. Other Motions

For all other motions not explicitly addressed by these Rules, including *ex parte* motions, please be aware that the Court does not provide hearing dates or briefing schedules in advance of filing. Please do not call chambers to request a hearing date.

I. Notification of Case Resolution

If the parties reach a settlement outside the presence of the Court, counsel must promptly call chambers to advise of the settlement and file a Notice of Settlement on the CM/ECF system.

J. Chambers Copies and Proposed Orders

Chambers (courtesy) copies of motions and lodgments are not required unless specifically requested by the Court. All proposed orders should be submitted by email (efile_leshner@casd.uscourts.gov) in Word format and should be free of any attorney names, firm names, document management numbers or insignia in the caption, margins or footer.

K. Lawyer Development

The Court encourages parties to contribute to the development of the bar by permitting less experienced lawyers to argue matters before the Court. The Court may in its discretion hold a hearing on any motion where a party notifies the Court in advance that a lawyer with fewer than 10 years' experience will argue on behalf of the party.

Dated: November 2, 2022

HONORABLE BARBARA LYNN MAJOR
U.S. MAGISTRATE JUDGE
CHAMBERS RULES-CIVIL CASES

Please note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case. Counsel are reminded to carefully read the entire order issued by the Court, not just the docket entry summary.

I. Communication with Chambers

Chambers staff includes two law clerks and one courtroom deputy. The law clerks handle inquiries on civil matters while the courtroom deputy handles inquiries on criminal matters. The telephone number for the law clerks is (619) 557-7372. The telephone number for the courtroom deputy is (619) 557-7099.

A. Letters, faxes, or emails

Letters, faxes, and emails to chambers are prohibited unless specifically requested by the Court. If letters, faxes, or emails are requested by the Court, copies of the same must be simultaneously delivered to all counsel, unless otherwise directed by the Court (such as with confidential Early Neutral Evaluation ("ENE") statements and confidential Settlement Conference ("SC") statements). Copies of correspondence between counsel should not be sent to the Court.

B. Telephone calls

Telephone calls to chambers are permitted only for procedural matters such as scheduling a conference. Court personnel are prohibited from giving legal advice or discussing the merits of a case. When calling chambers, be prepared to identify your case as odd or even based on the last digit of the case number, so your call can be directed to the appropriate law clerk. **Only an attorney with knowledge of the case** may contact chambers.

C. Lodging documents

When an order directs you to "lodge" a document with chambers (usually an ENE or SC statement), you may e-mail it to efile_major@casd.uscourts.gov, or have it delivered to Judge Major's chambers, 333 West Broadway, Suite 1110, San

Diego, CA 92101. If the document including exhibits exceeds 20 pages, a courtesy copy must be delivered to chambers.

D. Transcripts

If a party wants to order a transcript of a court proceeding, counsel must contact the courtroom deputy, Natalie Peltier, at 619-557-7099 and provide the case name, case number, and date of the hearing.

E. Courtesy Copies

Unless otherwise ordered by the court, parties must deliver to the Clerk's Office or mail directly to the judge's chambers, within 24 hours after filing, any civil case filing which exceeds 20 pages in length including attachments and exhibits. In addition, where a party makes multiple filings in a case on the same day, and those filings cumulatively exceed 20 pages, a courtesy copy must be provided to the assigned judicial officer. If the nature of the filing is such that the need for a judge's immediate attention is anticipated or desired, a courtesy copy must be delivered on the same day as the filing. A copy of the Notice of Electronic Filing must precede the first page of the courtesy copy. Courtesy copies are to be addressed to the attention of the assigned judicial officer.

II. Early Neutral Evaluation Conference ("ENE") and other Settlement Conferences ("SC")

The ENE is a multi-purpose conference. The conference is informal, off-the-record, and confidential. It is an opportunity for the parties to educate Judge Major and each other regarding their claims and defenses. The ENE also provides an opportunity to have meaningful settlement discussions before costs and fees become significant factors or impediments to resolving the dispute. A candid discussion allows Judge Major to fashion an appropriate scheduling order for the case and to consider how best to approach discovery. The ENE typically is not scheduled until an Answer has been filed.

The Court will issue a Notice and Order for Early Neutral Evaluation Conference and Case Management Conference containing all of the requirements for the ENE/CMC. Please read this order carefully. The order will require, among other things, the parties to meet and confer, file a joint discovery plan, serve initial disclosures, lodge ENE statements, and attend the ENE/CMC conference.

A. Personal Appearance Required at the ENE and SCs

The Court requires all named parties and party representatives, insurance adjusters for insured parties, and principal attorneys to appear **in person** at the ENE and other settlement conferences and be legally and factually prepared to discuss settlement of the case. The Court further requires that all attendees have "full settlement authority" as defined in the Court's order. A limited or sum certain settlement authority is not acceptable as each party must be able to engage in meaningful face-to-face discussions with the unfettered ability to change the party's settlement position. Please see the Court's order scheduling the conference for more information.

The Court will **not** grant requests to excuse a required party from personally appearing absent good cause. Distance of travel alone does **not** constitute the requisite good cause. Counsel requesting that a required party be excused from personally appearing at the conference must meet and confer with opposing counsel prior to making the request and must file an appropriate motion establishing good cause for the request at least 5 court days before the ENE or SC. Unless the Court grants the motion, all identified individuals are required to appear in person.

The Court does not have discretion to convert the ENE to a telephonic conference.

B. ENE or SC Statement

The Court's order setting the ENE or SC will contain information regarding the length and content of the required statement as well as the date by which it must be lodged.

C. Continuing the ENE/CMC

Counsel seeking to reschedule an ENE or other settlement conference must confer with opposing counsel prior to making the request. Such requests must be made in a filed motion at least seven days before the scheduled hearing and may be granted only upon good cause shown.

D. Time Allotted

The Court generally allots up to three hours for ENEs and SCs, but the parties should be prepared to stay longer at the Court's discretion.

E. Notice of Resolution

If the case is settled in its entirety, or as to any party(ies), before the scheduled ENE or SC, counsel must file a Notice of Settlement and promptly call chambers at (619) 557-7372. After the Notice is filed, the Court will schedule a Settlement Disposition Conference which will be vacated with the filing of an appropriate Motion to Dismiss.

III. Case Management Conference ("CMC") and Scheduling Order

A. Rule 16 CMC

The Court conducts the CMC required by Fed. R. Civ. P. 16 immediately following the ENE, if no settlement has been reached. The requirements for this CMC are set forth in the Court's Notice and Order for Early Neutral Evaluation Conference and Case Management Conference and must be addressed in the Joint Discovery Plan filed by the parties prior to the ENE/CMC. After the CMC, the Court will issue a Scheduling Order Regulating Discovery and Other Pre-trial Proceedings ("Scheduling Order").

B. Requests to Amend the Scheduling Order

As provided in Fed. R. Civ. P. 16(b)(4), modification of the dates and times set in the Scheduling Order requires good cause and judicial consent. The Rule 16 "good cause" standard focuses on the reasonable diligence of the moving party. Counsel are reminded of that they must "take all steps necessary to bring an action to readiness for trial." Civil Local Rule 16.1(b).

Before requesting an extension of any date or deadline, the attorneys must "meet and confer" and the request should then be made by filing a joint motion. The joint motion must establish good cause for the request and shall include a declaration from counsel of record detailing the steps taken to comply with the date(s) or deadline(s), the specific reason why the identified deadline cannot be met, and whether any prior extensions or modifications to the Scheduling Order have been requested or approved. A party seeking a modification may move *ex parte* if the other parties will not join in a motion to amend the schedule. In an *ex parte* motion, the declaration must address the steps counsel took to meet and confer with opposing counsel to obtain authorization to file a joint motion, as well as the subjects required for the joint motion. When the motion is made after the

deadline has passed or time has expired, Fed. R. Civ. P. 6(b)(1)(B) requires the parties to address excusable neglect.

The filing of a motion to amend the Scheduling Order does **NOT** permit the parties to disregard the current dates and deadlines. Unless and until the Court grants the motion to amend, all parties must continue to comply with all dates and deadlines set forth in the Scheduling Order.

C. Telephonic Conferences

At the Court's discretion, the Court may conduct a telephonic conference to discuss case management or discovery issues. Unless otherwise directed, the Court will initiate the conference call. Counsel shall notify the law clerk of the telephone number at which they can be reached, if they will **not** be at their usual office number, in advance of the conference by calling the law clerk at (619) 557-7372. It is not necessary for counsel to contact chambers in advance of the conference call if they can be reached at their usual office number. Absent extraordinary circumstances, counsel shall use land lines, rather than cellular phones, for all telephonic conferences.

IV. Continuances

Parties requesting a continuance of any conference, motion or hearing date, or briefing schedule shall meet and confer prior to contacting the Court. If the parties reach an agreement, they shall file a joint motion identifying the current date, the requested date, the number and length of any prior continuance, and the reason for the requested continuance or extension of time. They also shall e-mail a proposed order in Word format to efile_major@casd.uscourts.gov detailing the current date and the proposed new date. Please refer to the Case Filing Administrative Policies and Procedures Manual located on the Court's website with regard to CM/ECF filings. If the parties are unable to reach an agreement, the requesting party shall file an *ex parte* motion satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result therefrom. In addition, the *ex parte* motion shall state (1) the original date, (2) the number of previous requests and continuances, (3) whether previous requests were granted or denied and (4) opposing counsel's position with regard to the requested continuance.

The filing of a motion to continue any date or deadline does **NOT** permit the parties to disregard the challenged date or deadline. Unless and until the Court

grants the motion to continue, all parties must continue to comply with all deadlines.

V. Discovery Disputes

A. Meet and Confer Requirement

Prior to bringing any discovery dispute to the Court, counsel must meet and confer pursuant to Civil Local Rule 26.1. If counsel are in the same county, they are to meet in person; if counsel practice in different counties, they are to confer by telephone. Under no circumstances may counsel satisfy the "meet and confer" obligation by written or emailed correspondence. The Court expects strict compliance with the meet and confer requirement, as it is the experience of the Court that the vast majority of disputes can be resolved by means of that process. Counsel must **thoroughly** meet and confer and shall make every effort to resolve all disputes without the necessity of court intervention.

If a party or lawyer fails to respond to opposing counsel's request to meet and confer for more than 72 hours, counsel may contact chambers and request a telephonic conference with the clerk assigned to the case or an appropriate briefing schedule.

B. Conference Call with Chambers

If the parties fail to resolve their dispute through the meet and confer process, then counsel for all parties are required to determine a mutually agreeable time to conduct a conference call with Chambers. The Court will not assign a hearing date before conducting a conference call with all counsel.

During the conference call, counsel for the parties will be asked to explain: (i) the details of their dispute; (ii) their respective positions; (iii) what meet and confer efforts have taken place; (iv) the precise relief the moving party is seeking; and (v) how soon they can file the motion and opposition.

Based upon the nature of the dispute, the Court will determine whether to conduct an informal dispute resolution process with the parties or have the parties proceed directly to filing a formal discovery motion.

C. Briefing Schedule

The Court believes it is important to resolve discovery disputes as soon as possible and routinely sets expedited briefing schedules for discovery motions. The parties should be prepared to file their motion and opposition in a shortened time frame after the Chambers' conference call.

Unless otherwise authorized, discovery motions and oppositions may not exceed **15 pages**, exclusive of exhibits. Reply briefs are not permitted unless requested and authorized by the Court.

D. Discovery Motion Hearings

Most discovery disputes can be resolved on the filed pleadings without oral argument and the Court rarely conducts discovery hearings. The parties will be notified if the Court will hear oral argument.

E. Timing of Motion

All discovery motions must be filed within 30 days of the event giving rise to the dispute and only after counsel have met and conferred and communicated with the Court as set forth above. The event giving rise to the dispute is **NOT** the date on which counsel reach an impasse in their meet and confer efforts. For written discovery, the event giving rise to the dispute is the service of the initial response or production of documents, or the passage of the due date without a response or document production. For oral discovery, the event giving rise to the dispute is the receipt of the transcript from the Court reporter of the affected portion of the deposition.

F. Contents of the Written Motion

The discovery motion must contain at a minimum 1) a declaration from lead trial counsel establishing compliance with the meet and confer efforts; 2) the exact wording of the discovery request and response, and 3) an explanation as to why the response is inadequate, precisely what additional information the moving party is seeking, and the legal authority supporting the motion.

VI. <u>Requests to File Documents Under Seal</u>

There is a presumptive right of public access to court records based upon common law and First Amendment grounds. Accordingly, no document may be filed under seal, i.e., closed to inspection by the public except pursuant to a Court order that authorizes the sealing of the particular document, or portions of it. A sealing order may issue only upon a showing that the information is privileged or protectable under the law. The request must be narrowly tailored to seek sealing only of the confidential or privileged material. To file a document under seal, the parties must comply with the procedures explained in Section 2.j of the Electronic Case Filing Administrative Policies and Procedures Manual for the United States District Court for the Southern District of California and Civil Local Rule 79.2.

A motion to seal must be filed before the Judge who will rule on the motion associated with the proposed sealed document. For example, a motion to seal a document associated with a motion to compel discovery will be before Judge Major, while a motion to seal a document associated with a Motion for Summary Judgment will be before the District Judge assigned to the case.

If the motion is being made to Judge Major, 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 should file the redacted document(s) simultaneously with a joint motion or *ex parte* application requesting that the confidential portions of the document(s) be filed under seal and setting forth good cause for the request.

VII. <u>Stipulated Protective Order</u>

All stipulated protective orders must be filed as a joint motion. The joint motion must contain the language of the stipulated protective order sought and the parties' electronic signatures. The parties must also email a proposed order, in Word format, containing the text of the protective order to efile_major@casd.uscourts.gov. If the parties are unable to agree on the terms of the protective order, the joint motion should set forth the terms on which the parties agree and clearly identify the terms on which they disagree. For the terms that are in dispute, each party should state the precise language the party is proposing and provide the legal and factual support for the proposal. The Court will decide which of the disputed terms, if any, will be included in the protective order.

If the parties want the Court to retain jurisdiction to enforce the terms of the stipulated Protective Order, the Court is willing to do so for no more than one year. If the parties want continuing jurisdiction, the stipulated Protective Order should include the following language "Continuing Jurisdiction: The Court shall retain jurisdiction for a period of one (1) year after the conclusion of this action to enforce the terms of the Protective Order."

Any proposed stipulated Protective Order must contain the following provisions:

A. Filing Under Seal. Before any materials produced in discovery, answers to interrogatories, responses to requests for admissions, deposition transcripts, or other documents which are designated as Confidential Information are filed with the Court for any purpose, the party seeking to file such material must seek permission of the Court to file the material under seal. No document may be filed under seal, i.e., closed to inspection by the public except pursuant to a Court order that authorizes the sealing of the particular document, or portions of it. A sealing order may issue only upon a showing that the information is privileged or protectable under the law. The request must be narrowly tailored to seek sealing only of the confidential or privileged material. To file a document under seal, the parties must comply with the procedures explained in Section 2.j of the Electronic Case Filing Administrative Policies and Procedures Manual for the United States District Court for the Southern District of California and Civil Local Rule 79.2. In addition, in accordance with Judge Major's preferences, a party must file a 'public' version of any document that it seeks to file under seal. In the public version, the party may redact only that information that is deemed 'Confidential.' The party should file the redacted document(s) simultaneously with a joint motion or ex parte application requesting that the confidential portions of the document(s) be filed under seal and setting forth good cause for the request."

B. Modification of the Protective Order by the Court. The Court may modify the terms and conditions of the Order for good cause, or in the interest of justice, or on its own order at any time during these proceedings.

VIII. ***Ex Parte* Proceedings**

The Court does not have regular *ex parte* hearing days or hours. Absent extraordinary circumstances, discovery disputes should not be filed as an *ex parte* motion. Appropriate *ex parte* applications must be filed electronically on CM/ECF

in accordance with the Local Rules and must explain why proceeding *ex parte* is necessary. The application also must include a description of the dispute, the relief sought, and a declaration describing the efforts made to resolve the dispute without the Court's intervention and establishing that reasonable and appropriate notice of the filing of the *ex parte* application was made to opposing counsel in accordance with Civil Local Rule 83.3.g. After service of the *ex parte* application, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond. If more time is needed, opposing counsel must call the law clerk assigned to the case to request additional time. After receipt of the application and opposition, the Court will review the submissions and most likely issue a decision without a hearing. If the Court requires a hearing, the Court will issue an order or contact the parties to set the date and time.

IX. General Decorum

The Court insists that all counsel and parties be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Professionalism and civility—in court appearances, communications with Chambers, and written submissions—are of paramount importance to the Court. Personal attacks on counsel or opposing parties will not be tolerated. Counsel are expected to be punctual for all proceedings and are reminded to follow Civil Local Rule 83.4, in their practice before this Court.

UNITED STATES DISTRICT COURT
Southern District of California

Honorable Lupe Rodriguez, Jr.
U.S. Magistrate Judge

CIVIL CHAMBERS RULES

Please Note: The Court provides this information for general guidance to counsel. The Court may, however, vary these procedures as appropriate in any case.

I. Civility and Professionalism. All counsel appearing before the Court must review Civil Local Rule 2.1 and act in compliance with the Code of Conduct set forth in that rule.

II. Communications with Chambers. For civil matters, contact the law clerks in chambers at (760) 339-4250. For criminal matters, please refer to the Court's Criminal Chambers Rules.

A. Letters, Faxes, E-mails, and Telephone Calls. Letters, faxes, or e-mails to chambers are prohibited unless specifically requested by the Court. Telephone calls are permitted only for scheduling and calendaring matters, or as specifically permitted in these rules. Court personnel are prohibited from giving legal advice or discussing the merits of a case. **Only counsel with knowledge of the case** may contact chambers.

B. Lodging Documents. When an order or these Rules direct counsel to "lodge" a document with chambers, the document should either be sent via e-mail to efile_rodriguez@casd.uscourts.gov, or delivered to Judge Rodriguez's chambers, 2003 W. Adams Avenue, El Centro, Suite 220, CA 92243. Lodged documents **shall not** be filed with the Clerk of Court or on the Case Management/Electronic Case Filing ("CM/ECF") system unless the Court directs otherwise.

C. Courtesy Copies. Courtesy copies of filings **exceeding 20 pages** must be submitted directly to chambers, 2003 W. Adams Avenue, Suite 220, El Centro, CA 92243. Courtesy copies of electronically filed documents **must be printed from CM/ECF**, with the CM/ECF stamp displayed on the top of each page. The pages must be firmly bound, and exhibits must be tabbed.

D. Transcript Requests. Transcript requests for proceedings before Judge Rodriguez must be electronically filed. Detailed instructions can be found at https://www.casd.uscourts.gov/attorney/transcript-order.aspx.

E. Questions Relating to the CM/ECF system. For technical questions relating to the CM/ECF system, the parties should contact the CM/ECF Help Desk at (866) 233-7983.

III. Settlement Conferences. All named parties (including those who are indemnified by others), claims adjusters for insured defendants, and client representatives with full and unlimited authority to enter into a binding settlement, as well as the principal attorney(s) responsible for the litigation, must be present, and legally and factually prepared to discuss and resolve the case at the settlement conference. However, where the suit involves the United States or one of its agencies, only counsel for the United States with full settlement authority are required to appear. Further, if Plaintiff is incarcerated in a penal institution or other facility, the Plaintiff may participate by videoconference or by telephone, and defense counsel should coordinate the Plaintiff's appearance. **Please see the order scheduling the conference for more information.**

IV. Discovery Disputes.

A. Meet and Confer Requirement. Before contacting the Court regarding a discovery dispute, counsel must **thoroughly** meet and confer regarding all disputed issues pursuant to Civil Local Rule 26.1.a. **The parties must meet and confer in person, by videoconference, or by telephone, and may not satisfy the meet and confer requirement by exchanging e-mails or other written correspondence.**

B. Deadline to Raise Discovery Dispute with the Court.

1. Written Discovery. For written discovery, the event giving rise to the discovery dispute is the date of service of the response, **not** the date on which counsel reach an impasse in meet and confer efforts. If a party fails to provide a discovery response, the event giving rise to the discovery dispute is the date response was due. The parties must contact the Court to request an informal discovery conference within **forty-five (45) days** of the event giving rise to the discovery dispute.

2. Depositions. If the dispute arises during a deposition, counsel may call chambers to seek a ruling. If Judge Rodriguez is available, he will either rule on the dispute or give counsel further instructions on how to proceed. If Judge Rodriguez is unavailable, counsel should proceed with the deposition in other areas of inquiry and Judge Rodriguez will respond as soon as practicable.

3. Parties' Stipulations are not Binding Unless Approved by the Court. The parties are required to obtain leave of Court to extend a deadline to raise a discovery dispute with the Court.

C. Informal Discovery Dispute Conference. If the dispute is not resolved in the meet and confer process, the moving party must e-mail chambers at efile_rodriguez@casd.uscourts.gov and request a conference to discuss the discovery dispute. The e-mail must include: (1) at least three proposed times mutually agreed upon by the parties for the telephonic conference; (2) a neutral statement of the dispute; and (3) one sentence describing (not arguing) each parties' position. The movant must copy opposing counsel on the e-mail.

No discovery motion may be filed until the Court has conducted its telephonic discovery conference, unless the movant has obtained leave of Court. <u>The Court will strike any discovery motion that does not comply with this process.</u>

D. Joint Discovery Motion. If the parties cannot resolve their discovery dispute during the discovery conference with Judge Rodriguez, **they will be given a deadline to file a Joint Discovery Motion**. The Joint Discovery Motion must include the following:

1. The exact wording of the discovery request or deposition question in dispute, and the exact response to the request or question;

2. An explanation as to why the response is inadequate, what relief the moving party seeks, and legal authority supporting the motion;

3. A statement by the responding party as to the basis for all objections and/or claims of privilege; and

4. A declaration from counsel of record establishing compliance with the meet and confer requirement.

The Joint Discovery Motion shall not exceed fifteen (15) pages. The parties may not attach copies of correspondence or e-mails between counsel unless those documents evidence an agreement alleged to have been breached.

E. These rules address the most common discovery disputes. **If litigants encounter circumstances that do not fit within these rules, they should contact Judge Rodriguez's law clerk for applicable procedures.**

V. <u>**Continuances**</u>. Any request to continue shall be **filed as a joint motion** pursuant to Civil Local Rule 7.2 or, if opposed, as an *ex parte* motion pursuant to Civil Local Rule 83.3(g). Whether filed as a joint motion or an *ex parte* motion, the parties are not required to obtain a hearing date. The motion shall include:

A. The original deadline(s) or date(s);

B. The number of previous requests for continuance;

C. A showing of good cause for the request;

D. Whether the request is opposed and why;

E. Whether the requested continuance will affect other case management dates; and

F. A declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why the deadlines cannot be met.

The filing of a motion to continue any date or deadline **does not** permit the parties to disregard the date or deadline(s) at issue. Unless and until the Court grants the joint motion, the parties must continue to comply with all scheduling deadlines.

VI. Filing Documents Under Seal. There is a presumptive right of public access to court records based upon common law and the First Amendment. Any motion to file information under seal must be supported by articulable facts showing a compelling reason to limit public access to court filings.

VII. Stipulated Protective Orders. All stipulated protective orders submitted for the Court's approval must be **filed as a joint motion**. Counsel are expected to review the Model Protective Order in the Local Rules for the United States District Court, Southern District of California ("Model Protective Order"). Use of the Model Protective Order is highly recommended. The joint motion must contain a statement as to whether the parties adopted the Model Protective Order. If the parties' proposed language differs from the Model Protective Order, the joint motion must explain the basis for the proposed changes and contain an attachment with a redlined copy of the proposed protective order highlighting the changes. The parties must also **lodge** a Word version of the proposed stipulated protective order containing the language of the stipulated protective order, the parties' electronic signatures, and a signature line for Judge Rodriguez.

Additionally, all stipulated protective orders submitted for the Court's approval must include the following provisions:

A. Modification of the Protective Order by the Court. The Court may modify the Protective Order in the interests of justice or for public policy reasons.

B. Filing Documents Under Seal. No document may be filed under seal, except pursuant to a court order that authorizes the sealing of the particular document, or portion of the document. A sealing order may issue only upon a showing that the information is privileged or protectable under the law. **The request must be narrowly tailored to seek sealing only of the confidential or privileged material.** To file a document under seal, the parties must comply with the procedures explained in Section 2.j of the Electronic Case Filing Administrative Policies and Procedures Manual for the United States District Court for the Southern District of California and Civil Local Rule 79.2. In addition, a party must file a redacted version of any document that it seeks to file under seal. In the redacted version, the party may redact only information that is deemed "Confidential." The party should file the redacted document(s) simultaneously with a joint motion or *ex parte* application requesting that the confidential portions of the document(s) be filed under seal and setting forth good cause for the request.

The Court is willing to retain jurisdiction to enforce the terms of the stipulated protective order for one year. If the parties want the Court to retain jurisdiction, the stipulated protective order should include the following language: "**Continuing Jurisdiction.** The Court shall retain jurisdiction for a period of **one (1) year** after the conclusion of this action to enforce the terms of the Protective Order."

VIII. *Ex Parte* Motions. All *ex parte* motions must comply with Civil Local Rule 83.3(g). Further, declaration(s) in support of the *ex parte* motion must describe meet and confer efforts made to resolve the dispute without the Court's intervention. After service of the *ex parte* motion, opposing counsel will ordinarily be given until 5:00 p.m. on the next business day to respond or contact the assigned law clerk to request additional time. The Court will either issue an order on the written submissions or set a date and time for a hearing.

IX. Notice of Settlement. If the parties reach a settlement, counsel must promptly file a Notice of Settlement. If a scheduled date with the Court is imminent, counsel must also contact chambers to advise of the settlement.

HONORABLE BERNARD G. SKOMAL

U.S. MAGISTRATE JUDGE

CHAMBERS' RULES

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

I. Communications With Chambers

A. **Code of Conduct.** Counsel are directed to review and be familiar with Civil Local Rule 83.4. This Court will hold counsel to the standards set forth in the rule and will enforce the standards through sanctions or disciplinary action as provided in Civil Local Rules 83.1 and 83.5.

B. **Letters, faxes, or emails.** Letters, faxes, or emails to chambers are not permitted unless specifically requested by the Court. If letters, faxes, or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel should not be sent to the Court. Unauthorized correspondence will be rejected.

C. **Telephone Calls.** Telephone calls to chambers are permitted only for matters such as calendaring or addressing discovery disputes. **Court personnel are prohibited from giving legal advice or discussing the merits of a case on an ex parte basis.** Call Judge Skomal's chambers at (619) 557-2993 and address your inquiries to the Research Attorney assigned to the case. When calling chambers, be prepared to identify your case number. Before contacting chambers, make sure to closely read all orders issued in the case, as well as review the Local Rules and CM/ECF Administrative Policies and Procedures Manual and only call if those resources do not provide an answer to your inquiry.

D. Conference Calls. When an order, minute order, or other notice from the Court directs you to "coordinate and initiate the conference call," the initiating party should make arrangements for all call participants to be on the phone and then should call chambers at the time set for the call. The Court cannot advise you on how to coordinate the conference or a particular conferencing service to use.

E. Lodging Documents. When an order directs you to "lodge" documents with chambers (usually your ENE and MSC statements), you must email it to: **efile_Skomal@casd.uscourts.gov.**

F. Courtesy Copies. Courtesy copies of filings exceeding 20 pages must be submitted to chambers via the Clerk's office. Unless expressly required by the Court, courtesy copies must be identical to the electronically-filed documents. The pages of each pleading must be firmly bound and must be 2-hole punched at the top. If a pleading or settlement brief has exhibits, the exhibits must be tabbed.

II. Early Neutral Evaluation ("ENE") Conference and Other Settlement Conferences, e.g., Mandatory Settlement Conference

A. Confidential Briefs. The order setting the ENE or Mandatory Settlement Conference ("MSC") will direct the parties to file confidential briefs on a certain date two weeks prior to the conference. This is a requirement and failure to timely submit the brief constitutes a violation of a court order.

The parties must directly submit to Judge Skomal's chambers a confidential ENE or MSC Statement, which outlines the nature of the case, the claims, the defenses, and the parties' demands and offers of settlement, including the settlement relief that the party is willing to accept at the conference. If a specific demand or offer cannot be made at the time the brief is submitted, then the reasons as to why a demand or offer cannot be made must be stated, and the party must also explain when they will be in a position to state a demand or offer. General statements such as a party will "negotiate in good faith" is not a specific demand or offer.

MSC briefs must not merely repeat what was contained in the ENE brief or any earlier settlement brief. MSC briefs must specifically identify what the discovery process revealed and the effect that the evidence has on the issues in the case. To the extent specific discovery responses, portions of deposition testimony, or expert reports are pertinent to the Court's evaluation of the matter, these documents must be attached as exhibits to the brief. Evidence supporting or refuting either party's claim for damages must also be identified and included as an exhibit.

The briefs must be e-mailed to: **efile_Skomal@casd.uscourts.gov.** **If the brief, including exhibits, exceeds 20 pages, a courtesy copy must be delivered the same day the brief is due, and must be delivered to Judge Skomal's Chambers via the Clerk's office.**

B. **Re-Scheduling the Conference.** Counsel seeking to reschedule an ENE or other settlement conference must confer with opposing counsel prior to making the request. Such requests may be made by filing a joint motion. At the time the request is filed, a proposed Order must also be submitted in Word or WordPerfect format to efile_Skomal@casd.uscourts.gov. Requests should be made as soon as counsel is aware of the circumstances that warrant rescheduling the conference. Requests to continue an ENE or other settlement conference based on preexisting scheduling conflicts should be raised within 10 days of the Court's issuance of the order setting the conference.

If the other party will not agree to reschedule the conference, counsel for both parties must jointly call chambers and present the dispute to the research attorney assigned to the case.

C. Required Presence at the Conference. Unless the order setting the ENE or MSC states otherwise, the Court generally requires all named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement to appear in person at the ENE and settlement conferences. The Court will consider requests to excuse a required party from personally appearing upon a showing of good cause. If counsel wishes to request that a required party be excused from personally appearing, they must confer with opposing counsel prior to making the request. Such requests may then be made by filing a joint motion, or if the other side will not agree to the exclusion, the party seeking relief may file an ex parte application setting forth the good cause for the excuse. At the time the request is filed, a proposed Order must also be submitted in Word or WordPerfect format to efile_Skomal@casd.uscourts.gov.

D. Settlement Prior to the Conference. If the case is settled in its entirety before the scheduled date of the ENE or other scheduled settlement conference, counsel must either (1) file a Joint Motion to Dismiss at least 24 hours before the conference; (2) file a Notice of Settlement at least 24 hours before the conference that includes the electronic signatures of counsel for all settling parties and states a date the Joint Motion to Dismiss will be filed; (3) if the matter settles less than 24 hours before the conference, counsel must jointly call Judge Skomal's chambers at (619) 557-2993 as soon as possible and receive permission not to appear in court. If the above protocol is not followed and the parties fail to appear at the scheduled conference, the Court may impose sanctions.

III. Case Management

A. Case Management Conferences ("CMC"). The Court conducts its CMCs at the ENE. If the Court decides to conduct it telephonically, Plaintiff's counsel coordinates and initiates all conference calls.

B. **Discovery Plans.** The parties are required to file a Joint Discovery Plan at least two weeks before the scheduled CMC. The plan must be one document and must explicitly cover the parties views and proposals for each item identified in Fed. R. Civ. P. 26(f)(3). In addition, Judge Skomal requires the discovery plan to identify whether the parties will consent to jurisdiction of a Magistrate Judge. Agreements made in the Discovery Plan will be treated as binding stipulations that are effectively incorporated into the Court's Case Management Order.

In cases involving significant document production and electronic discovery, the parties must also include the process and procedure for "claw back" or "quick peek" agreements as contemplated by Fed. R. Evid. 502(d)-(e).

C. **Requests to Amend the Schedule.** The dates and times set in the Scheduling Order will not be modified except for good cause shown. Fed. R. Civ. P. 16(b)(4). Counsel are reminded of their duty of diligence and that they must "take all steps necessary to bring an action to readiness for trial." Civil Local Rule 16.1(b).

1. Any unopposed requests for extensions should be made by filing a Joint Motion. The motion must include a declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why deadlines cannot be met, as well as the specific discovery that has been conducted, and what specific discovery remains outstanding. The extension will not be granted absent good cause.

2. When a party seeks a modification of the schedule and the opposing party will not agree to the extension, counsel must promptly and jointly contact Judge Skomal's chambers and speak with the research attorney assigned to the case. If a party is unresponsive to a request jointly contact Judge Skomal's chambers, after 48 hours, counsel for the moving party is to contact chambers and the Court will issue a minute order setting a telephonic conference with the research attorney assigned to the case.

3. When any motion to extend time is made after time has expired, Fed. R. Civ. P. 6(b)(1)(B) requires the parties to address excusable neglect.

IV. Discovery Responsibilities

The Parties are to strictly comply with the provisions of Fed. R. Civ. P. 26(g)(1-2). Failure to comply, without substantial justification, could result in sanctions as mandated by Rule 26(g)(3).

V. Discovery Disputes: Fed. R. Civ. P. 26 - 37, 45; Civ. LR 26.1

All discovery motions must comply with the following procedures.

A. The Meet and Confer Requirement. Counsel are to promptly meet and confer regarding all disputed issues. If counsel are located in the same county, you are required to meet and confer in person. If counsel are located in different counties, you are to meet and confer by phone or video conference. Under no circumstances will written communications satisfy the meet and confer requirement. Counsel must proceed with due diligence in scheduling and conducting an appropriate meet and confer conference as soon as a dispute arises. If a party is unresponsive to a request to meet and confer, after 48 hours, contact chambers and the Court will issue an order setting a telephonic conference with the research attorney assigned to the case.

B. Failure to Resolve the Dispute. If the parties have not resolved the dispute pertaining to Fed. R. Civ. P. 26 through 37 and Rule 45, through the meet and confer process, counsel for all interested parties must promptly and jointly contact Judge Skomal's chambers and speak with the research attorney assigned to the case. Counsel must be prepared to specifically and succinctly explain the dispute to the research attorney. Counsel must agree on the issue(s) in dispute prior to calling chambers. The research attorney will explain the issue to Judge Skomal. The Court will either set a further telephonic discovery conference or advise the parties to file a motion.

C. The 30-Day Rule. The Court will not rule on a discovery dispute that is brought to the Court's attention more than thirty (30) days after the date upon which the event giving rise to the dispute occurred absent a showing of good cause.

For oral discovery, the event giving rise to the discovery dispute is the completion of the transcript of the affected portion of the deposition. For written discovery, the event giving rise to the discovery dispute is service of the initial response or the time for such service if no response is given. A propounding party may grant a responding party up to a 30-day extension to respond to discovery requests. If the parties wish to extend a response deadline more than 30-days from the original deadline, they must JOINTLY call Judge Skomal's chambers and speak to the Research Attorney assigned to their case. Failure to do so will result in waiver of any potential dispute arising from those discovery requests.

****Be advised**: when parties are attempting to resolve disputes on their own without the need for Court intervention, the parties must call Judge Skomal's chambers and request that the 30-day deadline for bringing disputes to the Court's attention be tolled. If the parties do not alert the Court to the fact that they are attempting to resolve their dispute and the 30-day deadline

passes, the Court will not rule on the dispute absent a showing of good cause.

If the parties thereafter informally resolve the dispute without court intervention during the tolled period, they must promptly notify the Court of this resolution.

If the parties do not resolve the dispute informally, they must promptly and jointly contact the research attorney assigned to their case for further instructions. If the parties do not promptly and jointly advise the Court as required under this subsection, the 30-day deadline will be deemed to resume running at the time that the parties were required to notify the Court.

D. **Formal Discovery Motions.** If Judge Skomal requests that the parties file a discovery motion, the Court will advise the parties of the format for the motion. Under no circumstance may any party file any motion relating to Rule 26 through 37 and 45, *ex parte* or otherwise, without complying with the procedure set forth in these chambers rules re: discovery disputes.

E. Disputes during Depositions. If the dispute arises during a deposition regarding an issue of privilege, enforcement of a court-ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), counsel should suspend the deposition and immediately meet and confer. If the dispute is not resolved after meeting and conferring, counsel may call Judge Skomal's chambers at (619) 557-2993 to potentially receive an immediate ruling on the dispute. If Judge Skomal is available, he will either rule on the dispute or give counsel further instructions on how to proceed. If Judge Skomal is unavailable, counsel must mark the deposition at the point of the dispute and continue with the deposition. Thereafter, counsel must further meet and confer regarding all disputed issues pursuant to the requirements of Civil Local Rules 16.5.k. and 26.1.a. If counsel have not resolved their disputes through the meet and confer process, they must proceed as noted in these chambers rules.

F. Other Discovery not tolled. Counsel may not stop conducting other discovery due to a dispute.

VI. Protective Orders

A. All stipulated protective orders submitted to the Court must include the following provisions:

1. What the Court shall do with confidential or sealed documents after the case is closed (i.e., how the documents are to be disposed). The language should indicate whether the documents are to be destroyed or returned to the parties and the time frame in which to do either. Further, the Protective Order must state that any action by this Court must be preceded by an ex parte motion for an order authorizing the return of all Confidential and Attorneys' Eyes Only Material to the party that produced the information or the destruction thereof.

2. Modification of the Protective Order by the Court. The Protective Order shall state that the Court may modify the terms and conditions of the Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings.

3. Relation to any court or local rules. The Protective Order shall state that without separate court order, the Protective Order and the parties' stipulation does not change, amend, or circumvent any court rule or local rule

4. Filing documents under Seal. The Protective Order must include the language: No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If opposing counsel, or the person or entity who has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application, to notify the judge's staff that an opposition to the application will be filed.

   If an application to file a document under seal is granted by Judge Skomal, a redacted version of the document shall be e-filed. A courtesy copy of the unredacted document shall be delivered to Judge Skomal's chambers.

B. All stipulated protective orders submitted to the Court must be filed as a Joint Motion. Additionally, a proposed order must be submitted via email to **efile_Skomal@casd.uscourts.gov.** The proposed order must contain the full text of the stipulated protective order and be in Microsoft Word format. Please refer to Sections 2.f.4 and 2.h of the Court's Electronic Case Filing Administrative Policies and Procedures Manual for more information.

VII. General Decorum

The Court expects all counsel and parties to be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel. Professionalism and civility—in court appearances, communications with chambers, and written submissions—are of paramount importance to the Court. Personal attacks on counsel, parties, or court staff will not be tolerated under any circumstance. Inappropriate behavior will be subject to sanctions as provided in Civ. Local Rules 83.1 and 83.5.

VIII. Technical Questions Relating to CM/ECF

If you have a technical question relating to CM/ECF, please contact the CM/ECF Help Desk at (866) 233-7983.

IX. Inquiries Regarding Criminal Matters

All inquiries regarding criminal matters shall be directed to Judge Skomal's Courtroom Deputy, Trish Lopez, at (619) 557-7104.

Counsel is advised to be well versed in the local criminal rules.

Pro Bono Panel
Frequently Asked Questions

1. What expenses are reimbursable?

Pursuant to Civil Local Rule 83.8(a)(2) and the Pro Bono Plan, pro bono counsel may seek reimbursement for "out-of-pocket expenses, necessarily incurred by court-appointed attorneys representing indigents pro bono in civil cases not covered by the Criminal Justice Act...."

- a. What expenses can be reimbursed?
  - i. Any costs set forth in Civ. L.R. 54.1(b) as items taxable as costs at the end of the case are appropriate if they are "necessarily incurred." These include such items as transcripts, deposition costs, witness fees, and copies (please see the Rule for detailed explanations).
  - ii. Expert witness fees are excluded from the "costs" permitted under Civ. L.R. 54.1(b). However, upon an appropriately supported application submitted to the trial judge, the Court may authorize the payment of expert witness fees as a "necessarily incurred" expense.
- b. Can expenses be paid prior to the end of the case?
  - i. As a matter of course, pro bono counsel will be reimbursed for necessarily incurred expenses at the end of the case. Upon an appropriately supported application submitted to the trial judge, however, the Court may authorize the interim payment of expenses.
  - ii. In the event the represented party recovers costs, any out-of-pocket expenses paid out of the Pro Bono Fund must be redeposited into the fund.
- c. Attorney's and expert fees may also be awarded to a "prevailing part" "as part of the costs" pursuant to 42 U.S.C. § 1988(b) and (c). However, in civil actions brought by prisoners, 42 U.S.C. § 1997e(d) limits attorney's fees awards otherwise authorized by 42 U.S.C. § 1988.

2. Can I associate co-counsel?

If an appointed pro bono attorney wishes to associate counsel to assist in the matter, that associated attorney should also be a member of the panel.

3. What types of cases are referred under the Court's Pro Bono Plan?

The Court may refer any type civil case to pro bono counsel. As a matter of course, the majority of cases are civil rights actions filed by state prisoners under 42 U.S.C. § 1983 alleging constitutional violations in the conditions of their confinement.

4. At what stage of the proceedings are cases referred to pro bono counsel?

The Court may refer a case at any stage of the proceedings. However, most cases are post-summary judgment and ready for trial.

5. How flexible is the Court with regard to previously-set deadlines?

Although it is within the discretion of the individual trial judge, the Court appreciates the commitment of pro bono counsel and where possible will seek to accommodate counsel's

schedules even as to previously-set deadlines.

6. How long does the appointment last?

It is possible the Court could refer a matter for a particular and isolated proceeding, such as pretrial motions or settlement. Otherwise, the appointment is made through the conclusion of matters before this Court.

7. How often will an attorney or firm be appointed to a new pro bono matter

The Pro Bono Plan provides that a law firm or attorney will not be appointed to a new matter if they have previously been appointed within the last two years.

8. What if a Panel attorney or firm cannot accept a case?

The Pro Bono Plan provides that once a law firm or attorney becomes a member of the panel, the firm or attorney is expected to accept appointment, absent a conflict of interest or the presence of exceptional circumstances. Because the Court has limited resources, it must be able to rely upon the attorneys and law firms who join the Panel to honor their commitment. Nonetheless, nothing in the Plan provides for the imposition of sanctions against a Panel member who must decline an appointment.

Rebecca Church Jul 8, 2021 3 min read

An Opportunity for Growth: Call for Applications to the Pro Bono Panel

For the last decade, the U.S. District Court for the Southern District of California has been making pro bono appointments through the "Plan for the Representation of Pro Se Litigants in Civil Cases." *See* General Order 596. These pro bono appointments provide many benefits to the community including trial advocacy development in meaningful cases for attorneys, greater access to justice for litigants, and assistance with case management for the Court. Pro bono service also has an additional benefit: "It can strengthen your connection to your community and serve as a great reminder of what initially inspired you to become a lawyer."[1]

The vast majority of the cases referred to the District Court's Pro Bono Panel consist of civil rights cases filed by state prisoners challenging the conditions of their confinement, as well as related claims, pursuant to 42 U.S.C. § 1983.[2] The Pro Bono Plan addresses a significant and persistent need for our community given that cases filed by indigent prisoners without the assistance of counsel make up approximately 25% of all cases filed in the U.S. District Court, Southern District of California.[3]

Volunteers for the Pro Bono Panel have had impactful experiences that furthered their careers. Peter Stockburger, partner at Dentons, explains that volunteering for the Pro Bono Panel is "a very smooth process." He observes that "some attorneys are hesitant to volunteer for pro bono service because they are not an expert in the applicable law." However, Mr. Stockburger contends: "A volunteer attorney does not have to be an expert. Once you are in the program there are many resources available to you. You are not alone." He hopes that attorneys will overcome their hesitancy and give volunteer service a chance because "this is such a valuable pro bono experience compared to so many others because attorneys can get real trial experience in federal court while giving back to their community."

Long-time volunteer, Melissa Bobrow, founder of Law Office of Melissa Bobrow APC, first joined the program because she wanted an opportunity to appear in front of federal judges. Ms. Bobrow reflects that the experience has been "invaluable." Her frequent efforts volunteering for pro bono appointments led to an opportunity to work with the late Hon. Magistrate Judge David H. Bartick to improve the process of pro se plaintiffs filing complaints. She continues to recommend this experience for fellow attorneys, explaining: "The chance to negotiate, settle, or try a case for a younger attorney, under these conditions, is something every litigator should experience. Akin to how everyone should be in the food service industry at one point in their life."

Abbas Kazerounian, founding partner of Kazerouni Law Group, APC, explains that the Pro Bono Panel provides him with a unique opportunity to train associates at his firm: "A newer attorney can second chair a case, and for someone fresh out of law school, it's exciting, it's the big leagues." He has found that the lessons newer attorneys learn through pro bono trial service provides them with beneficial perspective by teaching "the importance of doing pretrial work and properly working up a case. You never again take anything for granted." Personally, Mr. Kazerounian appreciates the tremendous gratitude from the Court, reflecting: "Judges are very grateful, and they pay attention when you do these cases. It makes you feel good, and it shows them that there are attorneys who really care."

The Federal Bar Association, San Diego Chapter has been a longtime supporter of the Pro Bono Panel. The Chapter partnered with the Court and other representatives from the local bar to form the first panel of volunteer law firms and attorneys in 2011. More recently, this Chapter showed its continued support for the program by creating the "Distinguished Service Award," which provides that significant weight will be given to not only service to the FBA, but also volunteer programs offered by the Court such as the Pro Bono Panel. The FBA proudly continues to encourage the federal bar to volunteer their service.

If you are interested in serving your Court and community, as well as growing as a litigator, please reach out to Pro Bono Administrator Karen Beretsky at (619) 557-5693 or ProBonoAdministrator@casd.uscourts.gov.

By: Rebecca G. Church, President of the San Diego Chapter of the Federal Bar Association and past volunteer for the Pro Bono Panel.

[1] *Eight Reasons Why Lawyers Should Provide Pro Bono Services*, CALIFORNIA JUDICIAL COUNCIL (June 2, 2021).

[2] Appointments in these civil cases are made pursuant to 42 U.S.C. § 2000e et seq. and 28 U.S.C. § 1915(e)(1), and not pursuant to the Criminal Justice Act. Necessary expenses may be reimbursed pursuant to Civil Local Rule 83.8(a)(2) and 54.l(b) and prevailing parties may seek an award of attorney's fees under 42 U.S.C. § 1988.

[3] *See* United States District Courts — National Judicial Caseload Profile, DISTRICT COURT ADMINISTRATIVE OFFICE OF THE U.S. COURT'S FEDERAL COURT MANAGEMENT STATISTICS (May 22, 2021).

NOTICE

COURT SEEKS APPLICATIONS FOR PRO BONO PANEL

From: Chief Judge Dana M. Sabraw
Date: May 17, 2021

In August 2011, the U.S. District Court for the Southern District of California adopted a Plan for the Representation of *Pro Se* Litigants in Civil Cases pursuant to General Order 596. In partnership with the San Diego Chapter of the Federal Bar Association, the Court and representatives from the local bar formed a panel of law firms and attorneys qualified and willing to accept *pro bono* appointment in cases which the Court has determined appropriate for such representation.

Pursuant to the Pro Bono Plan as adopted by General Order 596, the Court is once again soliciting applications for new law firms and attorneys to serve on the Panel. Law firms and attorneys currently serving on the Panel will remain on the Panel and need not reapply.

Appointments of counsel from this Panel are made pursuant to 42 U.S.C. § 2000e et seq. and 28 U.S.C. § 1915(e)(1), and not pursuant to the Criminal Justice Act. Counsel from the Pro Bono Panel have and will be called upon to represent indigent plaintiffs asserting civil rights claims in the Southern District, most of whom are prisoners. Appointments may be made at the early stages of litigation, but are typically deferred until after summary judgment has been denied and a trial is anticipated.

Necessary out-of-pocket expenses incurred by Pro Bono Panel appointees will be reimbursed, upon properly supported request, out of the Court's Pro Bono Fund as provided in S.D. Cal. CivLR 83.8(a)(2). In addition, prevailing civil rights plaintiffs may seek an award of attorneys' fees under federal law.

The procedures for selection of law firms and attorneys to serve on the Panel, as well as applications to become a member of the Panel, can be found on the Court's website at https://www.casd.uscourts.gov/attorney/pro-bono-panel.aspx.

Questions should be directed to Pro Bono Administrator Karen Beretsky at (619) 557-5693 or ProBonoAdministrator@casd.uscourts.gov.

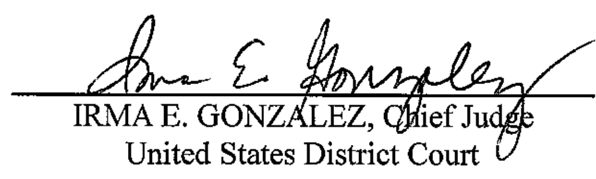
FILED
AUG 03 2011
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY UCS DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of)
ADOPTING PRO BONO PLAN) GENERAL ORDER NO. 596
)
)

The Court hereby adopts the attached Plan for the Representation of *Pro se* Litigants in Civil Cases.

Dated: 8/3/11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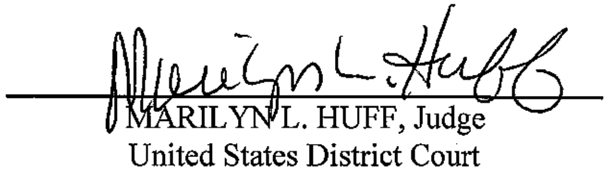
United States District Court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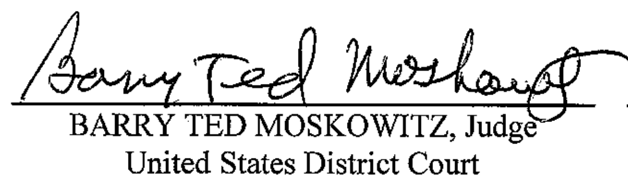
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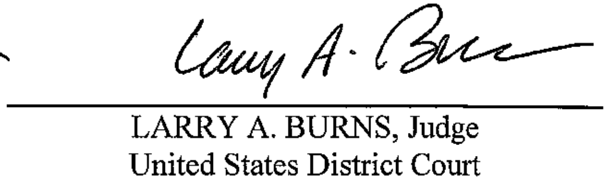
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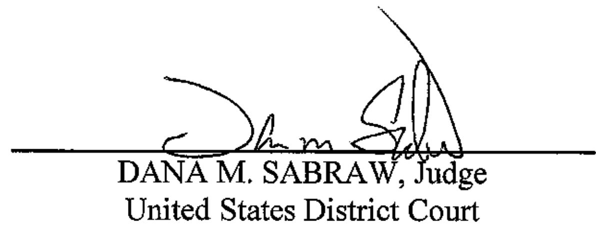
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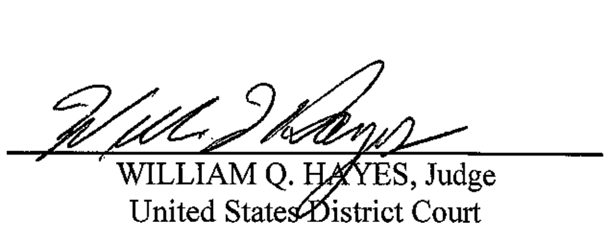
WILLIAM Q. HAYES, Judge
United States District Court

Plan of the United States District Court for the Southern District of California for the Representation of *Pro se* Litigants in Civil Cases

Selection of Attorneys to serve on Pro Bono Panel

The U.S. District Court for the Southern District of California will receive applications from law firms and attorneys willing to serve on a pro bono panel to provide representation to indigent civil plaintiffs. The Federal Bar Association - San Diego ("FBA-SD") and the Court will review the applications and compile a list of law firms and attorneys to participate on the pro bono panel. The factors to be considered in determining whether to include a law firm or attorney on the pro bono panel include the following:

1. for a law firm, the number of attorneys who are admitted to the bar of this Court and willing to serve as pro bono counsel;
2. for attorneys, the length time he or she has been a member of the bar of this Court;
3. the law firm or attorney's litigation and trial experience (civil or criminal);
4. the availability of personnel within a law firm or attorney's office, to consult and advise in languages other than English.

Once a law firm or attorney has been selected to serve on the pro bono panel, they will remain on the panel for a period of at least two years. The Court will solicit applications for new law firms and attorneys to serve on the panel on a rolling, as-needed basis. Any law firm or attorney who is placed on the pro bono panel should be willing to accept appointment, unless there exists a conflict, or unless the law firm or attorney has previously been appointed within the last two years.

Selection of cases appropriate for appointment of counsel

The assigned judge in a civil case filed by an indigent *pro se* litigant will determine whether such case is appropriate for the appointment of pro bono counsel, upon consideration of the following:

1. the inability of the *pro se* party to retain counsel by other means,
2. the potential merit of the claims as set forth in the pleadings,
3. the nature and complexity of the action, both factually and legally, including the need for factual investigation and evidentiary presentation at motions or trial,
4. whether the *pro se* party has another case pending before this Court and, if so, whether counsel has been appointed in such case;
5. the degree to which the ends of justice will be served by appointment of counsel, including the extent to which the Court may benefit from the appointment; and
6. any other factors deemed appropriate.

In addition, unless the Court determines based upon the above factors that counsel is not necessary, the Court may appoint counsel for purposes of trial as a matter of course in each prisoner civil rights case where summary judgment has been denied.

Nothing herein prevents the assigned judge from appointing counsel if it is apparent from the pleadings or other materials before the Court that the *pro se* civil plaintiff has mental or other disabilities substantially interfering with his or her ability to present the factual and legal claims and making an appropriate application for appointment of counsel.

Method of selection of counsel from the Pro Bono Panel

The Court will maintain a random-ordered list of law firms and attorneys who have been selected for the pro bono panel. When a judge determines appointment of pro bono counsel would be appropriate in a particular case, the judge's staff will prepare an historical memorandum, summarizing the procedural and factual history of the case as well as the nature of the legal claims asserted. The judge will forward this historical memorandum to the Court's pro bono administrator, who will transmit such memorandum along with a "Notice of Selection for Pro Bono Representation" to the next listed law firm or attorney on the random-ordered list.

Investigation of claim and acceptance of case

Within three weeks after receipt of the Notice, the selected Panel law firm or attorney will conduct a conflict check as well as an initial review and investigation of the civil plaintiff's claims. Thereafter, the panel law firm or attorney must return to the pro bono coordinator the "Pro Bono Panel Response Form," indicating (a) appointment is accepted, (b) appointment cannot be accepted due to a conflict, or (c) appointment cannot be accepted for another reason (such reason to be specified in the Response Form). Absent a conflict or the presence of exceptional circumstances, panel law firms and attorney are expected to accept appointment.

If the law firm or attorney cannot accept the appointment, the pro bono administrator will select the next listed law firm or attorney on the random-ordered list, and repeat the Notice process. Once a Panel law firm or attorney has accepted the appointment, the Court will notify the pro se litigant and enter an order of appointment.

Reimbursement of expenses

Local Civil Rule 83.8 (a)(2) provides that pro bono counsel may be reimbursed for their necessarily incurred out-of-pocket expenses. A sample form to claim such expenses can be found on the Court's website.

The provisions of this Plan are to be broadly interpreted in the interests of justice. Nothing herein is intended to limit (a) the ability of the Court to make alternative provisions for the appointment of counsel, (b) the ability of pro se litigants to represent themselves, or (c) the ability of counsel to request to be relieved if circumstances so require.