

HONORABLE CATHY ANN BENCIVENGO
U.S. DISTRICT JUDGE
CIVIL CASE PROCEDURES

Chambers

United States District Court
Southern District of California
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San Diego, CA 92101
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Court Reporter

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Unless otherwise ordered, matters before Judge Bencivengo will be conducted in accordance with the rules stated below. Unless specifically stated, counsel and *pro se* litigants are expected to follow the Federal Rules of Civil Procedure, the Civil Local Rules for the Southern District of California, the Electronic Case Filing Administrative Policies and Procedures Manual (the “ECF Manual”), and other applicable rules. The Civil Local Rules and the ECF Manual are available on this District’s website at: <https://www.casd.uscourts.gov/rules/local-rules.aspx>.

I. COMMUNICATIONS WITH CHAMBERS

A. Telephone Calls: *Parties seeking a motion date for a noticed motion should refer to Section II.* Telephone calls to Chambers are rarely appropriate. Such calls may **only** be made by **counsel** or **pro se litigants** with knowledge of the case. *Calls from secretaries, legal assistants, paralegals, or parties represented by counsel are prohibited.* Counsel and *pro se* litigants **should not** call Chambers with procedural questions or to inquire whether any action has been taken with regard to a previously submitted filing. The Court does not provide time estimates for its written rulings. **Court personnel are prohibited from giving legal advice or discussing the merits of a case.**

When calling chambers, be prepared to identify your case by case name and case number so your call can be directed to the appropriate law clerk. If your call is not answered, you may leave a voicemail, including your name, contact information, case number, and a detailed message. Upon reviewing your voicemail, the Court may return the call if necessary.

B. Letters, Faxes, or Emails: Letters, faxes or emails to Chambers are prohibited unless specifically requested by the Court. If letters, faxes or emails are requested, copies of the same must be simultaneously delivered to all counsel and, absent prior approval by Chambers, must not exceed three pages in length, using twelve-point font. Correspondence with the Court must state the manner in which it was served on all other counsel (e.g., “By Hand,” “By Express Mail”). Copies of correspondence between counsel must not be sent to the Court unless specifically requested by the Court.

C. Courtesy Copies: Parties do not need to provide courtesy copies unless specifically requested by the Court.

II. NOTICED MOTIONS

- A. Motion Dates:** Parties filing a noticed motion must set the hearing date to be thirty five (35) days from the motion's filing date.¹ **Parties should *not* contact chambers for a motion hearing date.**² Opposition and reply briefs are due based on the noticed date. The hearing date on a motion does not indicate a date when appearances are necessary; rather, it sets the briefing schedule for the motion pursuant to the applicable local rules. Consequently, the filing party will *not* specify a hearing time on its motion, and will include the following language in the caption of the motion: PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT. A party may request oral argument by filing a separate request that explains why oral argument would be helpful to the Court. If the Court grants a request for oral argument or *sua sponte* decides to hear oral argument, the Court will issue an order setting forth the date and time for oral argument.
- B. Proposed Orders:** Proposed orders will only be submitted on non-dispositive, procedural motions in accordance with Section 2(h) of the ECF Manual. Counsel should email proposed orders in Word format directly to efile_bencivengo@casd.uscourts.gov.
- C. Summary Judgment Motions:** Notwithstanding Civil Local Rule 7.1.f.1., Separate Statements of Fact will **NOT** be filed.
- D. Exhibits/Unreported Cases:** All exhibits submitted in support of motions should be excerpted to include only relevant material. All exhibits must be clearly labeled, dated, tabbed, and indexed. Copies of documents already contained on the electronic docket will not be included as exhibits. Such documents should be cited in the text of the motion as [Doc. No. ___ at ___] referencing the docket number of the document cited and using the ECF generated page number for pinpoint cites. For cases not assigned to a reporter for publication, WESTLAW citations should be given, if available. Citations to cases not available in WESTLAW or LEXIS should be accompanied by copies of the cases cited.
- E. List of Terms/Names:** For technical motions (especially in patent cases), one week prior to the motion hearing, the parties will send an email to chambers (but do not file) with a list of pertinent technical terms and/or proper names, the purpose of which is to assist the court reporter in the transcription of the hearing.
- F. Unopposed Motions:** An opposing party's failure to timely file an opposition to any motion may be construed as consent to the granting of the motion pursuant to Local Rule 7.1.f.3.c.

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

² This rule supersedes the requirement of Local Rule 7.1.b that a motion date must be obtained from chambers.

III. TELEPHONIC APPEARANCES

Telephonic appearances are allowed **only if specifically approved or requested** by the Court. All requests by parties to appear telephonically will be made by filing a document entitled “*Ex Parte* Application for Telephonic Appearance,” setting forth good cause for the request to appear telephonically. The *ex parte* application will be filed at least one week prior to the hearing.³ If the application is granted, the Court’s order will include the teleconference dial-in information.

IV. EX PARTE MOTIONS

Before filing any *ex parte* motion, counsel will contact the opposing party to meet and confer regarding the subject of the *ex parte* motion. All *ex parte* motions will be accompanied by a declaration from the movant documenting (1) efforts to contact opposing counsel, (2) counsel’s good faith efforts, in person or by telephone, to meet and confer to resolve differences with opposing counsel, and (3) opposing counsel’s general position regarding the *ex parte* motion. Any *ex parte* motion filed with the Court will be served on opposing counsel via fax, electronic mail with return receipt requested, or overnight mail. *Ex parte* motions that are not opposed within **two Court days** will be considered unopposed and may be granted on that ground.

V. PROTECTIVE ORDERS AND REQUESTS TO FILE UNDER SEAL

Although the Court acknowledges the parties’ desire to maintain the confidentiality of documents produced in discovery, “[w]hen discovery material is filed with the court [] its status changes.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). The public policy reasons behind a presumption of access to judicial documents apply. *Id.* The common law and the Constitution afford the public a qualified right of access to judicial records and proceedings. *Times Mirror Co. v. U.S.*, 873 F.2d 1210, 1211 n.1 (9th Cir. 1989); *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010).

In the Ninth Circuit there is a strong presumption in favor of access to court records and a party must show **compelling reasons** to file materials under seal as part of a non-discovery motion, even if they were produced subject to a discovery protective order. *See Foltz*, 331 F.3d at 1135-36. Once the protected discovery documents are made part of a dispositive [or non-discovery] motion, “they lose their status of being raw fruits of discovery” and no longer enjoy protected status without some overriding interests in favor of keeping the material confidential. *See id.*, at 1136.

Court records should be sealed to keep confidential only what must be kept secret, temporarily or permanently, as the situation requires. The party seeking to file under seal must provide articulable facts showing a compelling reason to limit public access to court filings. That a litigant might be embarrassed or exposed to additional liability or litigation, without more, is not sufficient. *See Foltz*, 331 F.3d at 1136. A court’s decision to seal material must be based on a compelling reason

³ If the Court sets a hearing with less than a week’s notice, the parties shall file their *ex parte* application for telephonic appearance as soon as possible.

and the order allowing a filing under seal must articulate the factual basis for its ruling without relying on hypothesis or conjecture. *See Pintos*, 605 F.3d at 679. “A ‘good cause’ showing will not suffice to fulfill the ‘compelling reasons’ standard that a party must meet to rebut the presumption of access to dispositive pleadings and attachments.” *Id.* (citing *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)).

Because the party that designated material as confidential should have the burden (and expense) of moving to file such documents under seal, the following procedures will apply when a party intends to file a non-discovery motion before Judge Bencivengo that cites to or attaches documents designated confidential.

- A. If the party filing the non-discovery motion (or opposition thereto) intends to cite or attach documents or information that it believes should be filed under seal, the moving party must file a motion to file documents under seal at least **seven calendar days** prior to the date on which it intends to file the non-discovery motion. The proposed sealed documents should **NOT** be lodged on CM-ECF with the motion to file documents under seal. Rather, a courtesy copy of the (filed) motion to file documents under seal, along with a courtesy copy of the unredacted (unfiled) materials that the party wants to file under seal, will be delivered to Judge Bencivengo’s Chambers within 24 hours of filing. After receiving a ruling from the Court on the motion to file documents under seal, the party may file its substantive motion (or opposition) consistent with the Court’s order and may then lodge any documents authorized to be sealed on CM-ECF by linking the sealed lodged documents to the original motion to file documents under seal.

- B. If the party filing the motion (or opposition thereto) intends to cite or attach documents or information that another party has designated as confidential pursuant to a protective order entered in the case, it will serve notice to the designating party by email, no later than **eight business days** prior to the date it intends to file the non-discovery motion or opposition, specifically identifying the documents and information it is contemplating using in connection with the motion or opposition. The designating party will then have **four business days** from the date of the notice to file a motion to file documents under seal. The proposed sealed documents should **NOT** be lodged on CM-ECF with the motion to file under seal. Rather, a courtesy copy of the (filed) motion to file documents under seal, along with a courtesy copy of the unredacted (unfiled) materials that the party wants to file under seal, will be delivered to Judge Bencivengo’s Chambers within 24 hours of filing. After receiving a ruling from the Court on the motion to file documents under seal, the party may file its substantive motion (or opposition) consistent with the Court’s order and may then lodge any documents authorized to be sealed on CM-ECF by linking the sealed documents to the original motion to file documents under seal. If the designating party does not timely file a motion to file documents under seal, the confidential designation will be deemed waived, and the party seeking to use the documents or information will file it publicly in connection with its motion or opposition.

VI. TRIAL PRACTICE AND PROCEDURES

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

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

- B. Pretrial and Trial:** Unless otherwise ordered by the Court, issues concerning trial such as motions *in limine*, jury instructions, and proposed voir dire will be discussed with the Court at the Pretrial Conference.
- C. Trial Schedule:** Trial generally proceeds from 9:00a.m. to 4:30p.m., Monday through Thursday, unless the Court schedules otherwise. Jury deliberations generally proceed from 9:00a.m. to 4:30p.m., Monday through Friday, unless the Court schedules otherwise.

UPDATED 9/9/24