

**HONORABLE D. THOMAS FERRARO**  
**U.S. MAGISTRATE JUDGE**  
**CHAMBERS' RULES**  
**CIVIL PRETRIAL PROCEDURES**  
Updated: January 7, 2025

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The Court provides this information for general guidance to counsel. 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 always courteous and respectful, 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 2.1 (Professionalism).

**II. Communications with Chambers**

Except for scheduled telephonic conferences and as provided in Section XI. of these Rules, calls or emails to chambers are permitted only for administrative, non-substantive matters such as scheduling and calendaring. Court personnel are prohibited from giving legal advice or discussing the merits of a case on an ex parte basis. When calling chambers, be prepared to identify your case number. Before contacting chambers, closely read all orders issued in the case, these Rules, the Court's Local Rules, and CM/ECF Administrative Policies and Procedures Manual, which are available on the Court's website. Only call if those resources do not provide an answer to your inquiry. Law clerks will not discuss procedural issues with anyone other than counsel for the parties or parties appearing in their matters pro se.

The chambers telephone number is (619) 557-6627. The email address is [efile Ferraro@casd.uscourts.gov](mailto:efile_Ferraro@casd.uscourts.gov).

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

**III. 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 engage in a Federal Rule of Civil Procedure 26(f) conference, file a Rule 26(f)(3) Joint Discovery Plan, serve Rule 26(a)(1) initial disclosures, lodge ENE statements, and attend the ENE/CMC.

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

The Court conducts the Rule 16(a) CMC immediately following the ENE, if the parties do not reach a settlement. A candid discussion with Judge Ferraro allows him 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.

**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 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*. 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 Ferraro at [efile\\_Ferraro@casd.uscourts.gov](mailto:efile_Ferraro@casd.uscourts.gov). Exhibits to ENE statements are not required or recommended. If the total number of pages including exhibits is fifty (50) pages or less, you may lodge the ENE statement via email at [efile\\_Ferraro@casd.uscourts.gov](mailto:efile_Ferraro@casd.uscourts.gov). If the submission exceeds fifty (50) pages the document must be delivered to:

United States District Court  
Southern District of California  
Attn: Magistrate Judge D. Thomas Ferraro  
333 West Broadway, Suite 1010  
San Diego, CA 92101

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. 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);<sup>1</sup>
4. A brief description of any previous settlement negotiations or mediation efforts;
5. If any video or audio recording exists of the incident(s) on which plaintiff’s(’) claims are predicated, counsel must lodge the video as an exhibit to the ENE statement. The video must be lodged by delivering a USB flash drive to the address above; and

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<sup>1</sup> 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 able to state a settlement demand.

6. In cases alleging violations of any or all of the Song-Beverly Consumer Warranty Act, the Magnuson-Moss Warranty Act, the Fair Debt Collection Practices Act, the Rosenthal Fair Debt Collection Practices Act, the Truth in Lending Act, or the Fair Credit Reporting Act in which the plaintiff alleges a claim for statutory attorneys' fees, an itemized billing statement detailing all costs and fees sought by the plaintiff as of the date of the ENE.<sup>2</sup>

**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 Rule 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 Rule 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

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<sup>2</sup> The bill should be attached to the settlement statement as "Exhibit A," and is excluded from the five-page limit. The bill may be judiciously redacted if necessary to preserve the attorney-client privilege, but only so far as is strictly necessary to preserve the privilege. Counsel should also be prepared to submit an unredacted version of the bill for *in camera* review at the Court's request.

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 Ferraro’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.

#### **IV. 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 fact discovery and before the expert discovery deadline, however, the parties may request the MSC be held at another time. The Court typically sets a Status Conference approximately one month before the MSC. The Court expects counsel for the parties to address at the Status Conference whether the MSC should proceed on the date originally set, or if the interests of the case would be better served setting the MSC for a different date and why.

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 or emailing a law clerk.

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

#### **V. Time Allotment**

The Court typically holds ENEs, MSCs, and VSCs between 9:30 a.m. and 12:00 p.m. or between 2:00 p.m. and 5:00 p.m. Requests for additional time may be made by placing a joint call or email to Chambers after counsel have met and conferred.

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

Requests to continue an ENE, MSC, or VSC may be made by placing a joint call or email to Chambers after counsel have met and conferred. The request must be made as soon as counsel is aware of the circumstances warranting a continuance. The parties must keep in mind that Local Rule 16.1.c.1 requires the ENE takes place within 45 days of the filing of the first answer.

All other requests to continue hearings or to amend the Scheduling Order deadline must 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 meet and confer.

***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.**

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, Rule 16;
4. If a request to amend the Scheduling Order includes a continuance of any discovery deadlines, the requesting party(ies) must provide a concise summary of the moving parties' efforts at taking discovery, a concise summary of the discovery for which a continuance is requested, and an explanation of why the parties could not timely obtain the needed discovery. Generally, diligence in pursuing discovery is a necessary condition of extending any discovery deadline but is not in and of itself sufficient.
5. Whether counsel met and conferred;
6. Whether the request is opposed and why;
7. Whether the requested continuance will affect other case management dates; and
8. 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.<sup>3</sup>

Joint Motions for Continuance of Scheduling Order Dates must also include supporting declarations by counsel. Counsel are reminded they must "take all steps necessary to bring an action to readiness for trial." Civil Local Rule 16.1.b. The Scheduling Order will not be modified "except upon a showing of good cause." Fed. R. Civ. P. 16(b).

Requests to amend the Scheduling Order may be denied if the proposed amendments necessitate an extension of the final pre-trial conference and/or trial date.

**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

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<sup>3</sup> A Scheduling Order will not be continually amended to accommodate the parties' desire to limit costs while engaging in private mediation.

VSC setting), counsel must promptly file a Notice of Settlement, call, or email 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. Counsel must meet and confer by telephone, video conference, or in-person. In no event will meet and confer letters or emails satisfy this requirement.

Prior to meeting and conferring regarding disputes over written discovery, counsel must read Judge Ferraro’s General Considerations for Written Discovery, which is available on the Court’s website.

### **B. Deadlines for Raising Discovery Disputes – The 30 Day Rule**

The Court will not rule on a discovery dispute that is brought to the Court’s attention more than 30 days after the date upon which the event giving rise to the dispute occurred absent a showing of good cause. The parties must file a joint motion demonstrating good cause if they seek to extend the 30-day deadline. If the parties do not alert the Court that they are attempting to resolve their dispute, and the 30-day deadline passes, the Court will consider the issue waived and the party will be barred from filing a corresponding discovery motion. The parties cannot extend the deadline by any agreement that is not approved by the Court.

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 counsel reach an impasse in meet and confer efforts.

### **C. Raising Unresolved Written Discovery Disputes with the Court**

Discovery motions may not be filed without leave of Court.

If the parties fail to resolve their dispute through the meet and confer process, then counsel for all

parties shall email a Joint Discovery Statement to the Court. The Joint Statement shall not exceed three pages and shall include:

1. A statement as to whether the moving party has complied with the 30-day Rule;
2. Each discovery request in dispute;
3. A brief, non-argumentative statement, not exceeding 100 words of each party's position on the dispute;
4. Three dates within the next 10 days on which counsel for all parties are available for a conference with the Court or the Court's staff if the Court so orders;
5. A statement describing the parties in-person or telephonic meet-and-confer efforts; and
6. Attached exhibits of the discovery responses at issue that include the text of the request, the response, and any objections. Counsel should provide excerpts of only the discovery responses at issue, not the entire set of responses.

The Joint Statement should not include copies of any meet-and-confer letters.

After reviewing the Joint Statement, the Court will provide further guidance to the parties on how best to present the issue to the Court for resolution.

**D. Disputes Arising During a Deposition**

If the dispute arises during a deposition, counsel should suspend the deposition and immediately meet and confer. If the dispute is not resolved after meeting and conferring, counsel may call Judge Ferraro's chambers to potentially receive an immediate ruling on the dispute. If Judge Ferraro is available, he will either rule on the dispute or give counsel further instructions on how to proceed. If he 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 Rule 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.

**E. Discovery Motions**

If Judge Ferraro requests 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 Rules 26 through 37 and 45, ex parte or otherwise, without complying with the procedure set forth in these Chambers Rules regarding discovery disputes.

## **IX. Privilege Logs**

Any party withholding documents based on 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 each withheld document. At a minimum, the index shall include the following information:

1. Bates number range of the document;
2. Date of 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(s) (i.e., party asserting privilege);
9. Attorney(s) involved, and client(s) 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.

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 contact the Court's law clerk at (619) 557-6627 or [efile\\_Ferraro@casd.uscourts.gov](mailto:efile_Ferraro@casd.uscourts.gov) 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**

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\\_Ferraro@casd.uscourts.gov](mailto:efile_Ferraro@casd.uscourts.gov).

The parties are encouraged to use this District's model protective order, which is included in the Court's Civil Local Rules and are available on the Court's website. If the parties use the Court's model protective order, the third sentence of Paragraph 13 should be modified as follows:

***If the dispute is not resolved consensually between the parties, the parties must follow the procedures set forth in the assigned Magistrate Judge's Chambers Rules regarding resolution of discovery disputes.***

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. Parties seeking a protective order that differs from the Court's model order must also:

1. Include a provision that any dispute over a confidentiality designation must be handled in accordance with the assigned Magistrate Judge's Chambers Rules regarding resolution of discovery disputes; and
2. Incorporate the following language:

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

## **XII. 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 five court 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 five court days of service.

## **XIII. Lodgments, Courtesy Copies, & Proposed Orders**

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 fifty (50) pages or less, you may lodge the document via email at [efile\\_Ferraro@casd.uscourts.gov](mailto:efile_Ferraro@casd.uscourts.gov). If the submission exceeds fifty pages, the document must be delivered directly to the Court through the intake window on the fourth floor of the Carter-Keep Courthouse.

Courtesy copies are unnecessary in a civil case unless specifically required by these rules or by separate Order of the Court.

Proposed orders in civil cases are only necessary for stipulated protective orders and stipulated ESI protocols. If the Court requires a proposed order on an ad hoc basis, the Court will contact counsel for the moving party via email.

Proposed orders must not include an attorney or law firm caption on the title page or side margin.