HONORABLE MICHELLE M. PETTIT
UNITED STATES MAGISTRATE JUDGE
CIVIL CHAMBERS RULES

The Court provides this information as general guidance to counsel and litigants. Please note the Court may modify these procedures as appropriate in any case.

The parties must also consult and comply with the Rule 26(f) Conference Checklist for the Southern District of California on the Court 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 Civil Local Rule 2.1 (Professionalism).

II. COMMUNICATING WITH CHAMBERS

Chambers' staff includes two law clerks and one courtroom deputy. The courtroom deputy handles all inquiries on criminal matters, including during magistrate judge criminal duty week. The telephone number for the courtroom deputy is (619) 695-5869.

The law clerks handle all inquiries on civil matters. The telephone number for the law clerks is (619) 557-3404. The email address for communications to the law clerks and the courtroom deputy is efile_Pettit@casd.uscourts.gov.

Court personnel are prohibited from giving legal advice, discussing the merits of a case, or discussing when or how the Court will rule on a disputed matter.

Telephone calls and emails to Chambers are permitted for administrative matters such as scheduling and calendaring. **Appropriate calls or emails to Chambers should be made by attorneys of record only.** Copies of emails must be simultaneously delivered to all counsel, unless otherwise directed by the Court (e.g., confidential Early Neutral Evaluation statements and confidential Settlement Conference statements).

III. MEET AND CONFER REQUIREMENT

The Court places a high value on the meet and confer process, as it is the Court's experience that the vast majority of disputes can be resolved without the necessity of court intervention through this process when counsel thoroughly meet and confer in good faith.

Prior to 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 to discuss thoroughly the substance of each issue in dispute and any potential resolution of that issue. Depending on the issue or issues involved, numerous efforts may be required to address thoroughly the issue(s) in good faith. Under no circumstances may the parties satisfy the meet and confer requirement by exchanging emails or other written correspondence without a face-to-face

discussion (i.e., in person or via videoconference).[1] This requirement applies to all motions filed before Judge Pettit other than summary judgment or habeas petitions. In any notice of motion filed with the Court, counsel for the moving party must include a statement to the following effect: "This motion is made following the conference of counsel that took place [in person/ via videoconference] on [date]."

The Court expects strict compliance with this meet and confer requirement when "meet and confer" is referenced below.

IV. IMPORTANCE OF CONTRIBUTING TO DEVELOPMENT OF THE BAR

The Court values the importance of providing opportunities for court appearances and conference participation for less experienced attorneys and encourages parties to give attorneys with fewer than ten (10) years of experience the opportunity to argue motions and meaningfully participate in settlement conferences and pre-motion discovery conferences before the Court, particularly where that attorney played a substantial role in drafting the underlying filing or matter.

In support of this policy, the Court encourages the following types of requests:

(1) to allow for oral argument when the Court would normally rule on the papers;

(2) to allocate additional time for oral argument beyond what the Court otherwise might have allocated were a newer attorney not arguing the motion;

(3) to bifurcate oral argument such that a newer attorney argues only a portion of the motion while a more senior attorney argues the rest; and

(4) to permit another more senior attorney of record to accompany and provide some assistance to the newer attorney who is arguing the motion, where appropriate during oral argument.

The Court recognizes there may be many different circumstances in which it is not appropriate for a newer attorney to argue a motion. Thus, the Court emphasizes that it draws no inference from a party's decision to not have a newer attorney argue any particular motion before the Court. Additionally, the Court will draw no inference about the importance of a particular motion, or the merits of a party's argument regarding the motion, from the party's decision to have (or not to have) a newer attorney argue the motion.

V. EARLY NEUTRAL EVALUATION ("ENE") AND CASE MANAGEMENT CONFERENCES ("CMC")

The ENE is a multi-purpose conference. The conference is informal, off-the-record, and confidential. CivLR 16.1(c). It is an opportunity for the parties to educate Judge Pettit and each other regarding their claims and defenses. A candid discussion allows Judge Pettit 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

[1] This requirement does not apply in actions involving unrepresented prisoners where a face-to-face discussion may be impractical. In such cases, the parties satisfy the meet and confer requirement by telephone.

assistance of Judge Pettit, before costs and fees become significant factors or impediments in resolving the dispute. The ENE typically will not be scheduled until Answers have been filed for all significant defendants.

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, including directions regarding briefing and requirements for personal attendance by the parties. **Please read this order carefully**. The order will also 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.

This Court has no preference regarding conducting conferences via video conference or in person. The Court typically sets the ENE and CMC to occur via videoconference for ease of scheduling and will hold the conferences in person when requested by the parties. If only one party requests to proceed in person for the ENE and CMC, the Court may allow a hybrid method of proceeding if there is no objection from the opposing party. All parties appearing remotely must have the technological capability (e.g., a WiFi hot spot and laptop or other electronic device with internet connectivity) to appear by videoconference to record settlement terms on the record or convene the CMC.

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. The Court will then issue a Scheduling Order following the CMC.

VI. MANDATORY SETTLEMENT CONFERENCES ("MSC")

A. In-Person Conferences: If a party prefers to appear for the conference in person, counsel shall email Judge Pettit's Chambers (efile_Pettit@casd.uscourts.gov) within fourteen days of the order setting the MSC, with counsel for all parties copied, indicating the party's request to proceed in person. The same requirements apply as stated directly above if only one party is appearing in person.

B. Who Must Attend: Lead trial counsel shall appear at the MSC with the parties. Any party who is not a natural person shall be represented by the person(s) with full authority to negotiate a settlement. An insured party shall appear with a representative of the carrier with full authority to negotiate up to the limits of coverage. Limited authority (i.e., authority up to a specific dollar amount) is not full authority. A person who needs to call another person who is not present before agreeing to any settlement does not have full authority. Personal attendance of a party is mandatory and will only be excused upon a written request that is timely under the circumstances and demonstrates extraordinary hardship.[2]

[2] If either counsel or party is located in a different time zone, the Court will endeavor to hold the conference at a convenient time for all parties. The parties shall meet and confer and then propose a mutually convenient time to the Court via email in accordance with these Chambers Rules. This applies to all settlement conferences.

C. Plaintiff Must Make a Formal Settlement Proposal: No later than twenty-eight calendar days before the MSC,[3] the plaintiff must serve on the defendant(s) a written settlement proposal, which must include a specific demand amount. The defendant(s) must respond to the plaintiff in writing with a specific offer amount no later than twenty-one calendar days before the MSC. The parties shall not file or copy the Court on these exchanges.

D. Meet and Confer: No later than fourteen calendar days before the MSC, counsel for the parties must meet and confer via videoconference to discuss the settlement demand and at least the following:

1. Who will attend the MSC on behalf of each party, including counsel, client representatives with full authority to make final decisions regarding any settlement offer, and any insurance representatives;
2. Identification of any persons or entities, such as a board of directors, who must approve a proposed settlement agreement, as well as the nature and duration of any approval process; and
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 the status of any tenders for coverage.

E. MSC Statement: No later than ten calendar days before the MSC, each party must submit a MSC Statement (not to exceed ten pages) that will be exchanged with the other parties. Any exhibits must be limited to twenty pages. Each party may also submit an optional Confidential Settlement Letter (not to exceed five pages) that will be for the Court's review only. Both the MSC Statement and the Confidential Letter (if one is submitted) shall be lodged (not filed) with the Court via email.

F. Contents of the MSC Statement: The MSC Statement must be served on opposing counsel and include at least the following:

1. A brief statement of the facts of the case;
2. A brief statement of the claims and defenses, including the statutory or other grounds upon which the claims are founded; a candid evaluation of the parties' likelihood of prevailing on claims and defenses; and any major issues in dispute;
3. A statement of facts not reasonably in dispute;
4. A list of the key facts in dispute and the specific evidence relevant to a determination of those facts;
5. Any discrete issue that, if resolved, would facilitate the resolution of the case;
6. A brief statement of the issues of law with respect to liability and damages. The statement must be supported by legal authority, but extended legal argument is not necessary;
7. A statement of the relief sought, including an itemization of damages and any other non-monetary relief. If a class is alleged, the number of putative class members and any other information relevant to settlement discussions (e.g., number of pay periods, etc.); and
8. Except to the extent prohibited by applicable rules of privilege, a summary of any prior settlement negotiations, including the settlement proposals exchanged pursuant to paragraph VI(C) above.

[3] The deadlines in a specific court order control over these general guidelines.

In addition to the information listed above, if a party seeks attorney fees and costs, that party shall provide the legal basis for the claim and sufficient information to evaluate the amount of fees claimed. The party shall be prepared to provide the Court with itemized billing records during the conference to support any fees and costs the party seeks to recover.

VII. PRE-SETTLEMENT CONFERENCE CALLS WITH COUNSEL

In certain cases, the Court may elect to hold an optional telephonic conference with counsel only to prepare for the upcoming Settlement Conference. The intended purpose of this conversation is for the Court's benefit in assessing, in advance of the Settlement Conference, settlement prospects and each party's concerns, challenges, and whether the Court can assist in alleviating them. These conversations will be confidential and off the record. Counsel of record must be present on all calls with the Court.

VIII. REQUESTS FOR CONTINUANCES, ETC.

A. Joint Motion: Any administrative request to the Court (e.g., extension of time, continuance of ENE or MSC, 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. Ex parte motions are appropriate only in exigent circumstances when the opposing party or 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. Any ex parte motion filed without first attempting to reach the opposing party will be denied unless the exigent circumstances are apparent on the face of the motion. Counsel who force an ex parte application by refusing to participate in the filing of a joint motion will be subject to sanctions.

B. Contents: 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.

Any 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 the request could not have been made earlier for reasons not within counsel's control.

IX. AMENDING THE SCHEDULING ORDER

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

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 seven calendar days in advance of the dates and deadlines at issue. Any motion filed fewer than seven 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. Contents: 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. Motions requesting to amend any date or deadline in the Scheduling Order shall include the following:

1. A showing of good cause for the request. Fed. R. Civ. P. 6(b), 16(b)(4).
2. 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).
3. 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.
4. The number of previous requests to amend.
5. 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.

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 dates and deadlines set forth in the Scheduling Order continue to be operative.

X. DISCOVERY DISPUTES

A. Meet and Confer in Good Faith: The parties must meet and confer in an attempt to resolve any issues before contacting the Court. See CivLR 26.1(a). Pursuant to the requirements of Civil Local Rule 26.1(a), lead counsel of record 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 meet and confer promptly 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 videoconference**.[4] **Under no circumstances may counsel satisfy the "meet and confer"**

[4] Please note the requirement for conferring by videoconference where counsel practice in different counties supplements Civil Local Rule 26.1(a). As noted above, this requirement does not apply to actions involving unrepresented prisoners.

obligation by only written correspondence. The Court expects strict compliance with 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 subject to sanctions. If a party or lawyer fails to respond to opposing counsel's request to meet and confer for more than three business days, counsel may contact Chambers and request a pre-motion conference or appropriate briefing schedule.

B. Discovery Conference: After meet and confer attempts have failed, the movant must email Chambers at efile_Pettit@casd.uscourts.gov seeking a conference 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; (3) one to two sentences describing (not arguing) each parties' position; and (4) a list of key authorities, if any, the parties believe are potentially dispositive of the dispute (e.g., if one party relies on a specific case to establish the relevance of the discovery sought). The movant must copy opposing counsel on the email.

No discovery motion may be filed unless the movant has obtained leave of Court, which will not normally be authorized until after a pre-motion conference. The Court may strike any discovery motion filed without complying with this process.

This process does not apply where a party is in custody and is proceeding pro se. In that case, the pro se party may file a discovery motion after meeting and confer with the opposing counsel in compliance with these Chambers Rules. In these cases, counsel for the Defendant must contact Chambers by telephone to obtain a hearing date on a noticed discovery motion.

C. Deposition: 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 shall 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) 557-3404 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.

D. 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 below) no later than thirty calendar 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.

E. Discovery Motions: A motion seeking to resolve a discovery dispute requires advance permission from the Court. If leave of Court is granted, the Court will issue a briefing schedule, often on an expedited basis, as the Court believes it is important to resolve

discovery disputes as soon as practicable. To that end, the parties should be prepared to file their motion and opposition in a shortened time frame.

Any discovery motion must include:

1. A declaration from lead trial counsel establishing compliance with the in-person or videoconference meet and confer requirement;
2. The exact wording of the discovery request and response in dispute; and
3. An explanation as to why the response is inadequate, precisely what additional information the moving party is seeking including any offers to narrow the request, and the legal authority supporting the motion.

Counsel must also include 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.

Counsel 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.

F. Discovery Hearings: The Court rarely conducts discovery hearings. Discovery disputes will be resolved on the filed pleadings without oral argument unless the parties are notified the Court will hear oral argument.

XI. 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 assess the basis for withholding the documents. Fed. R. Civ. P. 26(b)(5). 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.

XII. PROTECTIVE ORDERS

The Court encourages use of Judge Pettit's model protective order, which is available on Judge Pettit's page on the Court's website available at https://www.casd.uscourts.gov/Judges/Judge-Info.aspx.

If the parties jointly seek a protective order that differs from Judge Pettit'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 showing any changes from Judge Pettit's model.

All stipulated protective orders must be filed as a joint motion and contain the following 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 who 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 parties must also lodge the proposed protective order in Word format by email to efile_Pettit@casd.uscourts.gov.

XIII. FILING DOCUMENTS UNDER 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.

The party seeking to file a document under seal must comply with Civil Local Rule 79.2 and Section 2.j of the ECF Manual.

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 four 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 four business days of service.

XIV. NOTICE OF SETTLEMENT

If the case is settled in its entirety, counsel must promptly file a Notice of Settlement or an appropriate dismissal under Fed. R. Civ. P. 41. If a scheduled date with this Court is imminent, counsel also must promptly call Chambers at (619) 557-3404 or email the Court's efile with all parties copied. 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 Rule 41 dismissal.

If the Notice of Settlement includes a request to vacate court-issued dates or deadlines, the parties must file the notice as a Joint Motion to vacate deadlines.

XV. MISCELLANEOUS MATTERS

A. Conferences via Zoom: Zoom information for all conferences except for settlement conferences will be posted on the docket. The Court will email Zoom information for settlement conferences to counsel of record only.

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

C. Conference Calls: When an order, minute order, or other notice from the Court directs the parties to "jointly call Chambers," the initiating party (plaintiff's counsel unless designated otherwise) shall 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. The Court requires counsel of record to appear on all calls with the Court.

D. Technical Questions Relating to CM/ECF: Guidance regarding CM/ECF is available in the Electronic Case Filing Administrative Policies & Procedures Manual and the User's Manual for Electronic Case Filing found on the Court's website. Parties may also direct technical questions to the CM/ECF Help Desk at (866) 233-7983.

E. Transcripts: Transcript orders for proceedings before Judge Pettit 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. If any party knows they may order a transcript of a hearing or conference held by Zoom, they should notify the Court in advance of the remote hearing or conference.

F. Courtesy Copies: Please do not provide courtesy copies unless expressly requested by the Court.

G. Proposed Orders: All proposed orders should be submitted by email (efile_Pettit@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.