

CHECKLIST FOR RULE 26(f) CONFERENCE SOUTHERN DISTRICT OF CALIFORNIA

In order to ensure that civil litigation is “just, speedy, and inexpensive” as required by Fed. R. Civ. P. 1, attorneys and parties must collaborate in the discovery process. To that end, the Court requires attorneys and *pro se* litigants to review this Checklist at the initial conference required under Fed. R. Civ. P. 26(f). The Court expects the parties to summarize any actual or anticipated disputes in each area of the Checklist in their Joint Case Management Statement.

The Court recognizes that the parties may not be in a position to make definitive agreements in each of these areas at the outset of the litigation. In complex cases and where otherwise appropriate, the Court is open to the parties suggesting a phased approach to reaching agreement in certain areas of this checklist.

I. Protective Order

The parties must discuss whether a Protective Order is necessary prior to exchanging information in discovery. If so, the parties should be prepared to submit a proposed order to the Court no later than seven days following the initial case management conference.

II. Preservation and Collection of Information

The parties must confirm that they are preserving relevant evidence, including electronically stored information (“ESI”), and that proper litigation holds are in place. The parties should be wary of applying too narrow a definition of what constitutes relevant ESI, since a miscalculation could lead to the permanent loss of relevant information. They must also disclose the scope of any litigation hold with respect to custodians, information sources, and time period. The parties should discuss collection of ESI and any specific requirements for collection, such as forensic imaging. The parties should also discuss whether they agree that certain categories of ESI need not be preserved or produced because they are inaccessible, burdensome, or unlikely to yield relevant information.

III. Sources of Information

The parties must discuss the sources of relevant information, including corporate and personal accounts, and disclose all software and applications that are used to generate, manage, and store that information. This includes, but is not limited to:

- Email systems
- Mobile device data
- Text and messaging applications, such as iMessage, WhatsApp, Facebook Messenger, SnapChat, WeChat, Signal, Wickr, and Telegram
- Workplace collaboration tools and chat applications, such as Slack and Microsoft Teams
- Social media accounts
- Unstructured data, such as documents created by commonly used Microsoft Office programs and Google programs
- Structured data, such as information stored in structured databases like Salesforce and Basecamp
- Wearable devices, such as data from watches or tags
- Backup media, such as data from tapes, discs, or cloud accounts
- External storage media, such as portable hard drives or flash drives
- Voicemail systems
- Video surveillance systems

IV. Search Methodology for ESI

The parties must discuss what search methodologies will be used to identify responsive ESI, including the use of search terms or technology assisted review (“TAR”), and how those methodologies will be validated. An agreed-upon search methodology should include whether a producing party reserves the right to conduct a separate relevance review of information that is identified as responsive under the search methodology. The Court expects the parties to follow *The Sedona Principles, Third Ed.* (2017) and work to “reach agreement regarding production of electronically stored information.”

NuVasive, Inc. v. Alphatec Holdings, Inc., No. 18-CV-0347-CAB-MDD, 2019 WL 4934477, at *2 (S.D. Cal. Oct. 7, 2019).

V. Production of ESI

The parties must discuss how ESI will be produced, including:

- The format of production, i.e., native files, PDF files, TIFF+ files, etc.
- Whether the production will include a load file
- Applicable metadata by source of ESI
- The scope of messages to be produced from text messages and collaborative apps, i.e., the entire thread or a portion based on proximity to the responsive information
- Threading of emails
- Any applicable process for de-duplication of information
- Whether hyperlinked documents will be included in the production, and (where applicable) whether they will be produced in a family relationship with the underlying communication (email, chat message, text message, etc.)
- How to resolve any claims of privilege, and whether a separate Court order under Fed. R. Evid. 502(d) is appropriate
- How redactions will be handled and logged
- Production methods and timing, including any plans for supplemental or rolling productions

VI. ESI Order

The parties must discuss whether the case warrants the joint submission of a proposed order governing discovery of ESI. The parties must include language in any proposed ESI order that recognizes the Court's authority to modify the terms of the order for good cause at later stages of the litigation.

VII. Privilege Log

The parties must discuss whether an alternative form of privilege log, such as a categorical log, metadata log, or sample log would be more efficient than a traditional privilege log. The parties must also discuss the appropriate date range of information to be logged.