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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**SUPPLEMENTAL ORDER TO
ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE
IN CIVIL CASES BEFORE JUDGE WILLIAM ALSUP**

INTRODUCTION

The purpose of this supplemental order is to guide the parties on recurring practical questions that arise prior to trial and to impose certain requirements for the conduct of the case. Counsel must please read this order and follow it.

SERVICE OF THIS ORDER

1. For cases originating in this Court, plaintiff(s) must serve this order and the order setting the initial case management conference (along with any other required pleadings) on each defendant. For cases removed from state court, the removing defendant(s) must serve this order and the order setting the initial case management conference (along with any other required pleadings) immediately on each and every party that has previously appeared or that appears within thirty days after removal. Thereafter, any existing party to the action that brings a new party into the action must immediately serve a copy of this order and the order setting the initial case management conference (along with any other required pleadings) on the new party.

United States District Court
For the Northern District of California

CASE MANAGEMENT CONFERENCE

2 2. The parties will please address the standardized items in the court-wide format
3 for the joint case management statement. This is available at the Standing Order For all Judges
4 of the Northern District of California — Contents of Joint Case Management Statements.
5 Please file (electronically or manually depending on your case) at least **SEVEN CALENDAR DAYS**
6 prior to the case management conference. Each party shall be represented at the case
7 management conference by counsel prepared to address all such matters and with authority to
8 enter stipulations and to make admissions.

9 3. In the joint statement for the initial case management conference, any law firm
10 with more than fifty lawyers nationwide must submit a specific plan for how it intends, in this
11 case, to provide opportunities to junior lawyers (six years or fewer years out of law school) to
12 argue motions in court, to take depositions, and to examine witnesses at trial. Specific motions,
13 depositions, and junior lawyers must be identified. Please state whether it would be useful to
14 require client representatives to attend the upcoming case management conference where this
15 subject will be discussed.

16 4. Pursuant to FRCP 26(d), Rule 34 requests may be served more than **TWENTY-**
17 **ONE DAYS** after service of the complaint on a party. The request is considered to have been
18 served at the Rule 26(f) conference. As soon as a party has notice of this order, however, the
19 party shall take such affirmative steps as are necessary to preserve evidence related to the issues
20 presented by the action, including, without limitation, interdiction of any document-destruction
21 programs and any ongoing erasures of e-mails, voice mails, and other electronically-recorded
22 material.

ELECTRONIC CASE FILING — LODGING HARD COPIES WITH CHAMBERS

23 5. In all “E-Filing” cases, in addition to filing papers electronically, the parties are
24 required to lodge for chambers one paper copy of each document that is filed electronically.
25 These printed copies shall be marked “Chambers Copy — Do Not File” and shall be in an
26 envelop clearly marked with the judge’s name and case number. It shall be delivered in
27 accordance with Civil Local Rule 5-1(e)(7). For the final pretrial conference, please follow
28

1 *Guidelines for Trial and Final Pretrial Conference In Civil Jury Cases Before the Honorable*
2 *William Alsup.*

3 **SETTING MOTIONS FOR HEARING**

4 6. Counsel need not request a motion hearing date and may notice non-discovery
5 motions for any Thursday (excepting holidays) at 8:00 a.m. The Court sometimes rules on the
6 papers, issuing a written order and vacating the hearing. If a written request for oral argument is
7 filed before a ruling, stating that a lawyer of four or fewer years out of law school will conduct
8 the oral argument or at least the lion's share, then the Court will hear oral argument, believing
9 that young lawyers need more opportunities for appearances than they usually receive.

10 **FORM OF SUBMISSIONS**

11 7. On summary judgment motions, joint statements of undisputed facts are not
12 required but are helpful if completely agreed upon. Please do *not* file separate statements of
13 "undisputed facts."

14 8. Reply declarations are disfavored. Opening declarations should set forth all facts
15 on points foreseeably relevant to the relief sought. Reply papers should not raise new points that
16 could have been addressed in the opening.

17 9. The title of the submission must be sufficient to alert the Court to the relief
18 sought; for example, please do not bury a request for continuance in the body of a memorandum.

19 10. All submissions filed with the Court shall include on the cover sheet the date and
20 time of the hearing or conference. Counsel should include their facsimile transmission numbers
21 along with their telephone numbers on their papers.

22 **DISCOVERY**

23 11. The following paragraphs on discovery provide counsel and the parties with
24 views and guidelines of Judge Alsup so that they can plan accordingly. For good cause, the
25 parties are invited to propose any modifications in their joint case management conference
26 statement. Unless and until modified, however, the following provisions shall supplement the
27 requirements of the Federal Rules of Civil Procedure and the local rules.

28

1 12. In responding to requests for documents and materials under FRCP 34, all parties
2 shall *affirmatively state* in a written response the full extent to which they will produce materials
3 and shall, promptly after the production, confirm in writing that they have produced *all* such
4 materials so described that are locatable after a diligent search of *all* locations at which such
5 materials might plausibly exist. It is not sufficient to state that “responsive” materials will be or
6 have been produced. Such a response leaves open the distinct possibility that other responsive
7 materials have not been produced.

8 13. In searching for responsive materials in connection with FRCP 34 requests or for
9 materials required to be disclosed under FRCP 26(a)(1), parties must search computerized files,
10 e-mails, voice mails, work files, desk files, calendars and diaries, and any other locations and
11 sources if materials of the type to be produced might plausibly be expected to be found there.
12 The Court has found that certain basic information normally learned by counsel anyway should
13 be made available to the other side at the time of production, as if it were a response to a
14 standing interrogatory, as follows. At the time of the production, the responding party should
15 provide a written list to the requesting party setting forth in detail each specific source and
16 location searched. The list must also identify, by name and position, all persons conducting the
17 search and their areas of search responsibility. The producing party shall also provide a list
18 describing the specific source for each produced item as well as for each item withheld on a
19 ground of privilege, using the unique identifying numbers to specify documents or ranges.
20 Materials produced in discovery should bear unique identifying control numbers on each page.

21 14. To the maximum extent feasible, all party files and records should be retained
22 and produced in their original form and sequence including file folders, and the originals should
23 remain available for inspection by any counsel on reasonable notice.

24 15. Except for good cause, no item shall be received as case-in-chief evidence if the
25 proponent has failed to produce it in response to a reasonable and proper discovery request
26 covering the item, regardless of whether any discovery motion was made. A burden or
27 overbreadth or similar objection shall not be a valid reason for withholding requested materials
28 actually known to counsel or a party representative responsible for the conduct of the litigation.

1 16. Privilege logs shall be promptly provided and must be sufficiently detailed and
2 informative to justify the privilege. *See* FRCP 26(b)(5). No generalized claims of privilege or
3 work-product protection shall be permitted. With respect to each communication for which a
4 claim of privilege or work product is made, the asserting party must at the time of assertion
5 identify:

6 (a) all persons making or receiving the privileged or protected
7 communication;

8 (b) the steps taken to ensure the confidentiality of the communication,
9 including affirmation that no unauthorized persons have received the
10 communication;

11 (c) the date of the communication; and

12 (d) the subject matter of the communication.

13 Failure to furnish this information at the time of the assertion will be deemed a waiver of the
14 privilege or protection. The log should also indicate, as stated above, the location where the
15 document was found.

16 17. Absent extraordinary circumstances, counsel shall consult in advance with
17 opposing counsel and unrepresented proposed deponents to schedule depositions at
18 mutually-convenient times and places. That some counsel may be unavailable shall not,
19 however, be grounds for deferring or postponing a deposition if another attorney from the
20 same firm or who represents a party with similar interests to that witness is able to attend.
21 Ordinarily, if one side desires a prompt deposition, the other side is expected to agree to dates
22 falling within *thirty days* of the request. On the other hand, rarely should one side expect the
23 other side to agree to a deposition sooner than *seven days* of the request.

24 18. If any objection to a request for materials is overruled, and if the disputed request
25 was due and pending at the time of a deposition, the withholding party or counsel must, at the
26 request of any other party, re-produce all deponents under its control or represented by them for
27 further deposition examination as to any new materials produced in response that are germane
28 to that deponent and must bear the expense of doing so. A party objecting to producing

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