

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

**STANDING ORDER FOR
MAGISTRATE JUDGE KANDIS A. WESTMORE**
(Revised February 16, 2018)

Parties shall comply with the procedures in the Federal Rules of Civil or Criminal Procedure, the Northern District of California's Local Rules and General Orders, and this standing order, all of which are available at <http://www.cand.uscourts.gov>. The parties' failure to comply with any of the rules or orders may be grounds for monetary sanctions, dismissal, entry of judgment, or other appropriate sanctions.

CALENDAR DATES AND SCHEDULING

1. Criminal motions are heard on the first and third Thursdays of the month at 1:30 p.m., or during the regular criminal calendar when Judge Westmore is on criminal calendar duty. Civil motions are also heard on the first and third Thursdays of the month at 1:30 p.m. Civil case management and status conferences are heard on Tuesdays at 1:30 p.m. Civil pretrial conferences are heard on Wednesdays at 2:00 p.m.

2. Parties should notice motions (other than discovery motions) pursuant to the local rules. Parties need not reserve a hearing date, but should confirm the Court's availability at <http://www.cand.uscourts.gov/CEO/cfd.aspx?71BU>. The Court may reset hearing dates as the Court's calendar requires. For scheduling questions, please call Judge Westmore's courtroom deputy, Susan Imbriani at (510) 637-3525.

CONSENT CASES

3. In civil cases randomly assigned to Judge Westmore for all purposes, the parties should file their written consent to the assignment of a United States Magistrate Judge for all purposes or their written declination of consent *as soon as possible*, and in no event later than the deadlines specified in Civil L.R. 73-1(a)(1) and (2).

CHAMBERS COPIES AND PROPOSED ORDERS

4. Under Civil L.R. 5-1 and 5-2, parties must lodge an extra paper copy of any filing, with the exception of the written consent/declination to the assignment of a United States Magistrate Judge. All chambers copies must be marked "Chambers Copy" and submitted to the Oakland Clerk's Office in an envelope clearly marked "Magistrate Judge Kandis Westmore," and include the case number on the envelope. All chambers copies of e-filed documents must include the running header created by the ECF System on each page. All exhibits must be

clearly marked and tabbed. E-filed documents must be cited in all other documents as follows: Dkt. No. __ at __. Chambers copies must be mailed or delivered to chambers according to the deadlines set forth in Civil Local Rule 5-1(e)(7).

5. Any party filing a dispositive motion shall email a copy of the motion in Word format (.doc or .docx) to *kawpo@cand.uscourts.gov*.

6. Any stipulation or proposed order in a case subject to e-filing should be submitted by email to *kawpo@cand.uscourts.gov* in Word format (.doc or .docx) on the same day the document is e-filed. This address should only be used for this stated purpose unless otherwise directed by the Court.

CIVIL CASE MANAGEMENT

7. No later than seven (7) days prior to the any scheduled case management or status conference, the parties shall file a Joint Case Management Statement in full compliance with the Northern District of California's General Standing Order for civil cases entitled "Contents of Joint Case Management Statement." The parties shall appropriately caption their filing to read: "Initial Joint Case Management Statement" or "Further Joint Case Management Statement" as appropriate.

8. Parties may not stipulate to continue a case management, status, or pretrial conference without Court approval. Each party shall be represented **in person** at the Case Management Conference by lead trial counsel (or a party if *pro se*), who shall be (1) prepared to address all of the matters referred to in the Northern District of California's General Standing Order on Joint Case Management Statements; and (2) have full authority to enter stipulations and make admissions pursuant to that order. Permission for a party to attend by telephone may be granted, in the Court's discretion, upon written request made at least two (2) weeks in advance of the hearing if the Court determines that good cause exists to excuse personal attendance, and that personal attendance is not needed in order to have an effective conference. (*See* Judge Westmore's Procedures for Telephonic Appearances.) The facts establishing good cause must be set forth in the request. Parties requesting permission to attend by telephone should consult the Court's Procedures for Telephonic Appearances, available at <http://cand.uscourts.gov/kaworders>.

9. All motion hearings, case management, status and pretrial conferences are audio recorded. They are not reported by a court reporter unless counsel requests a court reporter in advance.

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CIVIL DISCOVERY

10. Parties shall propound disclosures and discovery in accordance with Federal Rules of Civil Procedure 26 through 37 and the corresponding Civil Local Rules for the Northern District of California. A copy of the Local Rules is available at the Clerk's Office and at the Court's website (<http://www.cand.uscourts.gov>). No exceptions to the limitations established in the Federal and Local Rules shall be permitted except pursuant to stipulation of the parties or order of the Court.

11. If parties believe a protective order is necessary, they shall, where practicable, use one of the model stipulated protective orders (available at <http://cand.uscourts.gov/stipprotectorder>). Parties shall file one of the following with their proposed protective order: (a) a declaration stating that the proposed order is identical to one of the model orders except for the addition of case-identifying information or the elimination of language denoted as optional; (b) a declaration explaining each modification to the model order, along with a redline version comparing the proposed protective order with the model order; or (c) a declaration explaining why use of one of the model orders is not practicable.

12. Meet and confer requirement for discovery disputes. As an initial matter, the parties must comply with Section 9 of the Northern District's Guidelines for Professional Conduct regarding discovery (available at http://cand.uscourts.gov/professional_conduct). Prior to filing any discovery-related motion, lead trial counsel for all parties shall meet and confer **in person or telephonically**, if an in-person conference is not feasible, regarding the discovery dispute(s) in an effort to resolve these matter(s). After attempting other means to confer on the issue(s) (i.e. letter, phone call, e-mail), any party may demand such a meeting on ten (10) business days' notice. The location of the meeting will alternate with the first location selected by counsel for Plaintiff, the second by counsel for Defendant, etc. If unable to resolve all disputes through this procedure, the party seeking Court intervention may file an appropriate motion or joint letter (*see* ¶ 13 below). Upon receipt of the filing, the Court may order the parties to further meet and confer if the nature of the dispute is such that it should be resolved without court intervention.

13. Discovery disputes between the parties must be addressed in a joint letter. After meeting and conferring as set forth in ¶ 12 above, the parties shall draft and file a jointly signed letter within five (5) business days of the lead trial counsels' meet and confer session that contains the following:

- (a) A cover page with the case caption and an attestation that the parties met and conferred in person or telephonically prior to filing the letter, have

complied with Section 9 of the Northern District's Guidelines for Professional Conduct regarding discovery prior to filing the joint letter, as well as the signature of both parties or counsel;

- (b) A section which sets forth the unresolved dispute and any pertinent factual background; and
- (c) With respect to each issue relating to the unresolved dispute, a detailed summary of each party's final substantive position and their final proposed compromise on each issue, including relevant legal authority.

The parties shall file a separate joint letter for each discovery dispute (i.e. if the parties have disputes regarding specific interrogatories and requests for production, they must file two letters). The joint letter shall not exceed five (5) pages, excluding the cover page, without leave of Court, and may not be accompanied by exhibits or affidavits other than exact copies of interrogatories, requests for production of documents and/or responses, privilege logs, and relevant deposition testimony. Any attachments shall not exceed 12 pages. The joint letter must be e-filed under the Civil Events category of "Motions and Related Filings>Motions--General>Discovery Letter Brief." The joint letter must be in the following format to ensure that the parties are addressing the same dispute, and are doing so in a manner that facilitates the Court's resolution:

A. Request for Production No. 7

[Summarize the issue and reproduce the request.]

Defendant's Position

[Defendant's position outlining why Plaintiff's response is deficient and the relief requested.]

Plaintiff's Position

[Plaintiff's rationale as to why he fully responded to the request, etc.]

B. Request for Production No. 12

[Summarize the issue and reproduce the request.]

Defendant's Position

[Defendant's position outlining why Plaintiff's response is deficient and the relief requested.]

Plaintiff's Position

[Plaintiff's rationale as to why he fully responded to the request, etc.]

This format should be used for each dispute, and the parties shall attach the propounded discovery and the applicable responses as exhibits to the joint discovery letter. All exhibits must be clearly marked and tabbed. Upon receipt of the joint letter, the Court will determine what future proceedings are necessary.

14. In responding to requests for documents and materials under Fed. R. Civ. P. 34, all parties shall affirmatively state, in a written response served on all other parties, the full extent to which they will produce materials and shall, promptly after the production, confirm in writing that they have produced *all* such materials so described that are locatable after a diligent search of *all* locations at which such materials might plausibly exist. It shall not be sufficient to object and/or to state that “responsive” materials will be or have been produced.

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

16. In the rare event that the parties are unable to meet and confer as directed above, or a moving party is unable to obtain the opposing party’s portion of a joint letter after the meet and confer session, the moving party shall file a written request for a telephonic conference for the purpose of enforcing the Court’s meet and confer requirement, or for the Court to fashion an alternative procedure. The written request shall include a declaration which states any attempt to meet and confer and/or obtain the joint letter, the reasons for the inability to comply with the standing order, and (if possible) three dates and times at which all parties are available for a telephonic conference. The moving party may attach exhibits to the declaration, but the declaration and exhibits combined may not exceed seven pages. The Court will not excuse a party from the requisite in-person or telephonic meeting unless good cause is shown.

17. In emergencies during discovery events (such as depositions), any party may, after exhausting good faith attempts to resolve disputed issues, seek judicial intervention pursuant to Civil L.R. 37-1(b) by contacting the Court through the courtroom deputy. If the Court is unavailable, the discovery event shall proceed with objections noted for the record.

18. No motion for sanctions may be filed until after the moving party has complied with the requirements of paragraphs 12-16 above. Motions for sanctions shall be filed separately, pursuant to Federal Rule 37 and Civil Local Rules 7 and 37-3.

19. In the event that a discovery hearing is ordered, the Court has found that it is most efficient and beneficial for counsel to appear *in person*. This provides the opportunity, where appropriate, to engage counsel in resolving aspects of the discovery dispute while remaining available to rule on any disputes that counsel are not able to resolve. For this

reason, the Court expects counsel to appear in person. Permission for a party to attend by telephone may be granted, in the Court's discretion, upon written request made at least two (2) weeks in advance of the hearing should the Court determine that good cause exists to excuse personal attendance and that personal attendance is not needed in order to have an effective discovery hearing. The facts establishing good cause must be set forth in the request. Parties requesting permission to attend by telephone should consult the Court's Procedures for Telephonic Appearances, available at <http://cand.uscourts.gov/kaworders>.

Privilege Logs

20. If a party withholds information that is responsive to a discovery request by claiming that it is privileged or otherwise protected from discovery, that party shall *promptly* prepare and provide a privilege log that is sufficiently detailed and informative for the opposing party to assess whether a document's designation as privileged is justified. *See* Fed.R.Civ.P. 26(b)(5). The privilege log shall set forth the privilege relied upon and specify separately for each document or for each category of similarly situated documents:

- (a) The title and description of the document, including number of pages or Bates-number range;
- (b) The subject matter addressed in the document;
- (c) The identity and position of its author(s);
- (d) The identity and position of all addressees and recipients;
- (e) The date the document was prepared and, if different, the date(s) on which it was sent to or shared with persons other than its author(s);
- (f) The steps taken to ensure the confidentiality of the communication, including affirmation that no unauthorized persons have received the communication; and
- (g) The specific basis for the claim that the document is privileged or protected. Failure to furnish this information promptly may be deemed a waiver of the privilege or protection.

COMMUNICATIONS WITH THE COURT

21. Pursuant to Civil Local Rule 11-4(c), with the exception of communication with the courtroom deputy regarding scheduling, no party may contact the Court *ex parte* without prior notice to the opposing party. All communications or questions to the Court shall be presented in writing, properly filed, and include a certification that all parties were served a copy of the written communication.

MOTION PRACTICE

22. The failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion.

23. The Court sometimes rules on the papers, issuing a written order and vacating the hearing. If a written request for oral argument is filed before a ruling, stating that a lawyer of four or fewer years out of law school will conduct the oral argument or at least the lion's share, then the Court will hear oral argument, believing that young lawyers need more opportunities for appearances than they usually receive.

MOTIONS TO FILE UNDER SEAL

24. Any party seeking to file a document under seal must comply with Civil Local Rule 79-5. The motion shall include a statement by the moving party that it has reviewed and complied with that rule. If the sole basis for the motion is that the opposing party, or a non-party, has designated the document "confidential," the designating party shall file a declaration identifying the appropriate legal standard, i.e., the good cause standard or the compelling reasons standard, and demonstrating why the document at issue meets the applicable legal standard. The declaration shall be filed by the deadline specified in Civil Local Rule 79-5(e)(1).

IT IS SO ORDERED.

Dated: February 16, 2018


KANDIS A. WESTMORE
United States Magistrate Judge