

HONORABLE JILL L. BURKHARDT
U.S. MAGISTRATE JUDGE
CIVIL CHAMBERS RULES

Please Note: The Court provides this information for general guidance to counsel. However, **the Court may vary these procedures as appropriate in any case.** Except as set forth below, counsel and pro se litigants are expected to comply with the Local Rules for the Southern District of California and the Electronic Case Filing Administrative Policies and Procedures Manual (“ECF Manual”). Litigants should familiarize themselves with the Local Rules and the ECF Manual, which are available on the District Court’s website.

I. Communications With Chambers

- A. Letters, Faxes, or E-mails.** Letters, faxes, or e-mails to Chambers are **not permitted** except as authorized by court order or by the Court’s local or chambers rules. If letters, faxes, or e-mails are requested by the Court, copies of the same must be simultaneously delivered to all counsel and any unrepresented party unless otherwise directed by the Court (such as with confidential Early Neutral Evaluation statements and confidential Mandatory Settlement Conference statements). **Copies of correspondence between counsel should not be sent to the Court.**
- B. Telephone Calls.** Before calling Chambers, first review Judge Burkhardt’s Civil Chambers Rules and the Southern District of California’s local rules available on the District Court’s website at www.casd.uscourts.gov. Except for calls to request a hearing date for a case-dispositive motion (*see* CivLR 72.1.c & g; CivLR 72.3.f), a **joint call** to Chambers with opposing counsel already on the line is **required** when contacting Chambers. The joint call should be placed by **counsel** with knowledge of the case. If a joint call is unfeasible, the calling party should limit its communication to notifying the court of the need for assistance in scheduling a joint call. **For discovery disputes**, first review Section IV., *infra*, for guidance before calling Chambers. **For inquiries related to calendaring, continuing, or rescheduling matters**, first review Sections III.C. and VII., *infra*, for guidance before calling Chambers. Court personnel are prohibited from providing time estimates for rulings, giving legal advice, or discussing the merits of a case. When calling Chambers, be prepared with your case name, case number, and other pertinent information. Call Chambers at (619) 557-6624 and address any appropriate inquiries to the law clerk assigned to the case or leave a **detailed voicemail message**.
- C. Lodging Documents.** When an order or rule directs you to lodge a document with the Court, send it via e-mail to efile_Burkhardt@casd.uscourts.gov **and**, if the lodged document(s) collectively exceed 20 pages, also provide a courtesy copy (*see* Section I.E., *infra*). Lodged documents shall not be filed with the Clerk of Court or the CM/ECF system unless the Court directs otherwise.

As set forth in the ECF Manual (available on the District Court’s website), the efile_Burkhardt@casd.uscourts.gov e-mail address is not to be utilized to communicate with the Court unless otherwise permitted or when communications are solicited by the Court.

D. Transcripts. If a court proceeding before Judge Burkhardt was placed on the record and the parties are seeking a copy of the transcript, they must contact Judge Burkhardt's courtroom deputy, Carolina Lopez, at (619) 557-6425 and provide the case name, case number, and date of the court proceeding.

E. Courtesy Copies. Courtesy copies shall be provided in cases where any one filing **or** multiple filings in a single court day exceed 20 pages. Courtesy copies shall be delivered directly to Judge Burkhardt's Chambers within 24 hours of the filing or lodgment deadline, c/o the Clerk's Office, U.S. District Court, Southern District of California, 333 West Broadway, Suite 420, San Diego, CA 92101. Unless expressly required by the Court, courtesy copies must be identical to the electronically-filed or lodged documents. The pages of each pleading must be firmly bound and must be 2-hole punched at the top. If a pleading has more than three exhibits, the exhibits must be tabbed.

II. Early Neutral Evaluation Conferences ("ENE") or Other Settlement Conferences ("SC")

A. ENE or SC Statement. Unless the pertinent court order directs otherwise, at least **10 calendar days prior to the ENE or SC**, the parties shall lodge ENE or SC statements of **5** pages or less, which outline the nature of the case, the claims, the defenses, and the parties' positions regarding settlement of the case. The settlement positions **must include a specific and current demand or offer** addressing all relief or remedies sought. If a specific demand or offer cannot be made at the time the statement is lodged, then the reasons therefor must be stated along with a statement as to when the party will be in a position to state a demand or offer. 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. The statement shall also **list all attorney and non-attorney conference attendees** for that side, including the name(s) and title(s)/position(s) of the party/party representative(s) who will attend and have settlement authority at the conference. The statement may be lodged confidentially at the parties' discretion.

ENE or SC statements shall be e-mailed to efile_Burkhardt@casd.uscourts.gov. Statements in excess of **5** pages will not be considered. If any statement, including exhibits, exceeds 20 pages, also deliver a courtesy copy to Chambers within 24 hours of e-mail delivery. (*See* Section I.E., *supra*.)

B. Time Allotted. The Court generally allots up to three hours for ENEs and SCs, but the parties should be prepared to stay longer at the Court's direction.

C. Participants. The Court requires all named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into a settlement agreement to appear **in person** at the ENE and other SCs. Please see the order scheduling the conference for more information. The Court will **not** grant requests to excuse a required party from personally appearing absent extraordinary circumstances. Distance or cost of travel alone generally does **not** constitute an "extraordinary circumstance." If counsel believes there are sufficient grounds to request that a required party be excused from personally appearing, they must confer with opposing counsel prior to making the request. Any requests to excuse a required party from personally appearing must be **filed** on the docket for the case as a motion at least **10 calendar days** before

the scheduled ENE or SC. The request should ideally be made by filing a joint motion. However, if the motion is opposed, then the request may be made by *ex parte* motion. (See also Section VI., Ex Parte Proceedings, *infra*.)

D. Notice of Resolution. If the case is settled in its entirety before the scheduled date of the ENE or SC, counsel must file a Notice of Settlement and place a joint call to Judge Burkhardt's Chambers at (619) 557-6624 as soon as possible, but no later than 24 hours before the scheduled ENE or SC.

III. Case Management Conferences ("CMC")

A. Telephonic Participation. Ordinarily, the Court conducts its CMCs at the conclusion of the ENE Conference. However, if the CMC is conducted telephonically, then counsel must, and the parties may, participate in the CMC by telephone. Unless otherwise directed, parties seeking permission to use CourtCall for their telephonic appearances must contact Chambers no less than 10 calendar days before the scheduled CMC. Counsel (and the parties) may request to appear in person subject to the approval of the Court. Any requests to appear in person must be made **in writing** by filing a joint motion or, if opposed, by *ex parte* motion. (See also Section VI., Ex Parte Proceedings, *infra*.) Any such motion must be filed at least 10 calendar days before the scheduled CMC.

B. Discovery Plans. Unless directed otherwise, at least **10 calendar days** before the scheduled CMC, the parties are required to file on the CM/ECF system as well as lodge with Magistrate Judge Burkhardt a **Joint Discovery Plan**. (See Section I.C., *supra*, regarding lodging documents.) The Joint Discovery Plan must be one document and must explicitly cover the parties' views and proposals for each item identified in Fed. R. Civ. P. 26(f)(3). The parties should consult the assigned District Judge's Chambers Rules, if any, in drafting their Joint Discovery Plan.

In addition, Judge Burkhardt requires the Joint Discovery Plan to identify:

1. By name and/or title, all witnesses that counsel plans to depose in the case and a brief explanation as to why counsel wants to depose the witness. If opposing counsel does not agree to the deposition of a specific witness, counsel must concisely explain the legal basis for the objection;
2. Specific documents or categories of documents that counsel want produced during discovery. If opposing counsel disagrees about the production of documents or categories of documents, the plan must articulate a concise, specific, and valid legal basis for the objection;
3. What limited discovery may enable the parties to make a reasonable settlement evaluation (e.g., deposition of plaintiff, defendant, or key witness, and/or exchange of a few pertinent documents);
4. What issues in the case implicate expert evidence, including whether counsel anticipates any issues under *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993);
5. Threshold legal issues that may be resolved by summary judgment or partial summary judgment;
6. The procedure the parties plan to use regarding claims of privilege;
7. Whether a protective order will be needed in the case; and

8. A proposed schedule for:
 - a. the filing of motions seeking to amend pleadings and/or add parties;
 - b. the filing of any motion for class certification;
 - c. the completion of fact and expert witness discovery;
 - d. the designation and supplemental designation of expert witnesses;
 - e. the service of expert witness reports and rebuttal expert witness reports;
 - f. the date by which all motions, including dispositive motions, shall be filed;
 - g. a date for the Mandatory Settlement Conference (*see* CivLR 16.3); and
 - h. a date for a Pretrial Conference before the District Judge assigned to the case.

If the Court's order setting the CMC provides a **tentative** schedule and if the parties' proposed schedule differs from the Court's tentative schedule, the Joint Discovery Plan **shall** identify whether and what good cause (specific to this case) exists to modify the Court's tentative schedule. Failure to identify good cause to modify the tentative schedule may constitute consent to the Court entering the deadlines set forth in the tentative schedule.

C. Requests to Amend the Scheduling Order. The dates and times set in the operative scheduling order **will not** be modified except for good cause shown in timely filed motions. Fed. R. Civ. P. 6(b), 16(b)(4). Counsel are reminded of their duty of diligence and that they must "take all steps necessary to bring an action to readiness for trial." CivLR 16.1.b. Any motion requesting extensions should be filed no less than **10 calendar days** in advance of the dates and deadlines at issue and shall include a declaration from counsel of record detailing the steps taken to comply with the dates and deadlines set in the order, and the specific reasons why deadlines cannot be met. The declaration must address the steps counsel took to obtain a stipulation. When the motion is made after time has expired, Fed. R. Civ. P. 6(b)(1)(B) requires the parties to address excusable neglect. The motion should be made by filing a joint motion or, if opposed, the motion may be made *ex parte* pursuant to CivLR 83.3.g. Whether filed as a joint motion or an *ex parte* motion, the parties are not required to obtain a hearing date. (*See also* Section VI., Ex Parte Proceedings, *infra*.)

Absent express permission obtained from this Court, and notwithstanding the pendency of any motion, counsel shall timely comply with the dates and deadlines ordered by the Court.

IV. Discovery Disputes

A. Meet and Confer. The Court will not address discovery disputes until counsel have met and conferred to resolve the dispute. *See also* CivLR 26.1.a.

Counsel must proceed with due diligence in scheduling and conducting an appropriate meet and confer conference as soon as the dispute arises. Absent leave of court, counsel shall comply with their meet and confer requirement within **14 calendar days** of the event giving rise to the dispute (*see* Section IV. *infra*). Any requests to extend the time by which parties must conclude the meet and confer process or file discovery motions should be made by filing a joint motion no less than **10 calendar days** in advance of the discovery motion deadline at issue.

The Court expects strict compliance with the meet and confer requirement, as it is the experience of the Court that the vast majority of disputes can be resolved by means of that process. Counsel must **thoroughly** meet and confer and shall make every effort

in good faith to resolve all disputes without the necessity of court intervention. If counsel have offices in the same county, they **shall** meet in person. If counsel have offices in different counties, they are to confer by telephone. Under no circumstances may the parties satisfy the meet and confer requirement by exchanging written correspondence.

Any discovery disputes must be brought to the attention of the Court no later than 30 calendar days after the date upon which the event giving rise to the dispute occurred (*see* Section IV.F., *infra*).

B. Contacting the Court with Respect to Unresolved Discovery Dispute. No later than 30 calendar days after the date upon which the event giving rise to the discovery dispute occurred (*see* Section IV.F., *infra*), if the parties have been unable to resolve all of their disputes through the meet and confer process and need the Court's involvement as to the remaining disputes, the parties are to place a joint call to Chambers. (*See* Section I.B., *supra*.) Upon reaching a law clerk or the Court's voicemail, the parties are to leave a message for the Court verifying that the meet and confer process has been exhausted, **describing in detail** the specific nature of and parties' respective positions concerning the remaining disputes, and providing three mutually agreeable dates of availability within a seven day window for an in-person or telephonic hearing with the Court. Based upon the nature of the dispute, the Court will determine whether to engage in an informal discovery dispute resolution process with the parties or have the parties proceed directly to the filing of a discovery motion.

C. Informal Discovery Dispute Resolution. If directed to do so by the Court, the parties shall LODGE by e-mail to Judge Burkhardt's Chambers at efile_Burkhardt@casd.uscourts.gov a **joint and integrated** document of no more than **3 pages** that lists the issue(s) in dispute along with each party's position on each issue. The parties should attach as an exhibit to the lodgment excerpts setting forth only the relevant requests and responses at issue (including any **material** definitions and general objections). Counsel should not attach copies of any meet and confer correspondence. After reviewing the joint lodgment, the Court may hold a telephonic or in-person discovery conference, or may authorize the party seeking relief to file a motion.

D. Discovery Motion. A motion seeking to resolve a discovery dispute requires advance leave of court (*see* Section IV.B., *supra*). Unless directed otherwise, a discovery motion and any opposition thereto shall be no more than **10** pages, exclusive of exhibits. Reply briefs will not be permitted unless requested or authorized by the Court.

1. Contents of Motion

The following shall be included in the motion:

- a.** A declaration of compliance with the meet and confer requirements of this district court. *See* CivLR 26.1. Counsel **should not** attach copies of any meet and confer correspondence to the declaration or motion;
- b.** A specific identification of each dispute, following this format:
 - i.** A reference to the discovery request and response at issue;

- ii. A statement by the propounding party as to why the discovery is needed, including any legal basis to support the position; and
- iii. The legal basis for the objection by the responding party.

- c. Each motion shall include as an exhibit excerpts setting forth only the relevant requests and responses at issue (including any material definitions and general objections).

See I.E., *supra*, to determine whether a courtesy copy of the filing(s) is required.

Following the filing of the motion, the Court may hold a telephonic or in-person hearing or may issue an order without a hearing.

E. Disputes Arising During Depositions. If a dispute arises during a deposition regarding an issue of privilege, enforcement of a court ordered limitation on evidence, or pursuant to Fed. R. Civ. P. 30(d), counsel may place a joint call to Chambers at (619) 557-6624 to seek an immediate ruling on the dispute. If Judge Burkhardt is available, she will either rule on the dispute or give counsel further instructions regarding how to proceed. If Judge Burkhardt is unavailable, counsel shall mark the deposition at the point of the dispute and continue with the deposition. Thereafter, counsel shall 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 shall proceed as noted in paragraphs A through D above.

F. Calculating When the Event Giving Rise to the Dispute Occurs. For oral discovery, the event giving rise to the discovery dispute is the completion of the deposition session during which the dispute arose. For written discovery, the event giving rise to the discovery dispute is the date of the service of the response or, in the absence of a response, the date upon which a timely response was due.

V. Stipulated Protective Order Provisions for Filing Documents Under Seal

All stipulated protective orders submitted for the Court's approval must be filed as a joint motion pursuant to Civil Local Rule 7.2. The joint motion must contain the language of the stipulated protective order sought and the parties' electronic signatures. In addition, the parties must lodge by e-mail a proposed order **in Word format** to efile_Burkhardt@casd.uscourts.gov. The proposed order must contain the language of the stipulated protective order, the parties' electronic signatures ('s/' for registered CM/ECF users is acceptable), and a signature line for Judge Burkhardt. Please refer to Sections 2.f.4 and 2.h of the ECF Manual (available on the District Court's website) for more information.

Further, all stipulated protective orders submitted for the Court's approval must include the following provisions:

1. Designation of information as confidential. The protective order shall state that, a party or non-party subject to the protective order may only designate documents or other information in this action as confidential if the designating party or non-party has an articulable, good faith basis to believe that each document or other information designated as confidential qualifies for protection under Federal Rule of Civil Procedure 26(c).

2. What the Court shall do with confidential documents. The protective order shall state that, absent an *ex parte* motion made within 10 calendar days of the termination of the case, the parties understand that the Court will destroy any confidential documents in its possession.
3. Modification of the Protective Order by the Court. The Protective Order shall state that the Court may modify the terms and conditions of the Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings.
4. Relation to Any Court or Local Rules. The Protective Order shall state that without separate court order, the Protective Order and the parties' stipulation do not change, amend, or circumvent any court rule or local rule.
5. Filing Documents Under Seal. The Protective Order must include this language:

No document shall be filed under seal unless counsel secures a court order allowing the filing of a document under seal. An application to file a document under seal shall be served on opposing counsel, and on the person or entity that has custody and control of the document, if different from opposing counsel. If the application to file under seal a document designated as confidential is being made by the non-designating party, then, upon request, the designating party must promptly provide the applicant with a legal basis for the confidential designation to include within the application. If opposing counsel, or the person or entity that has custody and control of the document, wishes to oppose the application, he/she must contact the chambers of the judge who will rule on the application, to notify the judge's staff that an opposition to the application will be filed.

If an application to file a document under seal is filed, **a redacted version of the document(s) shall be e-filed contemporaneously** with the application to file under seal. A courtesy copy of the unredacted document(s) shall be delivered to Judge Burkhardt's Chambers. (*See also* Section I.E., *supra*.)

VI. Ex Parte Proceedings

Appropriate *ex parte* written motions may be made at any time. Except for motions to continue or to reschedule filed pursuant to Section VII., *infra*, any *ex parte* motion must set forth why proceeding *ex parte* is necessary and appropriate and why the matter could not be brought by a noticed motion. The Court requests that counsel for the parties place a joint call to Judge Burkhardt's Chambers to promptly notify the Court that an *ex parte* motion is anticipated or pending. The motion must be filed electronically through the CM/ECF system in compliance with the Civil Local Rules and include a description of the dispute, the relief sought, and a declaration that indicates reasonable and appropriate notice to opposing counsel pursuant to Civil Local Rule 83.3.g. The Court does not have regular *ex parte* hearing days or hours.

After service of the *ex parte* motion, opposing counsel will ordinarily have until 5:00 PM on the next business day to respond. If more time is needed, opposing counsel should initiate a joint call and leave a detailed message with Judge Burkhardt's Chambers concerning the extension of time sought. If a joint call is unfeasible, opposing counsel may call Chambers *ex parte*, but should limit any communication to setting forth the additional time requested and indicating whether the request is opposed by any other party. (*See also* Section I.B., Telephone Calls, *supra*.) After receipt of the *ex parte* motion and opposition (if any), the Court will review them and a decision may be made without a hearing. If the Court requires a hearing, the parties will be notified of the date and time selected for the hearing. Reply briefs will not be permitted unless requested or authorized by the Court.

VII. Requests to Continue or Reschedule

Counsel seeking to continue or reschedule any matter must confer with opposing counsel in person or by telephone prior to making the request. Unless the Court directs otherwise, all requests to continue or reschedule any matter must be **filed** on the docket. The request should be made by filing a joint motion or, if opposed, the motion may be made *ex parte* pursuant to Civil Local Rule 83.3.g. Timely requests will be granted only upon a showing of good cause. *See* Fed. R. Civ. P. 6(b), 16(b)(4). Whether filed as a joint motion or an *ex parte* motion, any request to reschedule a court proceeding or deadline shall be made in writing no less than **10 calendar days** before the affected date. Untimely requests will be granted only upon a showing of both good cause and excusable neglect for the party's failure to act before time had expired. Fed. R. Civ. P. 6(b)(1)(B).

Requests seeking to continue or reschedule any matter shall state:

1. The original date or deadline;
2. The number of previous requests to reschedule;
3. A showing of good cause for the request (*see* Fed. R. Civ. P. 6(b) and 16(b)(4)) **and**, for untimely requests, a showing of excusable neglect (*see* Fed. R. Civ. P. 6(b)(1)(B));
4. Whether the request is opposed and why;
5. Whether rescheduling the date or deadline will affect other dates in the scheduling order; **and**
6. For requests to continue or reschedule a court proceeding, three mutually agreeable alternative dates. For parties who show good cause (and, if applicable, excusable neglect) and provide three mutually agreeable alternative dates within a 28 day window—14 days before or 14 days after—the date or deadline at issue, the Court will make every effort to accommodate the parties on one of the proposed alternative dates. In proposing alternative dates, please note that Judge Burkhardt's preference is to have matters start as early as 8:30 AM.

Joint motions seeking to continue or reschedule shall be made in the form required by Civil Local Rule 7.2. At the time the request is filed, a proposed order must also be lodged in Word format to efile_Burkhardt@casd.uscourts.gov. *See* Section 2.h of the ECF Manual (available on the District Court's website).

VIII. General Decorum

The Court expects all counsel and parties to be courteous, professional, and civil at all times to opposing counsel, parties, and the Court, including all court personnel.

Professionalism and civility – in court appearances, communications with Chambers, and written submissions – are of paramount importance to the Court. Personal attacks on counsel or opposing parties will not be tolerated under any circumstances.

Counsel are to read and be familiar with the tenets espoused in Civil Local Rule 83.4, which shall be the guiding principles of conduct in this Court. Counsel are expected to be punctual for all proceedings.

IX. Notice of Resolution

If a case is settled in its entirety or as to one or more parties, counsel must file a Notice of Settlement and place a joint call to Judge Burkhardt's Chambers at (619) 557-6624 as soon as possible.

X. Technical Questions Relating to CM/ECF

If you have a technical question relating to CM/ECF, please contact the CM/ECF Help Desk at (866) 233-7983.

XI. Inquiries Regarding Criminal Matters

All inquiries regarding criminal matters shall be directed to Judge Burkhardt's courtroom deputy, Carolina Lopez, at (619) 557-6425. Please see Judge Burkhardt's Criminal Chambers Rules.