**RULE 26(f) CONFERENCE CHECKLIST**
**U.S. DISTRICT COURT FOR**
**THE SOUTHERN DISTRICT OF CALIFORNIA**

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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. Attorneys and *pro se* litigants should review the topics set forth in this Checklist at the initial conference required under Fed. R. Civ. P. 26(f). They should also consult the assigned Magistrate Judge's Chamber Rules on the Court website to ensure they have reviewed and are in compliance with any additional requirements.

## I. Protective Order

The parties should discuss whether a protective order is necessary prior to exchanging information in discovery and the timing for submitting a proposed order to the Court.

## II. Preservation and Collection of Information

The parties should 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. The parties should consider and discuss the following:

- The scope of any litigation hold, including, but not limited to, a description of information sources to be preserved, date ranges for any ESI to be preserved, and names, job titles, or descriptions of custodians for whom ESI will be preserved;
- Any specific requirements for collection of ESI, including forensic imaging;
- Whether certain categories of ESI need not be reviewed, preserved or produced because they are inaccessible, burdensome, not proportional, or unlikely to yield relevant information;
- Whether to continue any automatic destruction program, such as ongoing erasures of e-mails, voicemails, videos, or other electronically stored material;

- Any disputes related to the scope or manner of preservation;
- Identification of systems or sources from which discovery will be prioritized; and
- Location of systems in which potentially discoverable information is stored.

## III. Sources of Information

The parties should 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
- Accounting software
- 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 should discuss what search methodologies will be used to identify responsive ESI, including the use of search terms, technology assisted review

("TAR"), or Generative Artificial Intelligence ("GenAI") tools, 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 parties should be familiar with The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1 (2018), 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 should discuss how ESI will be produced, including but not limited to:

- The format of production, *i.e.*, native files, PDF files, TIFF+ files, etc.;
- Whether the production will include a load file;
- The extent, if any, to which metadata will be produced and the fields of metadata to be produced;
- 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 (*e.g.,* email, chat message, text message, etc.);
- How to resolve any claims of privilege, and whether a separate order under Fed. R. Evid. 502(d) is appropriate;
- How redactions will be handled and logged; and
- Production methods and timing, including any plans for supplemental or rolling productions.

## VI. ESI Order

The parties should discuss whether the case warrants the joint submission of a proposed order governing discovery of ESI.

## VII. Privilege Log

The parties should discuss whether an alternative form of privilege log, such as a categorical log, metadata log, sample log, or GenAI-generated log would be more efficient than a traditional privilege log. The parties should also discuss the appropriate date range of information to be logged and whether the parties will enter into any sort of clawback agreement under Federal Rule of Evidence 502 regarding inadvertent production of privileged information.

## VIII. Use of Generative Artificial Intelligence to Create or Enhance Evidence

The parties should discuss whether they intend to present any evidence that is created or enhanced by a GenAI tool at trial, such as video enhancement or scene reconstructions, and whether specific deadlines should be set in the case schedule for challenging the admission of such evidence.