

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

STANDING ORDER IN CIVIL CASES

CHIEF JUDGE LARRY ALAN BURNS

Carter/Keep Courthouse

14th Floor, Courtroom 14A

1. **LOCAL RULES**

Except as stated in this Standing Order or as otherwise ordered by the Court, all parties are expected to adhere to the Local Rules of this District.

2. **SETTLEMENT**

a. The assigned Magistrate Judge, rather than Judge Burns, will retain jurisdiction to resolve all disputes arising out of settlement agreements, including interpretation and enforcement of the terms of the agreement. Stipulations asking for the Court to retain jurisdiction: (1) must be accompanied by a Consent to Exercise of Jurisdiction by a United States Magistrate Judge ***signed by all parties and their counsel***; and (2) must include language acknowledging that the Magistrate Judge has authority and the consent of the parties to resolve any settlement disputes and to enforce the terms of the settlement agreement.

b. **Class Actions**: Proposed orders for preliminary approval of class certification or preliminary settlement approval must be supported by an affidavit and memorandum of points and authorities establishing that all statutory requirements have been satisfied, including the class certification factors and fairness factors. If the proposed order seeks approval of class notice, the affidavit and memorandum of points and authorities must also establish compliance with all applicable procedural rules and statutory provisions.

3. **MOTIONS**

a. **Time of Filing and Service of Moving Papers**: Regardless of the motion hearing date, the moving party must file all moving papers within three court days of obtaining the hearing date from chambers, or within the time provided by Civil Local Rule 7.1(e)(1), whichever is earlier.

b. Audio or Video Exhibits: A party seeking to rely on audio or video materials as exhibits to motion papers must file a transcript of the audio or video materials with the motion. The transcript must be certified by a court reporter or stipulated to by the opposing party.

c. Summary Judgment/Adjudication: Before filing a motion for summary judgment or summary adjudication, the parties are ordered to meet and confer and submit a Joint Statement of Undisputed Facts. Only one joint statement of undisputed facts, signed by all parties, will be filed. Statements of undisputed facts not complying with this provision will be rejected. Any objections to evidence filed in support of the moving party's reply must be served on the opponent and filed no later than three court days prior to the hearing date.

d. Oral Argument: The Court **may** hear oral argument on motions **when specifically requested by a party**. The Court will notify the parties least three days before the scheduled hearing if oral argument is granted. In cases in which oral argument is either not requested or not granted by the Court, the matter will be considered submitted for decision on the papers pursuant to Civil Local Rule 7.1(d). Requests for argument by telephone under Civil Local Rule 7.1(d)(2) must be made no later than three court days before the scheduled hearing.

e. Applications for Reconsideration: **Motions for reconsideration of Orders and rulings by the Court are disfavored and will be summarily denied unless a party shows: (1) there is new evidence; or (2) a change in controlling law; or (3) the Court committed clear error in making the earlier ruling.** No later than the time provided in Civil Local Rule 7.1(i)(2), a party seeking reconsideration of an Order or ruling must file an *ex parte* application, not more than five pages, seeking leave to file a motion to reconsider. The *ex parte* application must be accompanied by a declaration as required by Civil Local Rule 7.1(i)(1), and must briefly summarize the party's argument. The Court will issue an order either granting leave to file the motion for reconsideration (including a briefing schedule) or denying leave to file.

4. **TEMPORARY RESTRAINING ORDERS AND MOTIONS FOR EMERGENCY RELIEF**

Motions for temporary restraining orders or other emergency relief must be briefed. Only under extraordinary circumstances will the Court hear such motions *ex parte*. In the ordinary situation, the party seeking emergency relief must serve the opposing party and afford a reasonable opportunity for the party to file an opposition. In appropriate cases, the Court may issue a limited restraining order to preserve evidence pending further briefing.

5. **EX PARTE APPLICATIONS AND MISCELLANEOUS ADMINISTRATIVE REQUESTS**

Before submitting an *ex parte* application, counsel for the moving party must meet and confer with opposing counsel to attempt to informally resolve the issue. The Court will consider *ex parte* applications on the papers. All *ex parte* applications must be supported by a declaration certifying that the parties have met and conferred, and must be served on opposing counsel at the time of filing. *Ex parte* applications that are not opposed within two court days will be considered unopposed and may be granted on that ground.

6. **CONTINUANCES**

Parties requesting a continuance of any conference, hearing, deadline, briefing schedule, or other procedural changes, must meet and confer before making the request to the Court. If an agreement is reached, the parties must submit a stipulation and proposed order (*see* Civil Local Rule 7.2). Absent agreement, the requesting party must file a request reciting: (1) the original date; (2) the number of previous requests for continuance; (3) whether previous requests were granted or denied; (4) a showing of specific good cause pointing out diligence by the party seeking delay and prejudice that may result if a continuance is denied; (5) if applicable, the reasons given by the opposing party for opposing the request; and (6) whether the requested continuance affects other case management dates. Except in extraordinary circumstances, stipulations to amend a briefing schedule or to continue a motion hearing date must be filed no later than three court days before the affected date.

7. **PRO SE PRISONER CASES**

In cases involving *pro se* prisoners as litigants, the Court expects defense counsel and the government entity representing the defendant to cooperate in facilitating the prisoner's telephonic and personal appearances for any scheduled conference, hearing or trial. The responsibility includes preparing writs of *habeas corpus ad testificandum* for an incarcerated *pro se* plaintiff and any incarcerated witnesses, as authorized by the Court.

8. **PRETRIAL CONFERENCES AND PREPARATION FOR TRIAL**

a. Memorandum of Contentions of Fact and Law: The requirement to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule 16.1(f) is waived. The parties shall instead focus their efforts on timely drafting and submitting a proposed pretrial order as provided by Civil Local Rule 16.1(f).

b. Pretrial Conference: At the pretrial conference, counsel should be prepared to discuss the following: (1) trial scheduling; (2) setting reasonable trial time limits; (3) issues relating to proof, such as stipulations of fact, stipulations to the authenticity of documents, foundation and admissibility of documentary evidence and depositions, requests for advance rulings on admissibility of evidence, if appropriate, and any anticipated motions *in limine*; (4) bifurcation of issues if necessary or appropriate; (5) the need for special procedures to deal with complex issues or multiple parties; (6) the need for interpreters or any other special needs; and (7) elimination of abandoned claims or defenses before trial.

c. Trial Date and Time Limits: A trial date will be set at the pretrial conference. The Court will also set time limits within which each side must present its case. In setting time limits, the Court will consider the estimates of counsel, but will also make an independent assessment of the time necessary to complete the trial. Time limits set by the Court include opening statement, direct and cross exam, and closing argument, but do not include jury selection, the jury instructions conference, or the time necessary to instruct the jury. Parties may use the time allotted by the Court as they see fit. However, counsel must remain aware of their time: time limits are limits—not mere suggestions.

d. Motions *in Limine*: Before filing motions *in limine*, parties must meet and confer and attempt to resolve their disputes. The Court typically hears argument on motions *in limine* on the day before trial. The Court will set a briefing schedule for any motions *in limine* at the pretrial conference.

e. Trial Briefs: In bench trial cases, trial briefs must be served and filed no later than 14 calendar days before the date initially set for trial. In addition to complying with the provisions in Civil Local Rule 16.1(f), trial briefs must analyze the legal basis for each cause of action, request for relief, and defense to be tried.

f. Final Witness and Exhibit Lists: **No later than five court days before trial**, the parties must exchange and submit to chambers their final witness and exhibit lists. Each party must submit one extra copy of the witness list (for the court reporter), and two extra copies of the exhibit list (for the court reporter and the courtroom deputy). Unless permitted by the Court, the final witness and exhibit lists must not contain any witnesses or exhibits that were not included in the pretrial order.

g. Joint Statement of the Case: **No later than five court days before trial**, the parties must submit to chambers a joint statement of the case setting forth the undisputed background facts of the case and describing the claims and defenses. The joint statement of the case should include all relevant, uncontested background facts to provide context for the dispute and to

acquaint the trier of fact with the disputed issues. The Court will read the Joint Statement of the Case to prospective jurors and reread it to the jury, once empaneled.

h. Proposed Jury Instructions:

(i) The parties must file one set of agreed-upon instructions **no later than ten court days before the scheduled trial date**. The parties must meet and confer in advance to prepare the agreed-upon set of instructions.

(ii) If the parties cannot agree upon one complete set of instructions, they must jointly submit one set of instructions that they agree on. Each party must separately file supplemental instructions the party proposes but which are not agreed to **no later than ten court days before the date initially set for trial**. A party proposing separate instructions must state all objections to the opposing party's proposed instructions on the same issue, and provide legal authority explaining why the opponent's instruction is improper or unnecessary.

(iii) For good cause, additional jury instructions may be filed after the original deadline for submitting instructions.

(iv) The Court typically uses form instructions, such as the Ninth Circuit model instructions or CACI. A party proposing a modification to the form instruction must clearly delineate each modification and establish the reason or authority for it.

(v) The parties must lodge directly with chambers two copies of all jury instructions in an editable electronic format, such as Microsoft Word. Proposed instructions must be double-spaced and printed in **14-point Times New Roman font**. One copy of the instructions must identify the instruction, its source, and the authority for it. The second copy must recite only the proposed instruction with no other marks or writing except for the heading "COURT'S INSTRUCTION NO. ___" with the number left blank, and printed on plain, unlined, unnumbered paper. All nonstandard instructions should be short, concise and neutral statements of the law. Counsel will be provided with a copy of the final instructions before they are read to the jury.

i. Electronic, Video or Audio Equipment: Parties should confer in advance with the courtroom deputy regarding equipment they intend to use at trial. At least five court days before trial, parties must file an *ex parte* motion to bring in electronic equipment and must submit a proposed order in editable electronic format.

j. Jury Selection: Unless authorized by the Court, parties should not submit jury questionnaires. The courtroom deputy will provide counsel with a list of prospective jurors before

voir dire. The Court conducts initial jury *voir dire* and may permit follow-up *voir dire* by the attorneys. Once *voir dire* of the entire panel has been completed, counsel may make any challenges for cause at side bar. Counsel will then exercise peremptory challenges using the “Double Blind Method,” simultaneously exercising their challenges. Depending on the length of the case, the Court will seat between seven and twelve jurors.

9. TRIALS

The Court expects counsel and witnesses to be on time.

a. Witnesses: Counsel must have their witnesses available at court on the day the witnesses are to testify. Absent extraordinary circumstances, the Court will not delay the trial because a witness is not present. The Court will attempt to accommodate witnesses’ schedules, and will permit witnesses to testify out of sequence, if necessary. Counsel shall promptly alert the Court to any scheduling problems involving witnesses.

b. Exhibits: **Before the court session in which an exhibit is to be referred to or offered in evidence, the exhibit must be pre-marked for identification in the lower right corner using labels supplied by the courtroom deputy.** Exhibits must be admitted in evidence before being displayed to the jury.

c. Bench Conferences: *The Court discourages sidebar conferences.* Requests to speak to the Court outside the jury’s presence should be made at the start of a recess or at the end of the trial day. The Court will not grant requests for conferences out of the jury’s presence at the beginning of the trial day or following a recess.

d. Jury Fees: The expense of empaneling a jury may be taxed equally to the parties in the event a case settles after a jury has been empaneled.

10. COMMUNICATION WITH THE COURT OR CHAMBERS

Consistent with Civil Local Rule 83.9, attorneys and parties must not send correspondence or place telephone calls to the Court, nor send the Court copies of correspondence addressed to others, nor otherwise engage in unauthorized *ex parte* communications with the Court. Instead, all matters for the Court’s attention must be formally presented in compliance with the Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

Absent unavoidable circumstances, counsel must **personally** initiate any authorized communications with the Court or with chambers staff, rather than rely on a representative (*e.g.*,

a secretary or paralegal). Authorized telephonic communications with the Court or chambers staff regarding disputed issues must be initiated with all concerned counsel on the line.