HONORABLE WILLIAM V. GALLO
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. Accordingly, any Order issued by the Court that deviates from these Rules supersedes these Rules.

I. Communications With Chambers

A. Letters, faxes, or emails. Letters, faxes, or e-mails to chambers are disfavored unless specifically requested by the Court. If letters, faxes, or emails are requested, copies of the same must be simultaneously delivered to all counsel. Copies of correspondence between counsel should not be sent to the Court.

B. Telephone Calls. Except as noted in Rule IV(B), telephone calls to chambers are permitted only for matters such as scheduling and calendaring. *Ex parte* communications are prohibited except where the purpose of the call is purely administrative-*e.g.*, to provide a telephone number for a telephonic status conference-or in exigent circumstances. In all other circumstances, counsel shall call the Court jointly. Court personnel are prohibited from giving legal advice or discussing the merits of a case. Call Judge Gallo's chambers at (619) 557-6384 and address your scheduling inquiries to the Research Attorney assigned to the case.

C. Lodging Documents. When an Order directs you to "lodge" documents with the Court, either send it via e-mail to efile_Gallo@casd.uscourts.gov, or deliver the document to Judge Gallo's chambers. Ordinarily, documents under 20 pages in total length, including exhibits, should be e-mailed in PDF format *as one PDF file*.

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

A. Statements Required. The parties shall submit directly to Judge Gallo's chambers an ENE or SC Statement of **five (5)** double spaced pages or less, excluding exhibits, using 14-point font which, outlines the nature of the case, the claims, the defenses, and the parties' positions regarding settlement of the case. Exhibits, if submitted, shall not contain argument. Statements in excess of **five (5) pages**, exclusive of non-argumentative exhibits, will not be considered unless the Court has authorized an oversized statement.

It is the Court's view that resolution of lawsuits is generally facilitated when parties share information. Accordingly, the parties are required to exchange their ENE or SC Statements with all other parties and to lodge a confidential or non-confidential Statement with the Court. The confidential Statements lodged with the Court may contain confidential information about the settlement process or the party's settlement position that has not been

shared with opposing parties. The Court's Order that schedules the ENE or SC will set the deadline for exchanging and lodging Statements.

B. **Lodging of Statements.** The ENE or SC Statements should be e-mailed to Judge Gallo's chambers: efile_Gallo@casd.uscourts.gov. Ordinarily, Statements and included exhibits under 20 pages in total length should be e-mailed in PDF format *as one PDF file*.

C. **Time Allotment.** The Court generally allots two (2) hours for ENEs and SCs. Counsel should be prepared to be succinct and to the point. Requests for additional time must be made in writing and included in the party's ENE or SC Statement and accompanied by a short explanation.

D. **Pre-ENE or pre-SC Status Conference.** In addition to holding an ENE and SC, the Court may also hold an attorneys-only telephonic pre-ENE or SC status conference with each party separately. The intended purpose of this conversation is for the Court's benefit in assessing, in advance of the ENE or SC, settlement prospects and each party's concerns, challenges, and whether the Court can assist in alleviating these. These conversations will be confidential and off the record.

The scheduling Order that sets the ENE or SC will also set the deadline by which the parties shall filed their ENE or SC Statements as well as the date and time of the pre-ENE or SC telephonic status conference.

E. **Personal Attendance Required.** The Court requires all named parties, all counsel, and any other person(s) whose authority is required to negotiate and enter into settlement to appear **in person** at the ENE and 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 do **not** constitute an "extraordinary circumstance." If counsel still wish to request that a required party be excused from personally appearing, they must confer with opposing counsel prior to making the request. Such requests may then be made by submitting the request **in writing** at least **fourteen (14)** days before the scheduled ENE or SC. The request must be **filed** on the docket through CM/ECF.

F. **Pre-ENE or pre-SC Settlement.** 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 notify Judge Gallo's chambers as soon as possible, but no later than 24 hours before the scheduled ENE or SC.

III. Case Management Conferences ("CMC")

A. Ordinarily, the Court conducts its CMCs immediately after the ENE if the ENE does not result in a settlement. The Order setting the ENE will specify deadlines for tasks related to the CMC. However, on rare occasions, and at the Court's sole discretion, the Court may hold a telephonic CMC approximately 45 days after the ENE. The Order setting the ENE will specify whether the CMC will be held immediately after the ENE or at a later date.

B. **Discovery Plans.** The parties are required to submit a Joint Discovery Plan as directed by the ENE scheduling order. The Joint Discovery Plan must be one document and must explicitly cover the parties' views and proposals for each item identified in Federal Rule of Civil Procedure 26(f)(3). **For additional information about discovery responses, please see Appendix A to these Chambers Rules.**

Please note: At a minimum, the discovery plan must identify and include the following mandatory items:

1. Identify the counsel who attended the Rule 26(f) conference, and the manner in which it was held (*i.e.*, in person or telephonic);

2. List the cases, if any, related to this one that are pending in any state or federal court with the case number and court;

3. List anticipated additional parties that should be included, when they can or will be added, and by whom they are wanted;

4. List anticipated interventions;

5. Describe class-action issues;

6. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures, and when initial disclosures will be completed;

7. Describe the proposed agreed discovery plan, including:

    a. By name and/or title, all witnesses counsel plans to depose in the case and a brief explanation as to why counsel wants to depose the witness. If counsel do not agree to the deposition of a specific witness, counsel must explain the legal basis for the objection;

    b. Whether counsel anticipate exceeding the maximum number of depositions set forth in Federal Rule of Civil Procedure 30 and, if so, whether counsel will stipulate to the excess number.

    c. Specific documents or categories of documents that counsel wants produced during discovery. If counsel disagree about the production of documents or categories of documents, the plan must articulate a specific and valid legal basis for the objection;

    d. When and to whom counsel anticipate it may send interrogatories;

e. Whether counsel anticipate serving interrogatories in excess of the number permitted by Federal Rule of Civil Procedure 33 and, if so, whether counsel will stipulate to the excess number.

f. Any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced.

8. Prompt settlement or resolution.

a. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting;

b. Describe what each party has done or agreed to do to bring about a prompt resolution;

c. What limited discovery may enable them to make a reasonable settlement evaluation (*e.g.*, deposition of plaintiff, defendant, or key witness, and exchange of a few pertinent documents.);

9. State whether alternative dispute techniques are reasonably suitable and when such a technique may be effectively used in this case;

10. 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);

11. Threshold legal issues that may be resolved by summary judgment or partial summary judgment;

12. The procedure the parties plan to use regarding claims of privilege;

13. Whether a protective order will be needed in the case;

14. List any pending motions;

15. Indicate other matters peculiar to this case, including discovery that deserves the special attention of the Court at the conference;

16. Magistrate judges may hear jury and non-jury trials. Indicate the parties' joint position on trial before a magistrate judge;

17. State whether a jury demand has been made and if it was made on time;

18. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party;

19. A proposed schedule for:
    a. the filing of motions to amend pleadings and/or add parties;
    b. the completion of fact and expert witness discovery;
    c. the designation and supplemental designation of expert witnesses;
    d. the service of expert witness reports and rebuttal expert witness reports;
    e. the date by which all motions, including dispositive motions, shall be filed;
    f. a date for a Settlement Conference; and
    g. a date for a Pretrial Conference before the assigned District Judge.

C. Requests to Amend the Case Management Conference Order. The dates and times set in the Case Management Conference Order **will not** be modified except for good cause shown. Fed. R. Civ. P. 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." Civil Local Rule 16.1(b). Any requests for extensions must be made by filing a joint motion. The joint motion 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.

IV. Discovery Disputes

Refer to Appendix A and B for the Court's guidance and expectations in resolving disputes.

A. Pursuant to the requirements of Civil Local Rule 26.1(a), lead counsel or attorneys with full authority to make decisions and bind the client without later seeking approval from a supervising attorney, house counsel, or some other decision maker, are to promptly meet and confer regarding all disputed issues. If counsel practice in the same county, they **shall** meet in person; if counsel practice in different counties, they **shall** confer by telephone. Under no circumstances may counsel satisfy the "meet and confer" obligation by only written correspondence. Counsel must proceed with due diligence in scheduling and conducting an appropriate meet and confer conference as soon as the dispute arises.

B. The Court expects strict compliance with the meet and confer requirement. It is the experience of the Court that the vast majority of disputes can be resolved without the necessity of court intervention by means of this process **provided** counsel **thoroughly** meet and confer in **good faith** to resolve all disputes. If the dispute cannot be resolved through good faith meet and confer efforts, counsel shall jointly call chambers to notify the Court of a discovery dispute within **thirty (30) calendar days** of the date upon which the event giving rise to the dispute occurred. (See IV.F. below for guidance on calculating the **30 day deadline**).

C. When counsel jointly call chambers to notify the Court of a discovery dispute, counsel shall be prepared to provide the Court's Research Attorney the basic facts of the dispute. Counsel

may not present argument at this time—only the facts of the dispute. The Research Attorney will inform the Court of the facts of the dispute. The Court will then determine whether the dispute merits formal briefing, submission of simultaneous briefs, or a joint motion for determination of discovery dispute, and whether to schedule an informal telephonic discovery conference, an in-person discovery hearing, or to rule on the papers.

If the Court requires the parties to file briefing, the motions/briefs shall include:

1. A declaration of compliance with the meet and confer requirement which summarizes, without argument, the results of their meet and confer discussions, including all agreements, understandings, promises and concessions, and specifically identifying any issues that remain for determination by the Court. Counsel **shall not** attach copies of any meet and confer correspondence to the declaration or briefing;

2. A specific identification of each dispute;

3. A statement of the dispute(s) which follows the format below (see sample in subsection H. below):
    a. The exact wording of the discovery request in dispute;
    b. The exact objection of the responding party;
    c. A statement by the propounding party as to why the discovery is needed, including any legal basis to support the position;
    d. The legal basis for the objection by the responding party.

4. Exhibits shall not contain argument.

5. Please see Section 2(e) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual[1] to determine whether a courtesy copy of the Joint Motion needs to be delivered to chambers. If a courtesy copy is required, it shall be delivered directly to the Court's chambers in a binder with all motions, declarations and exhibits appropriately indexed and tabbed.

D. If the dispute arises during a deposition, counsel may call Judge Gallo's chambers at (619) 557-6384 for an immediate ruling on the dispute. If Judge Gallo is available, he will either rule on the dispute or give counsel further instructions regarding how to proceed. If Judge Gallo 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 B and/or C above.

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[1] This Manual can be found online at the Court's website www.casd.uscourts.gov.

E. The Court will **not accept** motions pursuant to Federal Rules of Civil Procedure 16, 26 through 37 and 45 until counsel have met and conferred to resolve the dispute and participated in an informal teleconference with the Court. Strict compliance with these procedures is mandatory before the Court will accept any discovery motions.

F. For **oral discovery**, the event giving rise to the discovery dispute is the completion of the transcript of the affected portion of the deposition.

For **written discovery**, the event giving rise to the discovery dispute is the date when the response was actually served or when legally due to be served.

For example, the thirty-day clock begins to run on the day:

1. Interrogatory responses or document production were due, if responses or production were untimely;
2. Insufficient interrogatory responses or document production were timely served; or
3. Timely objections are served.

G. The Court will either issue an order following the filing of the joint motion, schedule another telephonic discovery conference, or hold a hearing.

1. If the Court rules, with or without a hearing, the party prevailing overall, as determined by the Court, may be awarded its costs and expenses after the non-prevailing party has been given the opportunity to be heard. The costs will likely include, but not be limited to, (1) the time required to file pleadings, prepare for, travel to, and attend the required meeting, and, if necessary, the time required to prepare for, travel to, and attend the hearing; and (2) the actual cost of court reporting, travel, sustenance, and accommodations for all of the above. The costs will be paid by the non-prevailing attorney and not charged to the client unless counsel provides written proof that the client insisted on going forward against counsel's advice.

2. In the event that the discovery dispute involved a truly justiciable issue, the Court will not impose sanctions. The Court, in its discretion, will decide whether that criterion has been met.

3. **Bottom line: The Court is not a discovery dispute hotline to be called every time the parties have a disagreement and have not put in the effort to resolve it on their own. Before counsel involves the Court to rule on a dispute, counsel must be sure to have exhausted every reasonable possibility of resolving it. Counsel are hereby forewarned that involving the Court unnecessarily or without adequately meeting and conferring may result in the imposition of severe sanctions.**

H. Sample Format: Joint Motion for Determination Of Discovery Dispute

Request No. 1: Any and all documents referencing, describing or approving the Metropolitan Correctional Center as a treatment facility for inmate mental health treatment by the Nassau County local mental health director or other government official or agency.

Response to Request No. 1: Objection. This request is overly broad, irrelevant, burdensome, vague and ambiguous, and not limited in scope as to time.

Plaintiff's Reason to Compel Production: This request is directly relevant to the denial of Equal Protection for male inmates. Two women's jails have specifically qualified Psychiatric Units with certain license to give high quality care to specific inmates with mental deficiencies. Each women's psychiatric Unit has specialized professional psychiatric treatment staff (*i.e.*, 24 hour psychiatric nurses full time, psychiatric care, psychological care, etc.). Men do not have comparable services. This request will document the discrepancy (include relevant Points and Authorities).

Defendant's Basis for Objections: This request is not relevant to the issues in the case. Plaintiff does not have a cause of action relating to the disparate psychiatric treatment of male and female inmates. Rather, the issue in this case is limited to the specific care that Plaintiff received. Should the Court find that the request is relevant, defendant requests that it be limited to a specific time frame (include relevant Points and Authorities).

V. Stipulated Protective Order Provisions for Filing Documents Under Seal

All stipulated protective orders submitted to the Court must include the following provision:

> 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 opposing counsel, or the person or entity who 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 granted by Judge Gallo, a redacted version of the document shall be e-filed. A courtesy copy of the unredacted document shall be delivered to Judge Gallo's chambers.

All stipulated protective orders submitted to the Court must be filed as a joint motion and must include a proposed order. Please refer to Sections 2(f)(4) and 2(h) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual for more information.

VI. *Ex Parte* Proceedings

Appropriate *ex parte* applications may be made at any time after first contacting Judge Gallo's Research Attorney assigned to the case. The application must be e-filed and should include a description of the dispute, the relief sought, and a declaration that indicates reasonable and appropriate notice to opposing counsel, in accordance with Civil Local Rule 83.3.g. The Court does not have regular *ex parte* hearing days or hours.

After service of the *ex parte* application, opposing counsel will ordinarily be given until **5:00 p.m. on the next business day** to respond. If more time is needed, opposing counsel must call Judge Gallo's Research Attorney assigned to the case to request to modify the schedule. After receipt of the application and opposition, the Court will review them, and a decision may be made without a hearing. If the Court requires a hearing, the parties will be contacted to set a date and time for the hearing.

VII. Requests to Continue

The Court disfavors continuances, but is amenable to such requests if good cause is shown. Good cause includes, among other things, a showing that the parties have been diligent and have not been dilatory. Parties should not assume the Court will grant motions to continue as a matter of course. For example, if the parties seek continuance of a discovery cut-off, they should not operate under the assumption that such requests are routinely granted and proceed to schedule a deposition after the discovery cut-off as a result. Finally, parties should seek continuances at their absolute earliest possible opportunity upon discovering the need for the continuance.

Whether made by joint motion or by *ex parte* application, any request to continue an Early Neutral Evaluation Conference, Settlement Conference, Case Management Conference, or Case Management Conference Order deadline shall be made in writing no less than **seven (7) calendar days** before the affected date. The request shall state:

1. The original date or deadline;
2. The number of previous requests for continuance;
3. A showing of good cause for the request;
4. Whether the request is opposed and why; and
5. Whether the requested continuance will affect other dates in the Case Management Conference Order.

Joint motions for continuance shall be made in the form required by Civil Local Rule 7.2.

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. Counsel may expect such from the Court and the Court expects such from counsel. 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. Participation By Junior Attorneys

Participation by Junior Attorneys. The Court encourages the participation of less experienced attorneys in all proceedings, particularly where that attorney played a substantial role in drafting the underlying filing or matter. The Court is amenable to permitting more than one lawyer to argue for one party if this creates an opportunity for a junior lawyer to participate. Nevertheless, all attorneys appearing before the Court must have authority to bind the party they represent consistent with the proceedings (for example, by agreeing to a discovery or briefing schedule), and should be prepared to address any matters likely to arise at the proceeding. The ultimate decision of who speaks on behalf of the client is for the lawyer in charge of the case, not for the Court.

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 Gallo's Courtroom Deputy at (619) 557-7141. Please see Judge Gallo's Criminal Pretrial Procedures.

APPENDIX A

Resolution of Discovery Disputes and Expectations

The Court is well aware that abuse of the legal process most often occurs during discovery, and that lawyers do things during discovery that they would not dream of doing if a judge were present. An attorney or client who engages in bad behavior, is not civil, refuses to extend common courtesy, or engages in bullying tactics, can expect a response in kind. This Court will not consider half-baked arguments, lame excuses, delays caused by the client, mudslinging, passing the buck, pointing fingers, ad hominem attacks, blaming support staff, or, particularly, lack of time. If counsel's caseload prevents devoting sufficient and adequate attention to the litigation before this Court, then counsel should reduce his/her caseload. An attorney's "busy" schedule is not a valid and justifiable reason for untimely responses, nor does it excuse unprofessional conduct. Claims of ethical violations are not taken lightly. Counsel who make such an accusation better be prepared to prove it.

In the Court's experience, the great majority of discovery disputes arise when one or both sides exhibit (1) a failure to grasp, or disdain for, the law, the rules, or the facts; (2) lack of professionalism; (3) lack of civility; (4) a refusal to extend common courtesy to a fellow professional (and therefore to the Court); (5) bad faith; or (6) some or all of the above. Indeed, it is very rare for this Court to see a truly justiciable discovery issue requiring thoughtful consideration and resolution by the Court if the parties have met and genuinely conferred in good faith to resolve the dispute.

The Court also does not favor either fishing expeditions or questions and requests which are unlimited in time or place. Neither does the Court favor totally unsupported objections to discovery based on the usual boilerplate assertions that the request is overbroad or unduly burdensome, or that the information sought is irrelevant, privileged, or is unlikely to lead to the discovery of admissible evidence. **Support your objection with facts or it will be overruled.** (See Appendix B, Section (A)(1) for guidance on boilerplate objections.) **If you have answered a discovery request "subject to" or after "reserving" an objection (or similar phrase), you have waived your objection.** (See Appendix B, Section (A)(2) for guidance on conditional responses.) You should not assume that the Court will buy your argument that a common English word is "vague" or "ambiguous."

APPENDIX B

A. December 2015 Amendments to the Federal Rules of Civil Procedure

The recently amended Federal Rules of Civil Procedure have now codified what has long been expected practice. Everyone – the Court, the attorneys, and the parties – are all charged with the responsibility to engage in civil discovery practices that are meant to achieve "the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. The scope of discovery is generally broad enough to allow the parties to obtain discovery "regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Such discovery "need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). Objections to discovery requests must state with specificity the grounds for objecting to the request. Fed. R. Civ. P. 33(b)(3) and 34(b)(2)(B).

The Court expects all counsel to adopt these best practices rule amendments when engaging in civil discovery. Making only relevant, proportional discovery requests will further the laudatory goals of Rule 1, which is in everyone's interests. Moreover, as the 2010 Duke University Law School Conference recognized, "cooperation among litigants can reduce time and expense of civil litigation without compromising vigorous and professional advocacy." "Effective advocacy is consistent with – and indeed depends upon – cooperation and proportional use of procedure." Fed. R. Civ. P. 1, Advisory Committee Notes.

B. Waiver of Discovery Objections

1. Boilerplate Objections

The Court observes that many responses to discovery requests state boilerplate objections such as vague, ambiguous, over broad, seeks attorney-client privileged information, seeks work product, premature, discovery in this matter is ongoing and all the facts in issue have not been discovered, misstates the law, and it is the other party's burden to prove a particular claim or defense.

Where the responding party provides a boilerplate or generalized objection, the "objections are inadequate and tantamount to not making any objection at all." *Walker v. Lakewood Condo. Owners Ass'ns*, 186 F.R.D. 584, 587 (C.D. Cal. 1999); *Sherwin-Williams Co. v. JB Collision Servs., Inc.*, 2014 WL 3388871, at *2 (S.D. Cal. Jul. 9, 2014); *See also Ritacca v. Abbott Labs.*, 203 F.R.D. 332, 335 n.4 (N.D. Ill. 2001) ("As courts have repeatedly pointed out, blanket objections are patently improper, . . . [and] we treat [the] general objections as if they were never made."). The responding party must clarify, explain, and support its objections. *Anderson v. Hansen*, 2012 WL 4049979, at 8 (E.D. Cal. Sept. 13, 2012). "The grounds for objecting to a request must be stated . . . and as with other forms of discovery, it is well established that boilerplate objections do not suffice." *Id.* (discussing boilerplate objections asserted in response to requests for admission).

2. Conditional Responses

You either have a sustainable objection or you do not. You cannot have it both ways. Additionally, discovery responses often contain language stating "subject to and without waiving these objections, [Plaintiff/Defendant] responds as follows:," and "[Plaintiff/Defendant] will produce non-privileged responsive documents within its custody and control." Conditional responses and/or the purported reservation of rights by Plaintiffs or Defendants are improper and ultimately have the effect of waiving Plaintiff's or Defendant's objections to the discovery requests. *Sprint Commc'ns Co. v. Comcast Cable Commc'ns, LLC*, 2014 WL 545544, at *2 (D. Kan. Feb. 11, 2014) ("*Sprint I*"), modified 2014 WL 1569963 (D. Kans. 2014) ("*Sprint II*"); *Sherwin-Williams*, at *2; *Fay Avenue Props., LLC v. Travelers Property Casualty Co. of Am.*, 2014 WL 2965316, at *1 (S.D. Cal. Jul. 1, 2014); *Meese v. Eaton Mfg. Co.*, 35 F.R.D. 162, 166 (N.D. Ohio 1964) (holding that "[w]henever an answer accompanies an objection, the objection is deemed waived, and the answer, if responsive, stands."); *see also* Wright, Miller & Marcus, Federal Practice and Procedure: Civil § 2173: "A voluntary answer to an interrogatory is also a waiver of the objection."

The Court recognizes that it is common practice among attorneys to respond to discovery requests by asserting objections and then responding to the discovery requests "subject to" and/or "without waiving" their objections. This practice is confusing and misleading. Moreover, it has no basis in the Federal Rules of Civil Procedure. *Sprint I*, at *2; *Sherwin-Williams*, at *2; *Fay Avenue*, at *1.

These responses are confusing and misleading because, for example, when a party responds to an interrogatory that is "subject to" and "without waiving its objections," the propounder of the interrogatory is "left guessing as to whether the responding party has fully or only partially responded to the interrogatory." *Estridge v. Target Corp.*, 2012 WL 527051, at *1-2 (S.D. Fla. Feb. 16, 2012); *Sherwin-Williams*, at *2; *Fay Avenue*, at *1. Similarly, with respect to requests for production of documents, a response "subject to" and "without waiving objections," leaves the requesting party to guess whether the producing party has produced all responsive documents, or only some responsive documents and withheld others on the basis of the objections. *Sprint I*, at *2; *Rodriguez v. Simmons*, 2011 WL 1322003 at *7 (E.D. Cal. Apr. 4, 2011).

Consequently, responses to discovery requests that are "subject to" and "without waiving objections," are improper, the objections are deemed waived, and the response to the discovery request stands. *Estridge*, at *2 (citing *Tardif v. People for the Ethical Treatment of Animals*, 2011 WL 1627165, at *2 (M.D. FL 2011); *Pepperwood of Naples Condo. Assn. v. Nationwide Mut. Fire Ins. Co.*, 2011 WL 4382104, at *4-5 (M.D. FL 2011); *Consumer Elecs. Ass'n v. Compras And Buys Magazine, Inc.*, 2008 WL 4327253, at *3 (S.D. Fla. 2008) ("subject to" and "without waiving objections" "preserve . . . nothing and serve . . . only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered."); *Sherwin-Williams*, at *3; *Fay Avenue*, at *2.

"If [a party has] responsive documents, but wish[es] to withhold them on privacy (or privilege) grounds, [the opposing party] should be made aware of this fact and the parties should continue their meet and confer obligations to ensure redaction, a protective order, *in camera review*, or other (privilege or) privacy-guarding measures are implemented to properly balance the need for discovery against the need for (privilege or) privacy." *Id.* at *7, n. 9 (citation omitted) (emphasis in original); *Fay Avenue*, at *2.

Moreover, when a party responds to a request for production of documents, it has three options under Federal Rule of Civil Procedure 34: (1) serve an objection to the requests as a whole, (Federal Rule of Civil Procedure 34(b)(2)(B)); or (2) serve an "objection to part of the request, provided it specifies the part to which it objects and respond to the non-objectionable portions, (Federal Rule of Civil Procedure 34(b)(2)(C)); or (3) serve a response that says that all responsive documents will be produced. What a party cannot do is combine its objections into a partial response without any indication that the response was actually a partial response. *Haeger v. Goodyear Tire & Rubber Co.*, 906 F. Supp. 2d 938, 976 (D. Ariz. 2012); *Fay Avenue*, at *2.

Further, conditional responses to discovery requests violate Federal Rule of Civil Procedure 26. Rule 26(g)(1)(B)(i)-(iii) requires responders to discovery requests to certify that the discovery responses are consistent with the Federal Rules of Civil Procedure, "not imposed for any improper purpose," and are "neither unreasonable nor unduly burdensome." Moreover, the 1983 Committee comments to Rule 26(g) state that "Rule 26 imposes an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rule 26 through 37." Providing conditional responses to discovery requests is improper. *Sprint II*, at *3; *Sherwin-Williams*, at *2; *Fay Avenue*, at *1.

C. Reference to Documents In Discovery Requests

A party may answer an interrogatory by specifying records from which the answer may be obtained and by making the records available for inspection. Fed. R. Civ. P. 33(d)(2). But the records must be specified "in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could." Fed. R. Civ. P. 33(d)(1). Responses to interrogatories that do not specify where in the records the answers could be found do not comply with Rule 33(d)(1). Rule 33 was amended in 1980 "to make clear that a responding party has the duty to specify, by category and location, the records from which the answers to the interrogatories can be derived." *Rainbow Pioneer No. 44-18-04A v. Haw. Nev. Inv. Co.*, 711 F.2d 902, 906 (9th Cir. 1983) (discussing former Federal Rule of Civil Procedure 33(c)); *West v. Ultimate Metals Co.*, 2014 WL 466795, at *2 (N.D. Cal. 2014); *Tourgeman v. Collins Fin. Servs., Inc.*, 2010 WL 2181416, at *6 (S.D. Cal. 2010). Former Federal Rule of Civil Procedure 33(c) is the same as the current Federal Rule of Civil Procedure 33(d). *Cambridge Elecs. Corp. v. MGA Elecs.*, 227 F.R.D. 313, 323 (C.D. Cal. 2004); *Fay Avenue* at *2.

D. Contention Interrogatories

Contention interrogatories ask the receiving party to state the factual bases for its allegations. The purpose of contentions interrogatories "is not to obtain facts, but rather to narrow the issues that will be addressed at trial and to enable the propounding party to determine the proof

required to rebut the respondent's position." *Folz v. Union Pac. Railroad Co.*, 2014 WL 357929, at *1 (S.D. Cal. 2014) (citing *Lexington Ins. Co. v. Commonwealth Ins. Co.*, 1999 WL 33292943, at *7 (N.D. Cal. 1999)). Courts recognize that contention interrogatories, when served after substantial discovery is complete, may be appropriate. *Folz*, 2014 WL 357929, at *2 (citing *Tennison v. City and County of San Francisco*, 226 F.R.D. 615, 618 (N.D. Cal. 2005)). At some point in time, parties answering contention interrogatories will have to fully respond to the contention interrogatories. *Folz*, 2014 WL 357929, at *1.