UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

, Plaintiff(s), v. , Defendant(s).	CASE NO. _____ (SK) **STANDING ORDER ON CIVIL DISCOVERY**

The following order shall apply in all cases where the undersigned Magistrate Judge is presiding pursuant to the parties' consent under 28 U.S.C. § 636 and those cases in which the assigned District Judge has referred discovery matters to the undersigned Magistrate Judge. Nothing in this order is intended to displace or alter any contrary order by the assigned District Judge (if there is one), nor does this order change the parties' obligations under the Federal and Local Rules, except as otherwise expressly stated in this order.

1. *Familiarity with FRCP Revisions*. The parties shall be familiar with the most current revisions to the Federal Rules of Civil Procedure, including the major December 2015 revisions (and accompanying advisory committee notes) that affect civil discovery practice. The parties shall **not** cite to cases that rely on language, principles, or holdings derived from the pre-December 2015 versions of the Federal Rules of Civil Procedure that are inconsistent with the text and purposes of the December 2015 revisions.

2. *Conferences of Counsel*. In accordance with Local Rule 37-1, if opposing "counsel are located in the same county," the mandatory pre-filing conference of counsel "must take place **in person** at the office of the moving party's counsel unless the parties agree to meet someplace else." But if opposing "counsel are not located in the same county," the conference must still be done by at least video (e.g., Zoom, Teams). Conference by telephone alone may be done only if videoconference is technologically infeasible (a vanishingly uncommon situation). **In no circumstances will exchanges of solely written electronic communications (via email, text, or the like) satisfy the pre-filing conference requirement; they may only supplement—but cannot substitute for—the mandatory in-person, video, or telephonic conference of counsel**.[1]

3. *Rule 26(f) Discovery Planning*. Creating a meaningful discovery plan during the Rule 26(f) conference became mandatory in 1993—nearly three decades ago. *See* 1993 Adv. Comm. Notes to Fed. R. Civ. P. 26(f). Any doubt that the Federal Rules require a substantive—not pro forma—discovery planning conference was eliminated in 2015 when "Rule 1 [was] amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to employ the rules in the same way." 2015 Adv. Comm. Notes to Fed. R. Civ. P. 1.

The purpose of a substantive discovery conference is to rebalance information asymmetry between parties. Plaintiffs and defendants alike,

[1] *See generally* Roghanizad & Bohns, *Should I Ask Over Zoom, Phone, Email, or In-Person? Communication Channel and Predicted Versus Actual Compliance* (2021).

after all, start a case "without a full appreciation" of the facts or without "information about the importance of the discovery in resolving the issues." 2015 Adv. Comm. Notes to Fed. R. Civ. P. 26(b)(1). That is why "these uncertainties should be addressed and reduced in the parties' Rule 26(f) conference." *Id.*

That is also why parties have been urged since December 2020 to discuss Rule 30(b)(6) witnesses and topics in advance during the Rule 26(f) conference. *See* 2020 Adv. Comm. Notes to Fed. R. Civ. P. 30(b)(6). Such early discussions are rarely wasteful since Rule 30, as amended in 2020, requires parties to convene a separate conference anyway before noticing any Rule 30(b)(6) depositions. The purpose of that conference is to have "[c]andid exchanges" and "good faith" discussions about the "organization's information structure," the "number of witnesses and the matters on which each witness will testify," and "any other issue that might facilitate the efficiency and productivity of the deposition." 2020 Adv. Comm. Notes to Fed. R. Civ. P. 30(b)(6). Since that "process of conferring" is intended to "be iterative," *id.*, there is little to lose by starting those discussions sooner than later during the Rule 26(f) discovery planning conference.

Therefore**, written discovery plans that simply restate—usually in a handful of paragraphs—the non-exhaustive topics enumerated in subsections (f)(3)(A) through (F) in Rule 26 with a perfunctory affirmation or pro forma response (e.g., "the parties intend to propound document requests and notice depositions on subjects relevant to the parties' claims or defenses") will not suffice and may be grounds for striking any discovery motion that could or should have been avoided with a substantive discovery planning conference.**

4. *Informal Discovery Before Formal Discovery*. Resorting to formal discovery methods to conduct "discovery about discovery" is wasteful pretrial activity. That is why, for instance, the amended Federal Rules now encourage early Rule 34 document requests. *See* Fed. R. Civ. P. 26(d)(2) (2015). "This relaxation of the discovery moratorium [before the Rule 16 pretrial conference was] designed to facilitate focused discussion during the Rule 26(f) conference." 2015 Adv. Comm. Notes to Fed. R. Civ. P. 26(b)(1). In truth, early informal discovery has long been the rule, not the exception. *See*, *e.g.*, 1993 Adv. Comm. Notes to Fed. R. Civ. P. 26(f) ("The parties should also discuss at the meeting what additional information, although not subject to the [initial] disclosure requirements, can be made available informally without the necessity for formal discovery requests.").

Engagement in informal discovery is especially important for electronically stored information (ESI).[2] When parties "anticipate disclosure or discovery of electronically stored information, discussion at the outset may avoid later difficulties or ease their resolution." 2006 Adv. Comm. Notes to Rule 26(f). That is why Rule 26(f) was amended in 2006 "to direct the parties to discuss discovery of electronically stored information during their discovery-planning conference." *Id.* That conference is the place to agree on the "specific topics" and "time period for which [ESI] discovery will be sought." *Id.* It is when parties should "identify the various sources of such [electronically stored] information within a party's control that should be searched." *Id.* And it is the time to

[2] As in most states, California requires that attorneys licensed in the state maintain competence in technology. *See* Rule 1.1 of Cal. R. Prof. Conduct (eff. Mar. 22, 2021). "The duties set forth in [Rule 1.1] include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology." *Id.*, Cmt 1.

"discuss whether the information is reasonably accessible to the party that has it, including the burden or cost of retrieving and reviewing the information." *Id.* But to do any of these things naturally requires an understanding "of the parties' information systems." *Id.*

Modern information systems or resources now extend well beyond just basic email and word processing programs. *See*, *e.g.*, The Sedona Conference *Database Principles: Addressing the Preservation and Production of Databases and Database Information on Civil Litigation* (2014); Craig Ball, *Luddite Litigator's Guide to Databases in E-Discovery*; Dan Regard, *Fact Crashing* (2022). So it is vitally "important for counsel to become familiar with those systems *before* the [discovery] conference." 2006 Adv. Comm. Notes to Rule 26(f) (emphasis added). And that may require "*identification of, and early discovery from*, individuals with special knowledge of a party's computer systems." *Id.* (emphasis added).[3] Otherwise, "[f]raming intelligent requests for electronically stored information" is exceedingly hard to do absent "detailed information about another party's information systems and other information resources." 2006 Adv. Comm. Notes to Rule 26(f).

5. *Phased or Sequenced Discovery*. Contrary perhaps to conventional practices and customs, discovery methods can be used in phases or helpful sequences—especially if any party resists providing informal discovery about uncontroversial or indisputable predicate facts needed to propound proportionate discovery requests most relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(d)(3)(A); *see also* Fed. R.

[3] The Court has a very basic ESI Conference Checklist available for download on its Procedures and Schedules webpage. Other more current or detailed resources, however, are plentifully available to practitioners today. *See, e.g.*, 1 Arkfeld's Best Practices Guide for Legal Holds (2022), Appendix C Information Technology Discovery Questions.

Civ. P. 26(f)(3)(B) (contemplating discovery "in phases" and "limited to or focused on particular issues"). Early, abbreviated, and focused Rule 30(b)(6) depositions, for instance, of persons most knowledgeable on limited predicate topics (e.g., organizational structure, policies and procedures, ESI sources) may lay the necessary foundations for—and avoid needless disputes about the scope of—other substantive written discovery requests. Dragnet-style document requests and interrogatories, in other words, need not always be the discovery tools of first choice.

6. *Scope of Discovery*. If the parties have a dispute on the scope of discovery, they shall include in their meet-and-confer discussions the relevance and proportionality factors set forth in Rule 26(b)(1), as amended in December 2015. Relevance in discovery is broader than how relevance is defined in Federal Rule of Evidence 401, but parties may no longer assert relevant discovery includes any matter relating to "any issue that is or may be in the case," or that discovery is relevant so long as it relates to the subject matter of the action. Relevance in discovery means it must relate to the legal elements of the parties' "claims or defenses," and even then, relevant information may be produced only if it is proportional to the needs of the case considering the proportionality factors.

7. *Document Requests and Responses*. Requests for production of documents must be drafted with reasonable particularity and responses to those requests must not rely on general or boilerplate objections. *See* Fed. R. Civ. P. 34(b)(1)(A), (b)(2)(B)-(C); *see also* The Sedona Conference *Primer on Crafting eDiscovery Requests with "Reasonable Particularity"* (2022); The Sedona Conference *Federal Rule of Civil Procedure 34(b)(2) Primer: Practice Pointers for Responding to Discovery Requests* (2018). After all, document requests for "all communications" or "all documents"

that "refer or relate" to broad topics are certain to draw objections and present intractable enforceability problems.[4] So too are document requests with no reasonable and logical timeframe limits.[5]

Likewise, responses to document requests that contain general or boilerplate objections *and* also fail to specify whether responsive documents are being withheld based on a specific stated objection violate amended Rule 34(b)(2). *See* 2015 Adv. Comm. Notes to Fed. R. Civ. P. 34.[6] That misguided and misleading approach—"when a producing party states several objections and still produces information, leaving the requesting party uncertain whether any relevant and responsive information has been withheld on the basis of the objections"—generates only "confusion" and leads to the very discovery squabbles and spats that the 2015 amendments to Rule 34 were intended to "end." *Id.* Finally, it is also improper for responding parties to use the concept of "disproportionality" as a synonym for boilerplate objections like irrelevance, overbreadth, undue burden, and the like. Discovery may be proportional to the needs of a case even if producing it may be burdensome, time-consuming, and costly; and conversely, discovery that is not unduly burdensome to produce does not mean it is necessarily proportional to the needs of the case.

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[4] *See, e.g.*, *Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 649 (10th Cir. 2008); *In re Milo's Kitchen Dog Treats Consol. Cases*, 307 F.R.D. 177, 179–80 (W.D. Pa. 2015); *Lopez v. Don Herring Ltd.*, 327 F.R.D. 567, 575 (N.D. Tex. 2018).

[5] *Compare*, *e.g.*, *Guerra v. Balfour Beatty Communities, LLC*, 2015 WL 13794439, at *6-7 (W.D. Tex. Nov. 19, 2015); *Locke v. Swift Transp. Co. of Ariz. LLC*, 2019 WL 430930, at *1 (W.D. Ky. Feb. 4, 2019).

[6] *Accord Katz v. Shell Energy N. Am. (US), LP*, 566 F. Supp. 3d 104, 107 (D. Mass. 2021); *Infanzon v. Allstate Ins. Co.*, 335 F.R.D. 305, 311 (C.D. Cal. 2020); *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 446 (D. Utah 2020); *Lopez v. Don Herring Ltd.*, 327 F.R.D. 567, 580 (N.D. Tex. 2018); *Ceuric v. Tier One, LLC*, 325 F.R.D. 558, 561 (W.D. Pa. 2018); *Liguria Foods, Inc. v. Griffith Lab'ys, Inc.*, 320 F.R.D. 168, 186 (N.D. Iowa 2017).

8. *Document Productions*. Production of documents—and associated privilege logs—"must be completed either by the time for inspection specified in the request or by another reasonable time specifically identified in the response." 2015 Adv. Comm. Note to Fed. R. Civ. P. 34(b)(2)(B). "When it is necessary to make the production in stages the response should specify the beginning and end dates of the production." *Id*.[7] Of course, the parties are expected to communicate and cooperate about deadlines: requesting parties may not unreasonably refuse to extend deadlines for rolling productions or short uncontrollable delays, nor may responding parties seek extensions for purposes of tactical delay or to cover for lack of diligence.

9. *Rule 33(d) Business Records*. Rule 33(d) provides the "option to produce business records"—instead of a substantive response to an interrogatory—but only if the answer is best derived from "examining, auditing, compiling, abstracting, or summarizing" business records *and* the burden of deriving that answer is "substantially the same for either party." Fed. R. Civ. P. 33(d). The rule then specifies the form of the response that must be given if those conditions are met so that the "interrogating party" can "locate and identify" the pertinent business records "as readily as the responding party could." Fed. R. Civ. P. 33(d)(1). And last, it describes the procedure for the "interrogating party" to "examine and audit" the pertinent business records and then to make "copies, compilations, abstracts, or summaries." Fed. R. Civ. P. 33(d)(2). None of these things,

[7] *Accord Evox Prods. v. Kayak Software Corp.*, 2016 WL 10586303, at *4 (C.D. Cal. June 14, 2016) (responses that do "not specify the date for completion of [] production" violate amended Rule 34); *Fischer v. Forrest*, 2017 WL 773694, at *3 (S.D.N.Y. Feb. 28, 2017) ("[R]esponses [that] do not indicate when documents and ESI that defendants are producing will be produced" violate amended Rule 34).

separately or collectively, permits an interrogatory response that merely cross-references a parallel production of documents.

10. *Rule 26(e) Duty to Supplement*. The duty to supplement discovery responses or document productions under Rule 26(e) is no safe harbor to responding parties for belated responses or productions that they could or should have made sooner with due diligence and reasonable inquiry. *See In re Delta/AirTran Baggage Fee Antitrust Litig.*, 846 F. Supp. 2d 1335, 1357-58 (N.D. Ga. 2012); Fed. R. Civ. P. 26(g)(1). Rule 26(e), in other words, imposes an obligation to supplement prior document productions when new information is found that could not have reasonably been discovered before—it is *not* a license to produce documents whenever they may happen to be found so long as it happens to be before the fact discovery cutoff. There is no such "discovery is ongoing" escape hatch to excuse unjustified and unnoticed late or last-minute productions or responses. Any responsive documents or discovery responses produced late without good reason for why they were not disclosed sooner may subject the responding party to sanctions under Rules 37(b)(2)(A) and (C). *See also* Fed. R. Civ. P. 37(c)(1); Fed. R. Civ. P. 26(g)(3).

11. *Discovery Cutoff*. The parties act at their own peril if they agree to "pause" discovery while awaiting decision on a motion or engaging in settlement discussions. Without a court order, the parties cannot expect to enforce any side agreements—even bilateral ones—about staying discovery (in favor of settlement talks or otherwise) if a dispute later arises requiring court intervention before the discovery cutoff. *See* Fed. R. Civ. P. 16(b)(4); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992); *see also Williams v. James River Grp. Inc.*, 627 F. Supp. 3d 1172, 1178 (D. Nev. 2022) ("The governing rules" of discovery are aimed at "explicitly

disabusing attorneys of any notion that stipulations regarding case management deadlines are effective without judicial approval.").

For that and related reasons, ex parte applications to shorten time for hearing on a motion to compel because of an impending discovery cutoff deadline ordered by the assigned district judge are not permitted and shall be summarily rejected absent a showing of due diligence and good cause why the disputed motion could not have been raised sufficiently in advance of the discovery cutoff date so as to allow not only decision on the motion but time to complete any discovery ordered on that motion before the cutoff. If no such diligence and cause can be shown, the parties must seek and obtain relief from the district judge's scheduling order first before filing a motion to compel on the eve of a discovery cutoff.

12. *Reciprocal Discovery*. Whether, when, and to what extent one side reciprocates on its discovery obligations is never substantial justification for the other side to delay, manipulate, or withhold discovery of its own. *See* Fed. R. Civ. P. 26(d)(3)(B) ("[D]iscovery by one party does not require any other party to delay its discovery."); *Infanzon v. Allstate Ins. Co.*, 335 F.R.D. 305, 312 (C.D. Cal. 2020) (collecting many cases holding same by application of Rule 26(d)(3)); *accord Liguria Foods, Inc. v. Griffith Labs., Inc.*, 320 F.R.D. 168, 186 (N.D. Iowa 2017) ("Rule 26(d)(3) also makes clear that . . . a party cannot delay responding to discovery simply because the other party has not yet responded to its discovery."); *Fresenius Med. Care Holding Inc. v. Baxter Int'l, Inc.*, 224 F.R.D. 644, 653 (N.D. Cal. 2004) (party may not "condition its compliance with its discovery obligations on receiving discovery from its opponent."); *Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295, 308 (D. Kan. 1996) ("A party may not withhold discovery solely because it has not

obtained to its satisfaction other discovery.").

That consequence naturally follows from the rule that, unless otherwise stipulated or ordered, "methods of discovery may be used in any sequence." Fed. R. Civ. P. 26(d)(3)(A). Simply put, "discovery is not conducted on a 'tit-for-tat' basis." *Nat'l Acad. of Recording Arts & Scis., Inc. v. On Point Events, LP*, 256 F.R.D. 678, 680 (C.D. Cal. 2009). So counsel should need no reminding that "wrongful conduct by one party, perceived or real, does not justify wrongful conduct by the other party and is not a defense." *MGA Entm't, Inc. v. Nat'l Prod. Ltd.*, 2012 WL 12883974, at *6 n.5 (C.D. Cal. Jan. 19, 2012). "If the opposing party is recalcitrant in responding to discovery requests, the rules provide a mechanism for compelling responses and/or imposing sanctions. The rules do not authorize one party to withhold discoverable material in retaliation for the opposing party's withholding of discoverable material." *Lumbermens Mut. Cas. Ins. Co. v. Maffei,* 2006 WL 2709835, *5 n.21 (D. Alaska Sept. 20, 2006).

13. *Rule of Evidence 502*. In any discovery dispute about waiver of attorney-client privilege or work product protection, especially with respect to ESI, the parties' failure to have obtained a non-waiver agreement under Fed. R. Evid. 502(e) or a non-waiver order under Fed. R. Evid. 502(d) can and will be considered as a factor in deciding whether a privilege or protection has been waived.

14. *ESI Spoliation*. Parties moving for sanctions based on failure to preserve ESI shall be familiar with and seek relief only as permitted by amended Rule 37(e). Sanctions cases decided before the December 2015 amendments to Rule 37(e) should be used cautiously considering the changes to the rule.

15. *Sanctions*. Failure to comply with this order may result in discovery sanctions, including payment by the non-compliant party and/or its counsel of the opposing party's reasonable costs or attorney's fees (or its equivalent) incurred because of the noncompliance.

IT IS SO ORDERED.

UPDATED: **May 15, 2025**

/s/
HON. STEVE KIM
United States Magistrate Judge