ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl®

NORTHERN CALIFORNIA

A Report on the Bay Area Complex Litigation Superior Courts

By Frank Burke, Chandra S. Russell, Stephanie D. Biehl, Adam R. Brausa, Adrian Canzoneri, Shana Inspektor, Kapri L. Saunders, and Ashley L. Shively

Winter 2018

TABLE OF CONTENTS

PART I: INTRODUCTION AND OVERVIEW

Introduction and Overview

In the summer and fall of 2017, we conducted one-on-one interviews of the nine Bay Area Complex Litigation Judges on behalf of the Association of Business Trial Lawyers (ABTL). Our goal was to provide a comparative perspective for practicing lawyers about the respective Judges' case mix, standard pretrial and trial practices, their likes and dislikes concerning lawyer conduct, and other as-yet-unpublished feedback for counsel. The interviewers asked the Judges a common set of prepared questions on these topics.

The Judges interviewed were Hon. Mary E. Wiss and Hon. Curtis E. A. Karnow of San Francisco County; Hon. Marie S. Weiner of San Mateo County; Hon. Brian C. Walsh and Hon. Thomas E. Kuhnle of Santa Clara County; Hon. Winifred Smith, Hon. George C. Hernandez, and Hon. Brad Seligman of Alameda County; and Hon. Barry P. Goode of Contra Costa County.

The authors of this report comprised The interview Team (further details are included at the end of Section II).

After preparing our interview notes and this overview, we provided them to the Judges for editing and comments. The Judges were extremely generous with their time, both in the interviews and in the edits.

This Part I provides an overview of our interview findings. Part II contains the complete interview summaries for each Judge prepared by The Interview Team. Part III contains supplemental materials, including guidelines and sample orders, offered by the Judges.

Case Mix

The case mix information was either anecdotal or based on the individual Judges' case management data, since none of the Counties track this information in their official statistics.

All of the Judges reported that employment and wage hour class action and PAGA actions constitute either their largest category of actions or are among the top two types of actions in their court. They constitute 48-50% of the actions in Santa Clara, 35% of the actions in San Mateo, 10-43% of the actions in the various Alameda Departments, and one of the top two categories in San Francisco and Contra Costa.

The next largest categories vary by County. Contra Costa has significant construction defect and mass tort cases, and Judge Goode also handles CEQA cases. San Francisco has significant mass tort claims as well as many coordinated and consolidated claims of various types. Another Department handles asbestos and CEQA claims. In San Mateo County, securities actions are approximately 15% of the total actions, as are construction cases, and Judge Weiner also handles CEQA cases.

Alameda County has significant volumes of asbestos, toxic tort/Prop 65, and construction defect claims, each in the 15-25% range.

Except as noted above, the Judges reported a smaller mix (in the 10% or less range) of complex tort, contract, insurance, antitrust, securities, construction defect, trade secrets, other IP, product liability, business torts/unfair competition, and personal injury/property damage/wrongful death.

Professional Standards

All Judges agree that the quality of the lawyering is very high in the complex litigation courts. They also agree that collaborative case management by counsel, including robust meet and confers in advance of hearings and trial, is essential to complex cases. They encourage face-to-face meetings rather than e-mail.

Relatedly, the Judges discourage wasting time on collateral matters in discovery or taking unnecessarily adversarial positions in legal briefs and motion practice. As Judge Goode puts it, "light, not heat" is preferred in briefs and at oral argument, and "excessive use of adverbs and adjectives is not helpful."

Adequate preparation is a must. Most Judges also agree that, when in court and on the record, lawyers should address the Judge, not each other. Of course, arguing with the other side in open court is discouraged.

Judges Hernandez and Goode noted the value of creativity and novel approaches to the thorny and cutting-edge issues that often arise in complex cases. Judge Weiner adds that lawyers should be dressed professionally before entering the courtroom, stand while speaking, keep objections short, and not infringe on the jurors' space. Judge Smith, who permits counsel to communicate with the Court via email, discourages parties from using that medium to air disputes or ask questions whose answers lie in the court rules.

All Judges encourage younger attorneys to participate at hearings and trial. Most Judges do not have a formal rule on this but are enthusiastic when senior partners ask junior attorneys to participate, particularly where junior attorneys "did the work." The Santa Clara Complex Civil Litigation Guidelines contain two explicit references to encouraging junior attorney participation at hearings and trial.

Applicable Rules

In Alameda, parties in complex-designated cases receive a notice of assignment and an initial case management order containing specific rules. Each of the three complex Judges in Alameda County has a standing order. The standing orders all prohibit parties from moving to compel before a discovery conference, though the Judges have their own procedures for seeking a conference. Each Judge has recommended procedures available on the Alameda County Superior Court website, where litigants can find procedures and other

resources to aid them during litigation. Please refer to the Appendix in Part III for copies of many of these materials.

Santa Clara County's complex departments follow the CRC but add three mechanisms for complex case management: (1) automatic discovery stay until the first CMC; (2) a stay on the responsive pleading deadline also until the CMC; and (3) an Informal Discovery Conference (IDC) before any discovery motion can be filed. The Santa Clara County Guidelines (available in the Appendix) cover most aspects of complex practice. Judge Kuhnle notes that complex cases often require deviation from the standard rules, especially in regard to discovery.

As in Santa Clara, Judge Goode's preliminary notice of assignment stays all discovery until the CMC. Judge Goode issues an e-filing order in each case. Judge Goode's Order re Issue Conference contains detailed rules regarding various aspects of trial, including a list of seven sua sponte rulings for which it is unnecessary to file motions in limine. The court website also has "A Handy Guide to Department 17." Copies of these orders, notice, and guide are available in the Appendix.

In San Francisco, Judge Karnow's Users' Manual (available in the Appendix) provides thorough guidelines on case management, discovery, class actions, page counts, trial, and other matters. Judge Karnow stresses the importance of flexibility in modifying CCP, CRC, and Local Rules in complex cases. Judge Wiss does not have any chambers rules. She does have a Sample Discovery Order, also available in the Appendix.

Attorneys appearing before Judge Weiner are required to follow the CRC, Local Rules, and Complex Civil Department rules (available on the court's website and contained in her CMC Order #1). The website contains model protective orders and special rules for Filed Documents and Courtesy Copies, Hearing Dates, Ex Parte Applications, and Discovery. These materials are included in the Appendix.

Case Management Conferences

Each of the Judges emphasized the critical role of case management in complex litigation. Judge Karnow has emphasized that the difference between a simple and complex case is "the interventionist role of the judge in the complicated case as a result of the failure of the usual rules of civil procedure and the inefficiencies of the usual roles of the participants."

At the initial CMC, most Judges do not want to receive the standard Judicial Council form, opting instead for a joint statement covering the principal factual allegations, causes of action and defenses, status of the pleadings, identification of major procedural and substantive problems, and a vision of how the case will progress.

Judge Goode wants the parties to cut through to the heart of the case and identify "lynch pin" dispositive issues that can be teed up for decision. Similar sentiments were expressed by most of the

Judges. Judge Hernandez encourages counsel to come up with novel, "even crazy" solutions. Most encourage lead counsel to attend in person and not send a stand in.

Each Judge sets a schedule of follow-up CMCs at 2-5 month intervals. Most discuss a discovery plan at the CMC, covering issues such as phasing or bifurcation, and some engage in a preliminary discussion of how E-discovery will be handled. Judge Seligman does not think it helpful to launch extensive discovery without having first thought about the issues requiring resolution. Judge Karnow prefers that the parties consider sequencing discovery, "with each phase to either lead directly to a motion or provide efficiencies for the next phase." Judge Smith considers phasing discovery or bifurcation if requested by the parties.

Many of the Judges inquire about and set deadlines for substantive or class certification motions at the CMC. There are differences among them on the scope of discovery in advance of a class certification motion.

Judge Goode usually limits such discovery pre-certification to class certification issues, but recognizes that an examination of these issues may implicate substantive issues as well; he encourages parties to "try to find the line and stay on the class certification side of it initially and keep the merits discovery to only that which is necessary to inform the class certification issues." Judge Walsh uses a similar approach.

In employment class actions, Judges Goode and Walsh try to determine whether defendants plan to file declarations in opposition to the class certification motion, which may lead to further deposition discovery by plaintiffs before the response or reply brief is due. One of Judge Karnow's approaches is similar, but he usually anticipates little discovery before the certification motion, with defense discovery before its response and plaintiff discovery before the reply.

Judge Hernandez's and Judge Smith's Department Guidelines (available in the Appendix) suggest a similar "staggering" of discovery by plaintiffs and defendants in connection with a motion for class certification. Judge Weiner does not stay merits discovery pre-certification, but sometimes prioritizes the staging of discovery pre-certification, especially E-discovery which may be voluminous and time consuming.

The Judges report that in PAGA actions, phasing of discovery is impacted by the recent case of *Williams v. Superior Court*, 3 Cal. 5th 531 (2017), which governs.

Discovery

The topic of discovery and discovery disputes is another area for novel solutions in the complex litigation courts. Most of the Judges use a very different approach from that set forth in the rules. Judge Karnow urges counsel to "think outside the box." For many, discovery conferences are informal, with short letter briefs instead of

traditional style briefs and informal dialogue among the Court and counsel, sometimes considered to be off the record.

For example, in both Santa Clara County and Contra Costa County, all discovery is stayed until the CMC. After all parties have been served, the stay may be lifted in whole or in part. A hallmark of the Santa Clara Guidelines is the Informal Discovery Conference ("IDC"), an off-the-record discussion preceded by a three-page letter brief. If an agreement is reached, it is memorialized in an order, and if not, a motion may be filed.

Judge Goode encourages informal discovery conferences, but does not require them. Judges Hernandez, Seligman and Weiner require an informal process, with short letter briefs and discussion and guidance from the Court, before they will grant permission for the parties to file a formal motion. Judge Smith requires the parties to send two page e-mails to her Department requesting a Discovery CMC when there is a dispute.

Judge Karnow recommends that counsel consider informal conferences with him, either telephonically or in writing, and provides a checklist for counsel to follow. If that fails, he offers a unique "one shot" procedure which requires a joint submission that groups the issues, quotes only the relevant text of the disputed discovery, and succinctly presents each parties' argument, once per issue. He usually rules without a hearing within a few business days but will schedule a hearing if requested.

Judges Weiner, Seligman and Wiss are more proactive on electronic discovery. Judge Seligman wants the parties to issue litigation holds and determine what information they have, where it is and how to search for it, and to meet and confer with the other side before coming to the case management conference. Judge Weiner encourages the parties to agree on initial search terms and an initial subset of custodians and complete those productions before conferring on the full scope of custodians, a topic on which they often disagree, which is when she gets involved. Judge Wiss asks the parties to present her with information about what kind of discoverable information is available, its format, how it should be produced, the cost of productions, and whether they recommend using a document depository.

Several of the Judges suggest that parties focus on the named plaintiffs' depositions and defendant PMK depositions early on. Judges Hernandez, Smith and Weiner suggest that parties focus on depositions and documents rather than interrogatories and requests for admission. Judge Weiner limits parties to 35 special interrogatories and 35 requests for admission (other than authenticity of documents), without a prior court order after demonstration of need and a showing that other means of discovery would be less efficient.

Class Certification

All Judges agree that class certification should normally be adjudicated before summary judgment (per *Fireside Bank*). As part of class certification, many Judges have the parties submit a trial plan focusing on manageability and evidentiary issues and how the evidence presented by the class representative will prove the claims of absent class members, plus a discussion of how class damages will be proven.

The Judges have different procedural requirements for scheduling class certification deadlines and hearings. Judge Hernandez will specially set class certification motions as outlined in his Department 17 Guidelines. Judge Smith generally does not determine the appropriate time for filing a class certification motion, relying on the parties to decide and alert Judge Smith during a CMC or status conference.

For Judge Seligman, prior to filing a class certification motion, the parties should meet and confer and the motion itself should include a trial plan. Judge Kuhnle typically sets a class certification hearing well in advance of any certification briefing and adopts an extended briefing schedule. Judge Walsh usually sets the time for the class certification hearing 6 months out and encourages a longer, non-statutory briefing schedule.

For Judge Weiner, the parties will discuss certification and summary judgment timing at the CMC. Judge Goode specially sets class certification motions after discussing with counsel how much time they need for response and reply, and whether they need to exceed the usual page limits. He prefers to have 2-4 weeks between the reply brief and the hearing depending on the filing volume. Judges Walsh and Hernandez have a similar approach.

Judge Wiss asks the parties to give her 10 days between the filing of the last paper and the hearing date. Judge Karnow provides parties with a document entitled "Complex Litigation – Class Action Materials," available on the Court's website (and included in the Appendix), which provides a checklist for class certification issues and also a checklist for obtaining preliminary approval of class settlements. Each Alameda County Judge also has separate procedural guidelines for preliminary approval and final approval of class action settlements (samples are available in the Appendix).

The types of evidence the Judges find compelling on class certification depends on the case. But, regarding declarations, Judges Seligman, Walsh, and Weiner view quality as more important than quantity, and find multiple identical declarations less persuasive. Deposition transcripts and documents, on the other hand, can be quite helpful. Several Judges note that statistics or surveys can be helpful in certain circumstances, though Judge Weiner notes they are more commonly appropriate for damages purposes than liability. Judge Weiner also states that experts proffering

statistics or surveys are likely to be subject to a Section 402 pretrial hearing.

Judges Karnow and Smith are likely to subject the statistical evidence to the standards set forth in *Duran*.

Related Cases

All Judges prefer to address related cases as soon as possible, both because the existence of related cases factors into whether a case will be treated as complex, and so that the related cases can be adequately coordinated in different jurisdictions. Related cases are joined upon notice and motion and are governed by CCP 1048 and CRC 3.350 and 3.500 for consolidation and CCP 403-404 and CRC 3.501-3.550 for coordination. The procedure varies depending on whether the cases are non-complex or complex and whether the actions are pending in the same or different counties.

Special Procedural Requirements

Most of the Judges stated that they recognize that the complex litigation cases present cutting edge issues which may require briefing beyond the statutory page limits.

On the other hand, Judge Goode stated that he "appreciates concision. Do not repeat things and do not bury adverse authority or difficult points in footnotes. Double space your briefs." Judge Hernandez noted that counsel is doing something wrong if he or she cannot get it under the page limit. Judge Walsh noted that brevity is the best way to keep the reader's attention. "Get it down to the heart of the issues. Put your best arguments up front, and keep them concise and clean. Footnotes are fine and have a different grammatical purpose than text." Judge Weiner requests a table of contents and a table of authorities in every brief, even if less than 10 pages. Judge Smith urges parties to be reasonable in seeking extended briefs, do not sneak in extra pages, and notes that footnotes with long string cites are ineffective. Each Alameda County Judge also has special guidelines regarding sealed documents and non-California authorities (samples are available in the Appendix).

Because most of the complex litigation Judges hold CMCs periodically and frequently, there appears to be less of a need for ex parte discovery motion practice. Judge Walsh notes that Santa Clara County has a 24 hour rule on expedited motions, and complex court practitioners must secure a time for an expedited hearing. Judge Weiner sets aside two afternoons per week for potential ex partes, on Tuesdays and Thursdays, with notice by 10 a.m. the previous day.

Most of the Courts except Alameda County have e-filing in the complex litigation courts. In cases with a voluminous record, Judge Goode may request hyperlinked briefs. The Alameda County Judges request courtesy copies to be delivered to chambers. E-filing is permissive but encouraged by Judge Weiner, who also requires courtesy copies to be e-mailed to

the Complex Civil Department or hard copy mailed to her.

Judge Goode is unlikely to grant a motion to exclude expert testimony under *Kennemur* unless the moving party can show that the expert was asked for all of his or her opinions and the bases for them. On Apex depositions, Judge Walsh requires that the party seeking the deposition must show that they have exhausted discovery of subordinates, and that the Apex deponent is critical on a central issue. He sometimes also imposes time limits.

Judges Goode and Hernandez report that they are amenable to special hearings or "science days" to educate them on technology issues or environmental issues in their cases.

Motions for Summary Judgment or Summary Adjudication

The Judges all encourage parties to avoid voluminous statements of fact, which are likely to raise factual disputes. They also strongly discourage scattershot objections to every statement of fact submitted, whether or not material and in dispute, which are unlikely to be dispositive and are extremely time consuming for the Judges. They may be stricken or lead to sanctions if abused. Judge Smith encourages parties to use excerpts of exhibits where possible, and discourages including arguments in briefs that are not necessary for decision.

Judge Seligman encourages the parties to meet and confer before filing a dispositive motion. Judges Hernandez and Weiner have no unique rules around page limits, and if a party requests to file an over-length brief, it is generally granted.

Judges Hernandez, Goode, Karnow, Wiss, and Weiner view CCP § 437c(t), stipulations to adjudicate sub-issues, as an underutilized statute that can be highly effective as part of the summary judgment/adjudication process.

Judge Walsh believes that the complex department is more open to motions for summary judgment/adjudication than typical unlimited jurisdiction courts, although Judge Goode observes that few motions for summary judgment are granted. Motions for summary adjudication fare slightly better, but not much. Judge Karnow expects the parties to understand the shifting burdens of proof, as well as the sometimes technical procedures required for such motions.

Several of the Judges suggest that counsel look for other methods to resolve dispositive issues, such as bench trials on stipulated facts, early motions in limine on key expert issues, early jury instructions to settle the law, or expedited jury trials.

Settlement Conferences

Generally, the complex Judges do not act as settlement Judges in their own cases, but some may act as settlement Judge for other cases in the complex litigation department. Most Judges observe private mediation as

the most common ADR approach among complex litigants.

In Alameda there are 3-4 settlement Judges. All asbestos and other types of cases go to them, unless the parties use an outside mediator, which they often do. If the parties request a judicial settlement conference, they are sent to one of the dedicated settlement departments utilized in Alameda County.

In Santa Clara, a Mandatory Settlement Conference occurs 1-2 weeks prior to trial, usually on a Wednesday. MSCs are typically handled by Temporary Judges, mediators who have been involved previously in the cases, and other sitting Judges. Judges Kuhnle and Walsh may be involved in a settlement conference if the case involves a jury trial and the parties agree to their involvement, but typically do not participate in cases going to bench trial. There is an assigned settlement Judge in San Mateo to whom Judge Weiner may send the parties if they cannot reach agreement before trial.

The San Francisco Superior Court has a panel of judicial mediators and there are about 12 Judges on the panel. If Judge Wiss determines a settlement conference is needed, Judge Wiss will try to facilitate a settlement conference with a sitting Judge of the parties' choice.

Judge Goode will not normally act as a settlement Judge on matters he oversees, asking other colleagues to sit in if needed, except in rare cases upon request of all parties.

Trial Management Issues

Many complex litigation Judges conduct final pretrial conferences 2-3 weeks before trial. Santa Clara and Contra Costa Counties have the most specific rules.

The Santa Clara County Complex Litigation Guidelines (included in the Appendix) require a joint statement of the case and controverted issues, stipulation to all facts amenable to stipulation, and exchange of in limine motions, exhibits, voir dire questions, proposed jury instructions, deposition designations, and a grid listing all proposed witnesses with estimated times for direct and cross examination and redirect examination and subject matter.

Contra Costa County local rules require a final Issue Conference. Judge Goode's Issue Conference Order (included in the Appendix) requires a statement of the case, voir dire questions, filed motions in limine, and exhibit numbering before the conference. It also includes a list of sua sponte rulings for which in limine motions need not be filed. Judge Goode also uses a mandatory witness grid system. In both Santa Clara and Contra Costa, a final witness time estimate is established, which the Judges use to keep counsel on track for the trial end date provided to the jury.

Judges Seligman, Karnow and Weiner also establish time limits for each side at trial, pursuant to discussions with counsel. Judge

Smith only asks for a time estimate. Judge Karnow strongly encourages the parties to develop a trial management plan. Once the time limits are established, he uses a chess clock and strictly enforces the total time limit. When a party's time is up, it is deemed to have rested.

Judges Wiss, Weiner and Seligman also report using final pretrial conferences to cover witness and exhibit lists and objections, in limine motions, and jury instructions. Judge Weiner also addresses jury questionnaires and motions to bifurcate, and requires counsel to meet and confer regarding exhibits and submit a stipulation regarding admissibility and authentication as well as deposition designations and objections. Judge Smith holds her pretrial conferences on the first day of trial, and requests parties to file only motions in limine on issues that will arise early in the trial, and generally file only motions, objections and other trial documents that are going to be used.

Judges Walsh, Wiss and Weiner prefer to pre-instruct the jurors at the outset of the trial on standard CACI elements of the main claims and defenses, so the jurors will have a roadmap of what they are to decide. Most of the rest pre-instruct the jurors before closing arguments, though Judge Weiner gives final jury instructions after closing arguments. Judge Goode has allowed witnesses to testify via Skype upon stipulation of the parties.

All of the Judges require some form of notice of witnesses to be called in advance of the day they will be called.

Most of the Judges are used to the parties bringing computerized presentation systems to trial, though many require the parties to agree upon and use the same system. Many of the complex courts have high-tech equipment in them. The Judges are amenable to the parties using Realtime transcripts and like to have Realtime on the bench. Some of the Counties have cut funding for Court reporters, so the parties must bring private reporters. In those cases, the Judges appreciate having Realtime also.

All of the Judges allow juror notetaking and most allow juror questions, though the manner in which the questions are asked varies. The Judges are generally amenable, if the parties stipulate, to other trial methods such as juror notebooks, interim summations, and use of full or partial deposition summaries in lieu of reading transcripts. Judge Smith does not allow interim summations and probably would not allow deposition summaries.

PART II: INTERVIEW SUMMARIES

San Francisco County Superior Court

Interview of Hon. Mary E. Wiss

Personal Background

Judge Mary E. Wiss presides in one of the two complex litigation departments of the San Francisco Superior Court. She previously served in the Probate, Criminal, and Civil Divisions, and also served as the Presiding Judge of the Appellate Division of the San Francisco Superior Court. She is a member of the Court's Judicial Mediation Panel and chairperson of the Court's ADR Committee. In 2009 she was elected President of the California Judges Association. In 2010 Judge Wiss was selected Judge of the Year by the San Francisco Trial Lawyers Association. Prior to her appointment to the bench, Judge Wiss specialized in civil litigation and was also a mediator with the American Arbitration Association. Judge Wiss is the co-author of California Tort Damages published by CEB, and other publications.

San Francisco County Complex Litigation Court

Judge Wiss does not have an exact number of the matters per year handled by the San Francisco complex litigation department because some of their cases are Judicial Council Coordinated Proceedings (JCCP) cases, which can each contain hundreds or thousands of related cases, and some cases are consolidated actions.

Judge Karnow and Judge Wiss are the only Complex Civil Litigation judges in San Francisco.

The complex departments do not handle asbestos and CEQA cases; those are handled by Judge Cynthia Ming-mei Lee in Department 503. In her complex department, Judge Wiss sees a multitude of mass torts, employment/wage/hour, a variety of class action matters, as well as a mix of antitrust, construction defect, securities, trade secrets and insurance coverage matters.

Judge Wiss was not able to obtain statistics from the County of San Francisco regarding the types and numbers of cases in the complex departments.

The complex judges in San Francisco do not handle unlimited jurisdiction cases not designated as complex.

Professional Standards in Judge Wiss's Courtroom

Judge Wiss expects the lawyers will be ardent advocates while at the same time treating opposing counsel with courtesy

and professionalism. Because the goal of complex treatment is to tailor case management, it is helpful when lawyers are cooperative and confer in advance about how they want the case to proceed, and help the judge stage the case. For example, the lawyers can tell the judges whether they want to focus on a particular issue, or defer a particular issue. Judge Wiss encourages the lawyers to be proactive and to guide the litigation because they know their cases the best, and if the lawyers do not do that, then the judges have to make decisions for them. So cooperation and planning among the lawyers, with respect to case management, will best meet the lawyers' needs.

With respect to particular issues or behaviors that Judge Wiss discourages, she puts it in the positive: common courtesy carries the day.

Judge Wiss encourages junior attorneys to participate in court hearings or trial. Her court room is a good place for new lawyers to make appearances. It is difficult to get courtroom experience, and yet we all had to start somewhere. The more appearances new lawyers are able to handle, the more comfortable they will become in the courtroom. And it gives them an opportunity to practice proper courtroom decorum. At the initial case management conference, Judge Wiss encourages the senior lawyers to allow new lawyers to make appearances, argue motions, and speak up. She will sometimes ask if the junior lawyer has anything to add. And, she will tell the senior lawyers that they can jump in if they need to.

Applicable Rules and Guidelines

The California Rules of Court and the county's Local Rules apply in Judge Wiss's matters.

She does not have any chambers rules because there are already so many rules for the lawyers to follow that she does not want to make it any more complicated than it already is. Lawyers practicing in the Bay Area have cases in multiple County Superior Courts as well as District Courts. Each court has its own local rules, so she does not have any additional rules that the lawyers need to follow.

However, she handles discovery in the following way. She suspends all deadlines to move to compel, and requires the parties to meet and confer to resolve any discovery issues. If the issue is not resolved, the parties schedule an informal discovery telephone conference with her. The conference will not result in an order because it is not a noticed motion. If the matter is not resolved in the informal conference, then any party is permitted to move to compel.

Case Management Conferences

The parties are required to submit a joint case management statement. For the initial case management conference, Judge Wiss asks the parties to be prepared to have a substantive discussion of the case. Issues include: how should the case be managed and staged, are there legal issues the parties would like decided first, what can be decided that would facilitate settlement, can the case otherwise be broken down and

addressed in parts, can we conduct trials on individual issues, etc.

At the initial Case Management Conference, she asks counsel, given the facts, in what order do you suggest that we approach discovery. For example, should we do phased or sequenced discovery, or should we focus on class certification issues first and reserve merits discovery?

As the volume of information has grown, specifically in the form of electronic data, discovery has become much harder. As a result, this requires lawyers to cooperate as to the scope and depth of discovery. Judges need the lawyers to help the Court set parameters on discovery by educating the Court to better understand the format that the information is in, and the cost of producing it. Most attorneys reach agreement on these matters, but if that does not happen, discovery can be a real hurdle that the judge and counsel need to get over to move the case along.

There is always a future case management conference, usually 90 days out, though this is tailored to the case.

Whether Judge Wiss prefers to focus on case dispositive issues first, or bifurcate proceedings depends on the case. She asks the lawyers if there is any issue on which an early decision would be helpful.

Related Cases

With respect to related cases, counsel are required to notify the court of a related action by filing a Notice of Related Action. The earlier counsel files such notice, the better. This allows counsel and the Court to coordinate with other jurisdictions and develop an overall plan that minimizes duplication and determine how best to proceed.

Discovery

The types of class discovery permitted depends on the case. Initially there is a focus on class certification issues, but there is not a bright line between class certification and the merits. Counsel generally work this out among themselves.

Judge Wiss does not have any particular rules or limits on written discovery.

Regarding her approach to electronic discovery, the lawyers should present the Court with information about what kind of discoverable information is available, its format, how it should be produced, the cost of production, and whether or not they recommend using a document depository.

She does not have any rules or limits on fact or expert witness depositions.

If the parties want a special master or discovery referee, Judge Wiss is fine with that.

Class Certification

The appropriate time for filing a class certification motion could be before or after summary judgment. The rule set forth in *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069 – which says that if you move for summary judgment before class certification, the ruling only binds the single

plaintiff – plays an important role in the timing of the class certification motion relative to the summary judgment motion.

For class certification motions, Judge Wiss asks the parties to give her 10 days between the filing of the last paper and the hearing date.

The kind of evidence (i.e. declarations, depositions, statistics, surveys) that is compelling in support of or opposition to class certification depends on the case.

Special Procedural Requirements

In Judge Wiss's opinion, the quality of briefing is superb in complex court. Having said that, the issues are sometimes cutting edge and have not been previously decided. As a result, briefing does not necessarily lend itself to a page limit. So if the issue merits more pages than the statutory limit, and counsel requests more, that is acceptable. As to what appears in text versus footnotes, she has no preference.

If Judge Wiss is holding an Informal Discovery Conference, she requests a joint letter a few days in advance, describing the issues to be discussed.

Judge Wiss does not require letter briefs outlining proposed substantive motions and requesting permission to file them. Counsel just need to call the clerk to schedule a hearing date.

Motions for Summary Judgment or Summary Adjudication

It is very hard to craft a summary judgment or summary adjudication motion that does not contain a factual issue. As a result, as an alternative to these motions, Judge Wiss encourages the parties to agree upon stipulated facts and to present the issue for a bench trial. As to CCP § 437c(t), it is available but she does not see many stipulations to proceed under that subsection.

Whether or not she encourages ex parte or expedited briefing depends on the case and the time frame. If trial is quickly approaching, she encourages the parties to reach agreement, or at least to agree on a briefing schedule for the motions.

The Court only uses File & Serve*Xpress* in the complex departments in San Francisco Superior Court. Everything must be e-filed and two copies must be delivered to Judge Wiss's chambers.

Settlement Conferences

Judge Wiss does not handle settlement conferences on the cases that are pending before her. She will ask the parties if they are using a mediator. The San Francisco Superior Court has a panel of judicial mediators and there are about 12 judges on the panel. Any case is eligible to ask for a judicial mediation. She lets the parties know that the court offers judicial mediation at no cost as a service to their litigants. Because mediation is a voluntary process, she never orders parties to mediation. But if she determines a

settlement conference is needed, she will order a settlement conference and will try to facilitate a settlement conference with a sitting judge of the parties' choice.

Trial Management Issues

Judge Wiss schedules a final pretrial conference to deal with witness and exhibit lists and objections, in limine motions, and jury instructions. Complex cases lend themselves to early rulings on Motions in Limine, jury instructions, and jury forms. All of this is sequenced before trial.

Before the jurors hear any evidence, she does some pre-instruction on relevant substantive law and it varies by case. She is in favor of anything that will help jurors understand their task.

Usually, as a timing matter, the instructions come last. However, pre-instruction helps the jurors grasp the issues they will be deciding. To the extent counsel can agree, it can be helpful.

Regarding use of electronic aids in the courtroom, the lawyers bring in their own equipment and their own tech people. Sometimes the lawyers agree in advance to share equipment. If the electronic aids are done well, they are very helpful to the judge and jury. Originally the courtroom was designed as a high-tech courtroom, but equipment quickly becomes dated and unusable, which is why most lawyers find it more convenient to bring their own. Wi-Fi is available.

Judge Wiss will not ask counsel to provide her with realtime transcripts, but if counsel offers, it is much appreciated!

As to the use of interim summations by the attorneys throughout trial, Judge Wiss has never done it.

She has never had counsel propose deposition summaries in lieu of reading deposition transcripts, but she would consider it if the parties stipulate to an agreed-upon summary.

Throughout trial jurors can submit questions. They hand them to the clerk, who will make copies and give them to the lawyers. Judge Wiss asks the lawyers how they would like to handle this. Sometimes the lawyers ask the questions so that they are in control of the presentation of their respective cases, but some judges ask the questions themselves and allow the lawyers to follow up. As to juror notetaking, all jurors are given notebooks to use.

If counsel agree to it, Judge Wiss allows the use of juror notebooks, which may include key admitted documents, substantive jury instructions, photos of witnesses, timelines, glossaries of key terms, or other organizational charts.

Regarding trial time limits, she likes the lawyers to provide estimates, and then she works with them on reasonable time limits and numbers of witnesses. Having said that, she thinks that attorneys should have the opportunity to try their case, so she tries to leave this as flexible as possible without putting restrictions on time. But as it relates to jury trials, she needs to keep to

the anticipated, projected amount of time. With a bench trial, she tries to work with the attorneys as to what they need.

Judge Wiss requires advance notice of which witnesses will be called. She considers what the lawyers can agree to, but there should be 24-48 hours advance notice of which witness will be called.

Interview of Hon. Curtis E.A. Karnow

Personal Background

The Honorable Curtis E.A. Karnow was appointed to the bench in February 2005, and now presides over Department 304 of the Superior Court of San Francisco County's complex litigation department. Judge Karnow was previously the Presiding Judge of the Court's Appellate Division.

Judge Karnow is a member of the California Supreme Court Committee on Judicial Ethics Opinions, and has served on the Chief Justice's "Your Constitution: The Power of Democracy Steering Committee" and several Judicial Council task forces and committees.

Judge Karnow spent 25 years in private practice prior to his appointment to the bench, where he specialized in antitrust, intellectual property litigation, computer and internet law. Judge Karnow's past experience includes a clerkship with Judge Louis H. Pollak (E.D. Pa.) and service as Assistant United States Attorney.

Judge Karnow has given lectures at the University of Michigan Business School, the Haas School of Business at U.C. Berkeley, Yale Law School, NYU Law School, Stanford Law School, Hastings, and the University of San Francisco Law School. He has written a variety of books and articles, and is a current author of Weil & Brown, et al., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL (The Rutter Group). Some of his articles are found at https://works.bepress.com/curtis_karnow/.

Judge Karnow was born in Germany, and raised in Hong Kong, France and North Africa. He admits that he possessed the desire to enter the legal profession in early childhood. He graduated *cum laude* from Harvard University with a degree in Philosophy, and attended the University of Pennsylvania Law School where he was an editor of the school's law review. Judge Karnow moved to San Francisco in 1981 where he was in private practice until his 2005 appointment to the bench.

San Francisco County Complex Litigation Court

Judge Karnow presides over the San Francisco Superior Court Complex Litigation Division along with the Honorable Judge Mary E. Wiss.

Judge Karnow explained that complex cases are assigned differently in every county. In San Francisco County, parties wishing to have an action designated "complex" must file an application in Judge Karnow's Department seeking an order deeming the

matter "complex." California Rule of Court 3.400 defines "complex case" as follows:

> An action that requires exceptional judicial management to avoid placing unnecessary burdens on the Court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties and counsel.

CRC Rule 3.400(a).

In an article written by Judge Karnow in 2015 entitled *Complexity in Litigation: A Differential Diagnosis* (it is a chapter in his book LITIGATION IN PRACTICE (2017)), he dives deeper into the definition of complex cases, citing the additional factors suggestive of the need for a complex judge as provided in CRC Rule 3.400(b), but also simplifies the main premise as follows:

> . . . the need for *judicial intervention*. This is a recognition that the usual rules—and in California, we have a lot of them, from Legislatively-prescribed discovery procedures, rules of court, a code of civil procedure, and laws found in other codes as well—won't work.

He goes on in his article to note the key distinction between a simple and complex case: "the interventionist role of the judge in the complicated case as a result of the failure of the usual rules of procedure and the inefficiencies of the usual roles of the participants. This distinction defines the complex case."

While Judge Karnow was unable to provide specific statistics regarding the types and volume of the cases that go through the complex division due the multitude of factors at play in a respective case and/or designation of complexity, he did indicate that the complex division does *not* handle asbestos or CEQA cases.

In that same article referenced above, Judge Karnow paraphrased a quote by Albert Einstein which aptly sums up Judge Karnow's approach to complex litigation:

> *Everything should be as simple as it can be, but not simpler.*

With this backdrop, we will take a closer look at Judge Karnow's specific and unique approach to complex litigation in his department.

Professional Standards in Judge Karnow's Courtroom

Judge Karnow expects professionalism from the attorneys he deals with. He indicated that he is no different than any other judge in that he expects counsel to be knowledgeable, prepared, and zealous advocates for their clients. He also indicated that the attorneys he has dealt with in the complex division are among the best in the state and from across the United States. He does not have any particular "pet peeves" aside from counsel who are unprepared and/or do not have a working knowledge of the rules and procedures required of a particular matter.

To assist the attorneys appearing in his department, Judge Karnow provides a

"Complex Litigation Users' Manual" which can be obtained from the Court's website. As stated in the Users' Manual, it is designed to assist counsel to pursue their cases efficiently. Judge Karnow again emphasizes in the Users' Manual, "Counsel should be open to modifications to the usual procedures. The main job in complex is to simplify."

Applicable Rules and Guidelines

While Judge Karnow acknowledges the importance of the California Code of Civil Procedure, Rules of Court and the county's Local Rules, he stresses the importance of counsel being flexible to proposed modifications of the standard rules and procedures, as he stated multiple times during our interview. Each complex case requires a certain amount of tailoring so as to set the case up for the most efficient path towards resolution—whether it be through settlement or litigation. As he stated in our interview, "the default does not work for complex matters."

As far as particular guidelines, Judge Karnow's Users' Manual provides a thorough outline and discussion of guidelines on these topics: (1) Case management conferences; (2) Motion practice, (3) Discovery; (4) Class Actions; (5) Summary Judgment/Adjudication; (6) Sealing; (7) Excessive pages; and (8) Trials.

Case Management Conferences

Judge Karnow prefers that the parties' initial case management conference statement focus on the topics set out in the *Deskbook on the Management of Complex Civil Litigation* §§ 2.21, 2.30, which include, among other topics, the following:

- The principal factual allegations, causes of action, and defenses, including the salient factual and legal issues that will be presented.

- The status of the pleadings, including whether all parties have been named and served and have responded.

- The identity of threshold dispositive issues such as jurisdiction, standing, statutes of limitations, the absence of indispensable parties, the effect of any pending related litigation or claimed arbitration agreements and the like.

- The major procedural and substantive problems likely to be encountered.

- Ideas for the efficient management of the case.

- Anything else that the judge should know about in order to manage the litigation.

Joint statements are due at least 3 court days in advance.

For subsequent case management conferences, Judge Karnow wants the joint statements to reflect the results of prior discussions among counsel including the following (a list for which he thanks his predecessor, Judge Richard Kramer):

- What has been done in the case;

- Where the parties aim to go next with the case;
- What counsel requests of the Court; and
- How best to move the case along.

Judge Karnow does not want the parties arguing motions and/or the merits of their respective cases in the case management statements. He also advises the parties to not ask for continuances of a CMC within the joint statements, but rather to contact the clerk to reset a CMC (assuming all parties agree), or to request an informal call with Judge Karnow himself to discuss the requested continuance.

Discovery

As with every element of a complex litigation matter, Judge Karnow requests from counsel both flexibility and an openness to collaborative approaches to discovery and any potential disputes. Discovery plans should usually be tailored for a given matter.

In addition, per his Users' Manual, Judge Karnow suggests parties consider sequencing discovery, "with each phase to either lead directly to a motion or provide efficacies for the next phase."

Judge Karnow strongly urges the parties to avoid "frustrating and expensive discovery motion practice." He seeks to work with counsel as "colleagues" and together to resolve discovery disputes without the need for formal motion practice. He recommends that counsel consider informal conferences with him, either in person or telephonically. The Users' Manual provides a checklist to prepare for such a conference.

Judge Karnow also offers a unique alternative to formal discovery motion practice which he calls the "one shot" procedure. This procedure entails the following:

- The parties confer on the disputed issues and create a single joint Submission which (i) groups the issues (ii) includes only the relevant text of the disputed demands (e.g., deposition notices, requests for production) and responses and (iii) succinctly presents the parties' argument, once per issue.
    - This is done in a single document, appending so much of other papers (such as relevant transcripts of earlier hearings) as the parties believe are necessary (usually none).
- The Submission is filed, served, and a courtesy copy provided to Judge Karnow. The court then issues an order without a hearing, usually within a few business days.
- If a party insists on a hearing, they must file the Submission four (4) court days in advance.

Judge Karnow believes that the process of creating the Submission is itself a meet-and-confer and often results in agreement on

issues. It also avoids the duplication of argument in both memoranda and the traditional separate statement; it avoids the repetition of arguments made with respect to multiple demands which raise the same issue; and it organizes the demands into logical groups raising similar issues.

Class Certification

Judge Karnow provides parties with a document entitled "Complex Litigation – Class Action Materials," available on the Court's website. In these materials, Judge Karnow provides a checklist/outline for use by counsel in obtaining preliminary approval of class settlements.

In addition, he suggests the parties may wish to engage in "staggered" briefing on certification motions, which could save the parties considerable time and resources, and which entails the following:

1. Plaintiffs do only the discovery they need to meet their certification needs.

    a. This is usually brief, as plaintiffs' counsel typically have what they need before the suit is filed.

    b. No discovery is taken at this stage regarding anticipated defenses to the certification motion.

    c. Then plaintiffs serve the certification motion.

2. Defendants undertake discovery they need to defend against the motion, if any, and then file the Opposition.

3. Plaintiffs then do the discovery they need, if any, to respond to the Opposition, and then file the Reply.

Judge Karnow holds a short case management conference roughly one week after each filing to set the boundaries of then pertinent discovery.

These class action materials include suggestions on a Trial Management Plan and encourage the parties to carefully prepare such plans as they can be material to convincing the trial judge that the case be certified (or not).

Special Procedural Requirements

Outside of those discussed here, Judge Karnow has no unique rules or procedural requirements. Rather, his approach to complex litigation is unique in the sense that he is willing to set aside the standard rules and procedures that typically govern litigation if it means enabling the Court, counsel and the parties to more efficiently manage, and eventually resolve, the litigation. He encourages all involved to "think outside the box."

Motions for Summary Judgment or Summary Adjudication

Given the cost and time usually invested in a motion for summary judgment, Judge Karnow encourages the parties to consider alternatives including (1) stipulations as to facts/law; (2) stipulated bench trials on

specific limited issues; (3) creative use of requests for admissions; (4) early motions *in limine*; (5) early jury instruction conferences to fix the law; and (6) expedited jury trials.

With regard to evidentiary objections, Judge Karnow stresses to counsel to *only* make objections that are truly material, so as to avoid wasting the Court's and all parties' time.

If the parties proceed with motions for summary judgment, Judge Karnow expects the parties to understand the shifting burdens of proof, as well as the sometimes technical procedures required for such motions, such as rules on required format of separate statements filed in support of and in opposition to the motions.

Trial Management Issues

In addition to urging the parties to utilize a Trial Management Plan, Judge Karnow utilizes his own unique approach to controlling the flow of any given trial. He uses a chess clock for every trial he presides over. In fact, he will not set a trial without fixing the length of it, and allocating a specific amount of time to each party to present its case/defenses at trial. For example, he may allocate a specific number of hours to a party to present its case and for cross examination. He tracks the timing with the chess clock, and when the time is up, Judge Karnow advises counsel: the party rests thereafter. This forces counsel to evaluate and address the truly material points in presenting their case, and attempts to weed out extraneous matters at trial.

In establishing the time allocations Judge Karnow always works with counsel and bases his estimates off of the estimates of counsel – although he may not settle on the exact time allocations counsel proposes. In some instances, Judge Karnow requests a rough witness list to assist in the process of time allocations for trial.

Judge Karnow dedicates approximately 4.2 hours per day for trial, to allow for hearings in other cases each day.

San Mateo County Superior Court

Interview of Hon. Marie S. Weiner

Personal Background

Judge Weiner graduated from U.C. Hastings College of the Law in 1983. She practiced at Milberg Weiss in San Diego from 1984 to 1986. From there she went to what is now Cotchett, Pitre & McCarthy, where she handled massive civil cases, and became a partner in 1991.

Judge Weiner was appointed to the bench in July 2002 by Gov. Gray Davis.

San Mateo County Complex Litigation Court

Judge Weiner is the only Complex Civil Litigation Judge in San Mateo County.

At any one time, Judge Weiner has about 100 lawsuits assigned to her, 45-50 of which are active at any one time (groups of related cases are counted as one of the 45-50).

The exact case mix at any one time varies, but currently about 35% of Judge Weiner's active cases are under the California Labor Code (including class actions, Private Attorneys General Act, or individual labor code cases). Securities cases make up about 15%, CEQA cases make up about 10%, and Construction cases make up 15%. The remaining categories include Intellectual Property, Antitrust, and Insurance Coverage.

Judge Weiner has observed a trend of plaintiffs' lawyers not designating cases as complex in order to avoid paying the $1,000 fee, which clogs the system in other departments. This can result in case management and law and motion judges hearing more motions that usual.

The County does not publish statistics regarding the types and numbers of cases; they are only anecdotal.

Due to the budget crisis and staffing reductions, from 2013 until February 2017, Judge Weiner was required to help on the master calendar one-half to one full day per week in addition to her complex calendar. These additional duties could involve presiding over criminal and civil court trials, prove up hearings, preliminary hearings and motions to suppress.

Judge Weiner also handles CEQA cases, as one of the two designated CEQA judges.

Professional Standards in Judge Weiner's Courtroom

Judge Weiner is "old school" about courtroom decorum. She believes professional behavior requires standing when speaking in court and always addressing the court rather than the other

party. Lawyers should be dressed professionally before coming into the courtroom (she has observed lawyers getting dressed in the courtroom before a hearing).

Judge Weiner encourages stipulations, because if the parties cannot agree, then the judge may pick something both parties do not like.

Failure to appear for a scheduled hearing or trial is the only conduct for which Judge Weiner has issued sanctions against attorneys. She rarely issues discovery sanctions. Of course, she discourages fighting or arguing with the other side in open court. Judge Weiner discourages lawyers from saying "with all due respect." She expects lawyers to be organized for all appearances.

During a jury trial, Judge Weiner does not allow lawyers to touch the bar in front of the jury or otherwise be in the jury's body space, to prevent jurors from feeling uncomfortable. She also does not allow lawyers to stand by jurors or peer over the jury. Judge Weiner's goal is to preserve jury neutrality as much as possible, so when lawyers use audio or visual aids they need to ensure that all jurors can see and hear it equally.

Judge Weiner advises lawyers to keep their objections short, especially in front of the jury. Judge Weiner will generally grant side bars until that privilege is abused by, for example, going on record of saying something contrary to what was said at side bar or using side bars too often. Also in jury trials, lawyers should arrive early so they can raise any issues with the judge before the jury starts at 9 a.m.

Judge Weiner often has to remind lawyers to speak more slowly, especially younger attorneys. She finds that younger lawyers tend to speak faster, so it is harder for court reporters and the judge to hear.

Judge Weiner does try to actively encourage participation by junior attorneys. She has been enthusiastic when senior partners ask junior attorneys to divide up voir dire, split witnesses, or argue motions. Judge Weiner thanks the senior attorneys for providing those opportunities. Judge Weiner also finds that less experienced lawyers who are given opportunities tend to be more well-prepared.

Applicable Rules and Guidelines

Attorneys appearing before Judge Weiner are required to follow the California Rules of Court, County Local Rules (including Local Rule 2.30, which governs the procedure for the determination of complex case designation), and the Complex Civil Department rules, which are available on the court's website and contained in her CMC Order #1 (*see* http://www.sanmateocourt.org/court_divisions/civil/complex_civil_litigation.php).

The website contains model protective orders for the ease of the parties and to assure compliance with California Rules of Court, Rules 2.550 and 2.551, as well as special rules for Filed Documents and Courtesy Copies, Hearing Dates, Ex Parte Applications, and Discovery.

Case Management Conferences

Judge Weiner is very active in case management because she believes that it helps reduce the number of motions and keeps the case moving. She requires that CMC statements do not use the judicial council form but rather be written in prose with appropriate details. She encourages lawyers to list the topics they want covered at the conference. The standard topics Judge Weiner expects to be covered in the CMC statement are the status of pleadings, discovery, and a proposed briefing schedule for any anticipated motions. The standardized Case Management Order No. 1 contains all the required components.

Judge Weiner requires lawyers to preschedule any anticipated motions. The parties will discuss this at the CMC and prearrange a briefing and hearing schedule that meets the needs of the case. Judge Weiner discourages parties from catching the other side off-guard with impromptu hearings. The philosophy is to work together as a team to set a schedule that meets the needs of the case and the schedule of counsel, even if the schedule veers from the statutory deadlines, usually by stipulation, given that complex cases are allowed flexibility.

Judge Weiner typically does not get into the weeds of discovery at the first CMC. The goal is to find out what the likely disputes are. Often discovery is phased (e.g., one party serves a request for production leading to the need to meet and confer about search terms and custodians). Judge Weiner works with the parties as a team to resolve these types of phasing issues.

Because people in the legal profession are procrastinators by nature, Judge Weiner works with the parties to pick logical deadlines to get things done.

Judge Weiner regularly holds CMCs, with an order issued after each one. The CMC discussion and the new schedule, including the date for the next CMC, are memorialized each time. Depending on the needs of the case, CMCs can be as often as 1 month and as intermittent as 4 months. Judge Weiner encourages lawyers to provide input on how often they think a CMC is warranted (though she does not wait for lawyers to request a conference—Judge Weiner proactively schedules them).

Judge Weiner also holds regular discovery conferences, as often as the case needs. She will often schedule discovery conferences in advance. If the parties are able to resolve the dispute, they can take the conference off calendar at that time. Judge Weiner believes it is easier to have periodic discovery conferences on calendar and remove them if necessary rather than keeping conferences unscheduled and having the parties scramble last minute to squeeze in a conference.

Judge Weiner does not stay merits discovery pending class certification or formally bifurcate proceedings. But she does prioritize what discovery is needed for class certification and opposition given that electronic discovery can be voluminous, making it important to prioritize the parties'

time and attention. Sometimes lawyers will stipulate to stay merits discovery, and Judge Weiner will caution the parties that doing so is at their peril because they may get to trial and have not had enough time to focus on merits discovery.

Once class certification is complete, the parties will often know whether the case will go to trial or not. Once certified, Judge Weiner will set pretrial dates and deadlines and figure out what further discovery is needed. But her hope is they have been working on class discovery on the merits all along.

Related Cases

To the extent cases are related and in San Mateo, Judge Weiner tries to get them all assigned together at the outset of the case during the first CMC (related cases are a required section on the CMC statement). If a related case is in federal court, Judge Weiner will ask the parties during the CMC to report on the status of that related case.

Discovery

As noted, Judge Weiner encourages the parties to prioritize what is needed at the current moment without formal phasing. She encourages defendants to take the named plaintiffs' depositions as soon as possible, and encourages the parties to meet and confer and select PMKs for deposition early on. Usually, experienced counsel will know what discovery they want to take with an eye on mediation. Weiner works with counsel to get discovery that is needed for meaningful mediation. Once that stage is complete, she and the parties will focus on the next priorities, e.g., what discovery is required for pleadings and for trial.

There is nothing in particular about class discovery that Judge Weiner does not permit. Her role is more about helping the parties prioritize what discovery they need for class certification and other phases.

Most attorneys are now familiar with a Belaire notice being a requirement for obtaining class contact information. Judge Weiner is involved in reviewing and approving the Belaire notice itself. The Belaire notice is not supposed to be lengthy like a class certification notice, and should not include a pre-printed opt out form—putative class members must actually send in something in order to opt out of providing their contact information.

Given the nature of complex cases, Judge Weiner views document production and depositions as the most effective means of discovery for adjudication of complex cases. Accordingly, no party may propound more than 35 special interrogatories and no party may propound more than 35 requests for admissions (other than as to the authenticity of documents), without prior court order after demonstration of need and a showing that other means of discovery would be less efficient.

With regard to discovery motions, parties appearing before Judge Weiner are relieved of the statutory obligation under California Rules of Court, Rule 3.1345, and thus need not file a separate statement. Instead, the subject written discovery requests and

responses (or deposition answers or objections), or samples thereof, should be attached to the supporting declaration on the discovery motion.

In regard to all discovery disputes, counsel for the parties (and any involved third parties) must meet and confer, and, if there are remaining disputes, then counsel for each side must serve on each other and mail/deliver directly to Department 2 a letter brief setting forth the dispute and attaching as tabbed exhibits the subject discovery requests and responses (if any). At the time or prior to submitting (not filing) the letter briefs, counsel for the parties must also schedule a discovery conference with the Court to occur no sooner than five court days after delivery of the last letter brief to the Court, in order to discuss the dispute. The discovery dispute letter briefs and the discovery conference must be done well in advance of the statutory deadlines for filing any motion to compel or other discovery motion.

Judge Weiner requires that no discovery motion be filed by any party unless and until there is compliance with the above requirements, i.e., (i) substantive meet and confer, (ii) exchange of letter briefs, and (iii) discovery conference with the Court. This requirement does not constitute an extension of time for any statutory time period for filing and serving any motion under the Civil Discovery Act.

In Judge Weiner's experience, most discovery matters may be resolved at the discovery conference. The motions that most often end up as formal motions to compel are matters relating to third party and other types of privilege.

Judge Weiner encourages lawyers to reach agreement on electronic discovery search terms. She also encourages the parties to agree on an initial subset of custodians and complete those productions rather than waiting for the parties to reach agreement on the full scope of custodians—a topic over which the parties often disagree. Often, both sides agree on the initial custodians and then Judge Weiner will be asked to get involved in the second cut.

A common problem with electronic discovery is string emails, which create duplicative documents as well as complexities with privilege rulings. Judge Weiner encourages use of software to assist with de-duplication to minimize the different versions of the same email.

Judge Weiner also encourages parties to reach an accord on electronic discovery that minimizes the court's burden, rather than asking for voluminous in camera review by the judge in the first instance.

Judge Weiner does not impose limits on fact witness depositions. She only tends to get involved when a party complains about abuse.

With the exception of construction defect cases, Judge Weiner rarely refers discovery disputes to special masters or referees. When Judge Weiner first became complex judge in 2010, cases sometimes used private discovery referees, but that process would often result in voluminous findings that the parties would contest, so Judge

Weiner had to adjudicate the issues herself anyway. In addition, Judge Weiner believes that remaining involved in discovery disputes allows her to keep abreast of the case. Moreover, formal discovery disputes are often where parties become angry, making the case harder to settle. Thus, as noted above, Judge Weiner encourages frequent conferences with herself as often as needed to keep the proceedings calm and informal.

Class Certification

Judge Weiner typically requires class certification before summary judgment, unless there is a particular legal topic that needs to be addressed before certification (e.g., standing of the plaintiff). California case law supports the proposition that courts should decide class certification early before adjudication on the merits; when the proceedings reach merits determination, there will be collateral estoppel effect on the parties. The parties will discuss at the CMC if there is a summary judgment motion that needs to be done before class certification. The defendant often argues for early adjudication of an affirmative defense, but Judge Weiner will normally say it is better to wait until after certification so the ruling is binding on the class.

Judge Weiner does not impose any special procedural requirements or limits on class certification motions. As with all motions, the parties are required to follow the California Rules of Court on the number of pages, but if counsel stipulate to expand the number of pages, Judge Weiner will typically grant such a stipulation.

Judge Weiner does prefer that parties include a table of contents and table of authorities in every brief, even if less than 10 pages.

Judge Weiner does not find it particularly persuasive when a party submits dozens of identical declarations from putative class members. When the declarations are basically identical, Judge Weiner does not find that evidence to be as compelling as documents and depositions.

Judge Weiner does not often see parties submit statistics in support of class certification or summary judgment. The *Walmart* U.S. Supreme Court case and California state cases have held that it is rare to be able to prove liability through statistics. It is more common to use statistics for damages purposes. When parties do use statisticians for class certification or summary judgment, a dispute often arises over the sample size. Judge Weiner will get involved in the sample size dispute. Resolving the dispute requires a professional statistician to provide an opinion about what would be a statistically significant number (unless the parties stipulate to a sample).

If any party is going to use experts on statistics or extrapolations, Judge Weiner commonly holds a 402 hearing before trial.

Special Procedural Requirements

The parties are required to follow the California Rules of Court on the number of

pages, but if counsel stipulate to expand the number of pages, Judge Weiner will typically grant such a stipulation.

As noted, Judge Weiner prefers that parties include a table of contents and table of authorities in every brief, even if less than 10 pages.

Judge Weiner requires letter briefs for discovery matters, as discussed above. She does not require the parties to submit joint letter briefs, though sometimes parties will submit a joint letter.

Judge Weiner disfavors surprise motions as they tend to create tension, and therefore encourages parties to stipulate to a briefing and hearing schedule. Judge Weiner sets aside two afternoons per week for possible ex partes. As a practical matter, ex partes tend to be very infrequent because Judge Weiner holds frequent CMCs.

If litigants do file an ex parte application, they are only heard on Tuesdays and Thursday between 2:00 p.m. and 3:30 p.m., and the parties are required to meet the requirements of CRC Rule 3.120 *et seq.* With the consent of counsel for all parties, telephone conferences on simple interim case management matters may be scheduled with the Court for a mutually convenient time and date – with the scheduling and logistics of such telephone conferences to be the responsibility of the requesting party/parties.

As discussed above, no discovery motions may be filed until after a Discovery Conference is held and counsel for the parties have submitted discovery letters outlining the disputes.

Permissive e-filing is now available and is encouraged. A courtesy copy of all filed documents must be provided to the Complex Civil Department by email at ComplexCivil@sanmateocourt.org, or by hard copy mailed to the Judge.

Judge Weiner encourages lawyers to reference the *Deskbook on Complex Litigation*, which contains samples of case management and trial setting orders issued by Judge Weiner.

Motions for Summary Judgment or Summary Adjudication

Although highly encouraged, Judge Weiner finds that counsel rarely stipulate to adjudication of sub-issues under CCP § 437c(t).

Enormously long Statements of Undisputed Material Facts are not helpful if a party wants a summary judgment motion granted. Any evidentiary objections should be limited in number and nature. Voluminous evidentiary objections, particularly "shotgun" objections to every piece of evidence, are discouraged and may be stricken under CCP § 128.7.

Settlement Conferences

Judge Weiner does not hold settlement conferences. Most parties stipulate to a mediator. If the case does not resolve before trial, Judge Weiner may send the parties to the court's assigned settlement

judge. Otherwise, Judge Weiner is not involved in settlement.

In construction cases, the special master often conducts settlement discussions.

Trial Management Issues

Judge Weiner does schedule pretrial conferences. These conferences are usually 2-3 weeks before trial (whether jury trial or not). Judge Weiner will go through all motions in limine. If a jury trial, Judge Weiner will also address jury selection, questionnaires, and motions to bifurcate. Parties are required to meet and confer about trial exhibits and submit a stipulated order regarding admissibility and authentication. If any party intends to use depositions substantively, they must submit a designation ahead of time and the opposing party may submit objections.

Judge Weiner herself tries all cases to which she is assigned. So, Judge Weiner will set trial dates months or a year in advance to ensure sufficient time in her calendar. Judge Weiner gives hard, solid trial dates, because continuances may not be available for weeks or months. Even if the parties stipulate, Judge Weiner does not have flexibility to move a trial date by only 1-2 weeks. Where there is a continuance, it usually happens well before the trial date.

Judge Weiner pre-instructs the jury at the outset, before the evidence, with basic instructions (e.g., general CACI instructions and elements of each cause of action).

Judge Weiner's practice is to give final jury instructions after closing argument.

The San Mateo branch has high-tech courtrooms designed to handle complex cases. Unfortunately, because of severe budget cuts, the Complex Civil Department had to move from the San Mateo branch to the main courthouse in Redwood City, which does not have the sophisticated equipment or adequate power outlets. So until courts are fully funded again, lawyers often have to bring their own technology equipment.

Judge Weiner uses realtime on the bench. Court reporters are not able to provide it to lawyers. Sometimes lawyers bring in their own reporters to prepare a rough transcript.

Judge Weiner has never done mini closings (but no one has ever asked).

Judge Weiner requires lawyers using deposition transcripts of a certain length to pre-designate, the other side objects, and Judge Weiner makes a ruling prior to trial. For court trials, Judge Weiner will mark the deposition transcripts and put excerpts into evidence that Judge Weiner reads to herself while not in court. In a jury trial, if a deposition video is played or a lengthy deposition transcript read, the designated portions of the deposition will be entered into evidence so that the court reporter does not need to retype the transcript.

Judge Weiner does not favor juror questions during the trial. Her view is that it encourages the jury to be advocates instead of neutral fact finders. Judge Weiner may ask a question of a witness if

she thinks the testimony or evidence will be unclear to the jury.

Jurors are provided notepads to take notes. Jurors are not provided their own copy of specific documents or summaries unless stipulated by counsel for all parties.

For jury trials, Judge Weiner works with attorneys to agree on trial time limits, in order to keep the trials within schedule and let jurors be done within the time period they were told.

For court trials, generally the parties will budget how long the trial will take, but rarely has Judge Weiner had to set time limits.

Judge Weiner requires advance notice of which witnesses will be called. In particular, she requires that each side tell the other by 4 p.m. the prior business day what witnesses are anticipated and whether the testimony will be presented via deposition or live.

Santa Clara County Superior Court

Interview of Hon. Brian C. Walsh

Personal Background

After graduating from Notre Dame and Boalt Hall, Judge Walsh practiced as a business trial lawyer for 28 years and has been a Superior Court Judge in Santa Clara County for 17 years. He served as Assistant Presiding Judge for 2 years, Presiding Judge for 2 years and has served in the Complex Litigation Department since January 2017. He was appointed Pro Tem Justice for the Court of Appeal, Sixth Appellate District four times, serving a total of 2 years. He also served on the California Judicial Council and the California State-Federal Judicial Council.

Santa Clara County Complex Litigation Court

There are two Judges in the Santa Clara County Complex Litigation Court, currently handling 230 active cases. In terms of the distribution of matters, 48% of the matters are PAGA and employment class actions. Product liability matters are 7%, breach of contract 7%, construction defect 5.5%, securities litigation 5%, business torts and unfair business practices 4%, PI/PD/WD 2.6%, IP 2.2%. Approximately 60% of the two Judges' caseload is complex litigation, while 40% come from the unlimited jurisdiction division. Other than the statistics above, the court provides the JBSIS case data published through the California Judicial Council.

Professional Standards in Judge Walsh's Courtroom

Civility and professionalism are very important to Judge Walsh and in the Santa Clara County Superior Court, which embraces the Code of Professionalism adopted by the Santa Clara County Bar Association.

Judge Walsh feels that many lawyers are remiss in conducting true meet and confers. He encourages face to face or at least personal colloquy, not e-mail notices. He feels that personal appearances are important wherever possible, to be able to dialogue directly with the court. He often asks the lawyers to use the hallway or jury room to confer on issues.

He encourages parties to agree to non-statutory briefing schedules, giving the parties more time to file, respond and reply and the court more time to review the briefs. He dislikes overly long briefs which are often unnecessary and ineffective. Brevity is usually more powerful.

Judge Walsh states that lawyers should not address each other directly when in court and on the record. He dislikes unreasonable discovery fights.

Judge Walsh encourages junior attorneys to participate in court hearings or at trial. There are two explicit references in the Santa Clara County Complex Civil Litigation Guidelines encouraging the use of junior lawyers to argue motions that they drafted or significantly contributed to, and to have a role in examining witnesses at trial.

Applicable Rules and Guidelines

The complex litigation rules are set forth within the California Rules of Court 3.400-3.770 (3.2220-2237 for CEQA)

The 21-page Santa Clara County Guidelines and Protocols, Complex Civil Litigation Department ("Guidelines") cover virtually every aspect of practice in the Complex Court from the Case Management Conference to Law and Motion to Pretrial Conference to Trial, all in great detail.

The Guidelines provide for an automatic stay of discovery until the CMC. The Guidelines provide for a joint CMC statement. At the CMC, if all parties have been served, Judge Walsh is likely to grant a partial or total lift of the stay. A hallmark of the Guidelines is an Informal Discovery Conference ("IDC"), preceded by a three-page brief by each party, at which discovery agreements can be reached. The Guidelines contain detailed requirements for the Final Pretrial Conference, discussed below.

Judge Walsh also has Rules of Safe Passage, Department 1, as well as a separate document for Jury Selection.

Case Management Conferences

Judge Walsh believes that the Judicial Council standard form is inadequate for complex cases. The parties need to focus on the issues set forth in CRC Sections 3.724, 3.727 and 3.750. The Guidelines direct parties to file a joint statement addressing a brief objective summary of the case, a discussion of prior orders from CMCs and compliance therewith, a discussion of procedural and practical problems likely to be encountered, suggestions for management, a proposed timeline of key events, and any other special considerations. Case management is the key to handling complex litigation.

Judge Walsh expects the parties to meet and confer about the discovery plan, and bring up problems with him. One example would be topics to be covered with a PMK witness, and how many witnesses would be required to cover the topics.

Judge Walsh schedules periodic Case Management Conferences every 90-120 days after the CMC.

Judge Walsh believes that the Complex Litigation Department is more likely to bifurcate trials and more open to motions for summary adjudication than typical Unlimited Jurisdiction Courts.

Related Cases

As soon as they become known. Related cases in Santa Clara County are joined and consolidated upon motion.

Discovery

A hallmark of the Guidelines is an Informal Discovery Conference ("IDC"), preceded by a three page brief by each party, at which discovery agreements can be reached. The IDC is at the heart of the Guidelines. There can be no formal discovery motion until there has been an IDC. Judge Walsh believes that the IDCs are very successful and very appreciated by the parties.

Judge Walsh states that it helps him to meet with counsel in the IDCs to get a better understanding of the cases. They are off the record conferences with the court, but sometimes include meet and confer sessions between counsel. The goal is to reach a stipulation on the disputed discovery, which then can be adopted as an order of the Court.

The Guidelines provide for an automatic stay of discovery until the CMC. At the CMC, if all parties have been served, Judge Walsh is likely to grant a partial or total lift of the stay.

Judge Walsh believes that *Williams v. Superior Court* must be considered in planning the phasing of discovery in PAGA cases. In class action cases, Judge Walsh believes in staging discovery. Prior to class certification, he prefers that the parties focus on the certification issues. Typically, he will allow merits discovery on the class representative only. He will usually set the date for the class certification motion at the same CMC at which the automatic discovery stay is lifted.

In a class action case, if the defendants plan to file declarations from putative class members with their response to the class certification motion, Judge Walsh may allow them to be deposed prior to the certification motion.

Judge Walsh believes in proportionality in discovery. Discovery limits can vary case to case. He prefers that counsel work it out. He feels that the amount of written discovery has to fit the case. If a recipient of discovery objects on the basis of undue burden, they must make a strong showing of real burden, supported by evidence. He will impose appropriate limits if asked.

Judge Walsh prefers to let the parties work out issues on electronic discovery. Parties usually develop protocols on numbers of custodians and search terms. There should be mutuality. Parties must establish the need for the electronic discovery if it will be expensive. This may lead to cost shifting.

On APEX depositions, sometimes it is apparent that they are sought for tactical leverage. The requesting party must make a showing that they have exhausted discovery of subordinates, and that the APEX deponent is critical on a central issue. Sometimes he limits the time in such depositions.

With respect to special masters or discovery referees in complex litigation, Judge Walsh does not use them all the time, because they are very costly. Special masters are commonly used in construction defect cases. Discovery referees are sometimes essential in very large matters with a large

number of contentious issues or a large number of privileged issues or documents.

Class Certification

Typically class certification will be decided first, with motions for summary judgment or adjudication later. Occasionally they are heard at the same time. He usually sets the time for the class certification 6 months in advance. He usually encourages a non-statutory briefing with longer times for response, reply, and for the court's consideration before the hearing.

Judge Walsh finds that statistics and surveys can be compelling at times. He does not find 50 boilerplate declarations all of which are identical to be helpful, though he understands that they may be necessary. Deposition transcripts can be quite helpful.

Sometimes Judge Walsh will focus on case dispositive issues first or bifurcate proceedings, but it is not his first preference. He often finds that this method is unlikely to dispose of the entire action. He frequently phases discovery in class actions, with the first phase focused on class certification issues and merits as to the named plaintiff(s).

Special Procedural Requirements

Judge Walsh states that he is reluctant to expand page limits in briefs. Brevity is the best way to keep the reader's attention. Get it down to the heart of the issues. Put your best arguments up front, and keep them concise and clean. He feels that footnotes are fine and have a different grammatical purpose than body text.

Judge Walsh does not require parties to send him short letter briefs outlining proposed substantive motions and requesting permission to file them.

Local Rule 8F contains a 24-hour rule before any expedited matter can be heard, CRC 3.1203(a). The parties must confer with the Coordinator for Complex, Rowena Walker, regarding a time for an expedited hearing. The Coordinator will check with the Judge, who often insists on full briefing by both parties before the hearing. After agreeing on a schedule providing for an opportunity for full briefing, the matter can be specially set for an expedited hearing.

The Santa Clara Complex Litigation departments have electronic filing.

Motions for Summary Judgment or Summary Adjudication

Judge Walsh believes that the Complex Litigation Department is more open to motions for summary adjudication than typical Unlimited Jurisdiction Courts.

In motions for summary judgment or summary adjudication, Judge Walsh encourages parties to avoid endless objections to evidence cited by the other side.

Settlement Conferences

A pro tem judge handles the Mandatory Settlement Conference ("MSC"), but Judge Walsh oversees the MSC and is available to participate indirectly. If the parties have been working with a private mediator who

is up to speed, he will often invite them to use the private mediator for the MSC.

Though Judge Walsh is willing to become directly involved in settlement negotiations, if the matter is scheduled for a bench trial rather than a jury trial, he would find it more awkward to participate in settlement negotiations and would ask another judge to participate instead.

Trial Management Issues

The Guidelines contain an extensive discussion of the Final Pretrial Conference to be held 10-15 days before trial. There is an extensive grid with time estimates for the witness list. There must be a joint statement of the case, and a joint statement of controverted issues. The goal is to resolve all in limine, witness, exhibit, expert, voir dire and jury instruction issues before the jury is empaneled. Judge Walsh treats jury time like gold. A thorough final pretrial conference makes the trial proceed more efficiently.

Judge Walsh pre-instructs jurors on relevant substantive law at the outset, before they hear any evidence. This requires some effort to settle the key jury instructions before the trial. Judge Walsh pre-instructs the jury on the CACI instructions on the main elements of the claims and defenses.

Judge Walsh pre-instructs jurors on relevant substantive law before final summations by the attorneys. If the trial was short and both sides agree, Judge Walsh does not re-read the entirety of the instructions he gave at the outset, but sends several copies of them into the jury room. If the trial was long, he will re-read all the instructions at the end.

Judge Walsh allows and encourages the use of electronic aids in his courtroom, which is a high tech courtroom. In the courtroom, there are computer screens for counsel, the witness and the court, with two large screens for the jury. Judge Walsh notes that there is no WIFI in the Santa Clara courthouse. The parties can create and use their own hotspots if they wish.

The Court no longer has its own reporters. Judge Walsh loves realtime, and if the lawyers arrange for it, he requests that he be provided with it as well.

Judge Walsh would allow the use of interim summations by the attorneys throughout the trial in a long trial, but that is not often requested.

If the attorneys agree, Judge Walsh would likely allow the use of deposition summaries (possibly including short quotes) in lieu of reading deposition transcripts.

Judge Walsh allows juror questions to witnesses. He does not ask for juror questions after each witness. If he receives a juror question, he treats it in a low-key manner. CRC 2.1033.

Judge Walsh allows juror notetaking in every case.

Judge Walsh allows the use of juror notebooks, which may include selected key admitted documents, selected substantive jury instructions, photos of witnesses, timelines, glossaries of key terms, and

organizational charts, but this has been requested by counsel in only one case.

Judge Walsh imposes overall trial time limits, based on a breakdown by witness, opening statement, and closing argument. This data is included in the filings for the Final Pretrial Conference as shown in the Guidelines. At the conference Judge Walsh always works out the overall trial time estimate with counsel. He provides the estimate to the jurors. He periodically reminds the lawyers of the estimate if they are falling behind. He does not keep time witness by witness during the trial unless time limits have been imposed. He states that trial days in his court generally begin at 9 a.m. and continue until 4:30 p.m., with a morning and afternoon break and lunch break from 12:00 to 1:30 p.m. Because he often meets with counsel before and after each day of trial, Judge Walsh expects counsel to arrive at 8:30 a.m. each morning of trial and be prepared to stay until 5:00 p.m.

Judge Walsh's general rule is to require notice of which witnesses will be called the night before unless the lawyers stipulate to a longer time.

Interview of Hon. Thomas E. Kuhnle

Personal Background

The Honorable Thomas E. Kuhnle started his legal career at a large international firm. His practice commenced with environmental law and transitioned to primarily business and intellectual property litigation. After fifteen years at the firm, he joined the Superior Court bench for the County of Santa Clara. Judge Kuhnle spent his first year as a misdemeanor judge and his next 2.5 years overseeing misdemeanor and felony family violence calendars and trials. After that, Judge Kuhnle presided over civil trials for six months and then spent two years in the probate division. As of January 2017, Judge Kuhnle started serving as one of the County's complex litigation judges.

Perhaps the best way to describe Judge Kuhnle's approach to his complex litigation department is to analogize it to how he prefers to spend some of his time when he is *not* on the bench: cycling more than 5,000 efficient miles per year. As the terrain, obstacles, pace, and participants vary with each ride he takes, his complex cases unfold in a similar fashion. Judge Kuhnle's prominent preference for conduct in the courtroom is preparedness. An attorney appearing in either of the two complex litigation departments can begin her preparation by reading Santa Clara County's extensive Complex Guidelines, which largely reflect Judge Kuhnle's courtroom procedures.

The County of Santa Clara houses two complex litigation departments, which are run by the Honorable Thomas E. Kuhnle (Department 5) and the Honorable Brian C. Walsh (Department 1). Together, Judge Kuhnle and Judge Walsh currently handle 234 active complex cases, which are divided evenly between them. Santa Clara County's current substantive mix of complex cases includes approximately 50% employment actions, 8% breach of contract/warranty cases, 6% securities cases, 6% construction defect actions, and 4% business torts/unfair business practice actions. The remainder of the County's complex cases varies widely (e.g., asbestos actions, auto cases, fraud actions, corporate governance actions, product liability cases, etc.). In addition to managing the complex actions described above, Judge Kuhnle spends about 40% of his time overseeing non-complex, non-criminal trials. In 2017, such trials have included probate trials, writs of mandate, personal injury trials, and others.

Professional Standards in Judge Kuhnle's Courtroom

In addition to encouraging civility and professionalism, Judge Kuhnle believes that

in complex cases, more than in other cases, the attorneys and the Court must work collaboratively to reach the merits of a case in an efficient manner. Conduct that enables this to occur is continuous attorney communication and face-to-face meetings to discuss issues or disagreements. Judge Kuhnle values attorneys' preparation and states, "come prepared when you come to court." Of course, this means Judge Kuhnle dislikes when attorneys are not prepared. He also discourages unnecessary delays in cases and instances where attorneys aim to thwart the progress of a case rather than work together to move the case forward. As set forth multiple times in the County's complex guidelines, Judge Kuhnle encourages the participation of junior attorneys, especially during oral argument.

Applicable Rules and Guidelines

The County's complex departments do not deviate from the California Rules of Court, but do add three mechanisms for complex case management. First, when a case is designated complex, the Court imposes an automatic discovery stay until the first case management conference. Second, the Court imposes a stay on the deadline to file responsive pleadings also until the initial case management conference. Once the parties and the Court have discussed the scope of discovery and other issues in the case, the action proceeds. Third, the Court requires an Informal Discovery Conference (IDC) before any discovery motion can be filed. The IDC is an opportunity to bring issues to the Court and to meet and confer in person with opposing counsel, with oversight from the Court, in an effort to avoid unnecessary motion practice. Judge Kuhnle commented that while complex cases are not governed by a completely different set of rules, these cases often require a more thoughtful conversation between the parties and with the Court regarding potential case issues and the scope of discovery.

Case Management Conferences

Judge Kuhnle prefers that the following items be the most developed in an initial case management conference statement and discussed at the first CMC: (1) the parties' proposed discovery plan; (2) possible alternative dispute resolution opportunities; and (3) identification of key issues in the case. Judge Kuhnle believes the initial CMC is a great forum to have a conversation about the case issues and how certain issues might be resolved. Judge Kuhnle always sets additional CMCs, usually between two and five months following the initial CMC, but the frequency of CMCs varies depending on the circumstances of the case. He prefers the parties bring to his attention any threshold issues that can be resolved earlier in an action, either through case dispositive motions or by bifurcating the case to resolve legal and/or factual disputes. He also prefers to address related cases as soon as possible in complex actions and estimates that between 10 and 15 percent of his caseload involves related actions.

Discovery

Judge Kuhnle does not have a particular practice of phasing discovery in all cases but

certainly utilizes a phased approach to discovery where cases warrant doing so. A common example in which phased discovery takes place is class action litigation—where the Court will likely allow discovery from the named plaintiffs and discovery pertaining to class certification issues before allowing full merits discovery. Judge Kuhnle allows all types of discovery in class cases (i.e., depositions, interrogatories, requests for production, etc.), but the scope of discovery depends on what stage the case has reached.

In cases that are not class actions, Judge Kuhnle contemplates whether it makes sense to phase discovery based on the circumstances and issues present in the case. Judge Kuhnle does not have a specific set of limits on written discovery but aims in all cases to keep track of the burden imposed on the parties and attempts to make judgments regarding discovery limits that account for the size of the case, the number of parties to the case, and what discovery will be helpful to the progress of the case. Likewise, Judge Kuhnle does not have a particular recommended approach to electronic discovery but expects the parties to work together to develop a reasonable approach and to be knowledgeable about the various options available to them. Judge Kuhnle does not limit fact witness or expert depositions in complex cases but does remind the parties that the first step if a dispute arises regarding any discovery is to get on calendar for an Informal Discovery Conference. While Judge Kuhnle does not have any hard-and-fast rules for which cases may need a discovery referee or special master, he often finds that construction defect cases are good candidates for outside discovery assistance, as are cases with numerous substantive, unique, or unusual discovery disputes.

Class Certification

Consistent with California law, the vast majority of Judge Kuhnle's class actions undergo class certification assessment before summary judgment, but if there is an issue that can be properly resolved through summary adjudication or summary judgment before class certification, Judge Kuhnle is not opposed to considering it. Judge Kuhnle typically sets a class certification hearing well in advance of any certification briefing and adopts an extended briefing schedule for the class certification papers. Often, he will set a deadline for the filing of a motion for class certification and then hold a CMC to decide the remainder of the briefing schedule.

Special Procedural Requirements

In general, Judge Kuhnle's department does not operate pursuant to procedures particular to him or the complex departments. The only instance in which a particular process must be followed is in the Informal Discovery Conference context. IDC statements must be lodged (not filed) by each party two days court days in advance of the IDC. The IDC statements are limited to three pages of pleading paper, *not* 3 pages of letter briefing.

The complex departments require e-filing in all cases.

Settlement Conferences

A Mandatory Settlement Conference (MSC) occurs between one and two weeks prior to trial, usually on a Wednesday. MSCs for Judge Kuhnle's complex cases are typically handled by mediators who have been involved previously in the cases, temporary judges, and other sitting judges. Judge Kuhnle may handle a settlement conference himself if the case involves a jury trial and the parties agree to his involvement. For bench trials, Judge Kuhnle generally will not serve as settlement judge unless the parties agree and can explain why the case will benefit from his direct involvement.

Trial Management Issues

Santa Clara County's complex departments have extensive procedures regarding pretrial management (found in the Complex Guidelines). Pretrial conferences are typically two weeks before the trial is set to begin and the parties are required to meet and confer in person at least 10 days before the pretrial conference. At this meet and confer, the parties must prepare a variety of trial materials, including joint materials. All trial materials are due no later than 12:00 p.m. the first court day before trial.

The timing of Judge Kuhnle's substantive law instructions to the jury depends on the type and circumstances of the case. Judge Kuhnle generally does not allow attorney summations throughout the trial or the use of deposition summaries instead of reading deposition transcripts. His courtroom does not have WiFi, and parties are expected to bring their own equipment. His department has plenty of outlets for the parties' utilization. Judge Kuhnle does not require but has no objection to the use of real-time transcripts.

Judge Kuhnle allows juror questions and encourages juror notetaking. He has never used juror notebooks (including key admitted evidence, substantive jury instructions, photos of witnesses, glossaries of key terms, etc.) but perceives this as potentially useful to jurors. Judge Kuhnle generally does not impose overall trial time limits, though he may find it necessary to prod the parties to move more expeditiously. He does not have a rule regarding advance notice of which witnesses will be called at trial (although expected witnesses must be listed in the joint witness list submitted before trial), but he prefers parties give notice at least 24 to 48 hours in advance of calling a witness.

In conjunction with Judge Walsh, Judge Kuhnle is always looking for ways in which his department can become more innovative, whether through case management approaches or trial technology, and he welcomes input from counsel on how practices in his courtroom can be improved.

Alameda County Superior Court

Interview of Hon. Winifred Smith

Personal Background

Born and raised in Berkeley, a successful 26-year career at the California Department of Justice, Office of the Attorney General in San Francisco, and a 17-year (and counting!) career as a judge of the Superior Court of California, Alameda County, Judge Smith is a public servant and a Californian. Her positive attitude, love of the job, thoughtfulness, and brilliance are readily apparent from the moment you meet her. Her chambers clearly reflects a hardworking person.

Judge Smith graduated from Berkeley High. After attending U.C. Berkeley for part of her undergraduate education, she left home and finished her degree at Stanford. She went to Stanford, excited about the overseas program, and had a great experience there. For law school, Judge Smith left California for the East Coast and attended Boston University. She clerked at the California Attorney General's Office in San Francisco during a law school summer and wanted to go back. She did, and Judge Smith went on to have a successful career at the Attorney General's Office, finishing her career there as a deputy assistant attorney general.

In 2000, Governor Gray Davis appointed Judge Smith to the Court. Judge Smith loves her judicial role and is actively involved in the judicial community. She served on the Judicial Council's Access and Fairness Advisory Committee from 2004 to 2007. She served on the Judicial Council from 2008 to 2011. She served as Assistant Presiding Judge from 2012 to 2014, and as Presiding Judge from 2014 to 2016.

Alameda County Complex Litigation Court

There are three complex judges in Alameda County, Judge Smith, Judge George Hernandez, Jr., and Judge Brad Seligman. Each judge oversees approximately 200 cases each year. Currently, Judge Smith has approximately 230 cases. Judge Smith's docket is filled with various types of complex cases: approximately 13% asbestos, 10% employment (mostly wage and hour), 30% class actions, 3% toxic torts, 3% construction defect cases. Most cases on Judge Smith's docket are complex cases. One or two non-complex cases may find their way her docket, but it rarely happens.

While statistics regarding the types and number of cases in Alameda County Superior Courts are not readily available, the Court regularly reports such information to the State of California.

Professional Standards in Judge Smith's Courtroom

The attorneys that appear before Judge Smith "are a dream." She does not have conduct issues. Although attorneys may get frustrated or upset during the course of a case, she has not had any particular, recurring issues. The attorneys appearing in her courtroom are very focused; they follow directions, and attempt to resolve issues on their own before bringing them to Judge Smith. If an error occurs, it happens one time, so Judge Smith does not find herself having to repeat instructions.

If you are appearing before Judge Smith, be sure to send her courtesy copies of everything filed! Also, as mentioned above, be sure to meet and confer about issues before getting Judge Smith involved in a dispute.

Judge Smith has certain expectations regarding the parties' use of Department 21 email to communicate with the Court. Parties should primarily use the Department 21 email to request dates for the Court to hear a motion, ex parte applications, and case management events. Her discovery dispute protocol (described in more detail below) also outlines another appropriate use of the Department 21 email address. At times, it may also be appropriate to send a last minute communication with the Court via email. However, documents should not be "filed" via email. She notes that parties have had disputes in the Department 21 email inbox. For example, a party sends an email stating that the parties have agreed on an issue. The opposing party responds via email asserting that there is no agreement. Then, the parties continue disputing the issue via email, with Department 21 copied. This is not a proper use of Department 21 email. Additionally, Department email should not be used to tell the Court about a problem a party is having, or to ask questions whose answers lie in the court rules. These are not common occurrences in Judge Smith's cases, but it is important for litigants to be mindful of their use of department email. (Do not forget formalities when drafting and to copy all parties when sending!)

Judge Smith does not require parties to inform her if a junior attorney will substantively participate in proceedings. She encourages junior attorneys to participate in court hearings or trial. There is room in the courtroom, so it is fine to have as many people at counsel table as necessary. (No need to have junior associates in the audience.) She finds that she often sees younger associates with stand up opportunities in her bench trials.

Applicable Rules and Guidelines

In Judge Smith's courtroom, litigants are expected to follow the relevant California Rules of Court, Code of Civil Procedure, the Alameda County Court's local rules, and other procedural rules for civil litigation in state courts. In addition, Judge Smith has recommended procedures available on the Alameda County Superior Court DomainWeb website (https://publicrecords.alameda.courts.ca.gov/PRS/). Here, litigants can find these procedures and other resources to aid them

during litigation. Specifically, at DomainWeb > Civil Complex Asbestos > Department 21 litigants can find: (1) general guidelines regarding the use of Department 21 email, scheduling hearing dates, sending courtesy copies, case management conferences, protective orders, demurrers, general discovery, class certification discovery, raising evidentiary objections in motion practice; (2) recommended court contact information language to include in class notices; (3) Judge Smith's discovery dispute procedure (discussed in more detail below); (4) guidelines for sealing orders; (5) separate procedural guidelines for preliminary approval and final approval of class action settlements; (6) a model protective order; and (7) when to provide copies of non-California cases cited as persuasive authority to the Court.

Case Management Conferences

Judge Smith asks the parties to draft a joint case management conference ("CMC") statement in narrative form. Parties may use the Judicial Council form CM-110 as a guideline to make sure they address all required issues, but it should not be used as a CMC statement. She has found that a narrative format helps the parties crystallize conflicts and work out procedural issues. It also usually eliminates the need for a case management conference. However, if the parties have issues that they need to discuss with the Court, the CMC statement should identify the disputes, and Judge Smith will address them with the parties.

Discovery planning during a CMC before Judge Smith varies case by case. For example, Judge Smith does not spend much time on discovery during a CMC in more mature cases. She may spend some time on discovery during a CMC, if the parties have issues they need resolved. Judge Smith understands that sometimes the parties are unable to meet and confer about issues due to scheduling conflicts, and the CMC presents an opportunity to meet and confer. She regularly offers the jury room to the parties to discuss pending issues to see if they can work out a resolution without the Court's intervention.

At a CMC, Judge Smith will also explore whether the parties anticipate mediation. After the CMC, Judge Smith schedules periodic cases status conferences to check in with the parties and receive updates about how the case is progressing. Her practice is to set the date for the next status conference during the prior status conference.

Other pretrial case management issues include issues related to bifurcation and related cases. Judge Smith does not normally raise issues regarding bifurcation. She may find a case appropriate for bifurcation, but would only consider the issue if raised by a party. If a party would like the case bifurcated, it is better to raise the issue earlier, rather than later. In Judge Smith's experience, the need for bifurcating a case becomes apparent early in the litigation. As to related cases, parties should file a notice of related cases with their case. Two related cases may need to be tracked together. It also might be appropriate to move the cases to one judge, when the issues in both cases are

similar, or it otherwise makes sense to manage the cases together.

Discovery

Judge Smith does not require the phasing of discovery. However, if raised by the parties, she may allow it. In class action cases, phasing discovery necessarily occurs, but Judge Smith does not issue an order about the scope of the discovery until the parties have met and conferred or filed a motion. In complex cases other than class actions, Judge Smith does not require phased discovery. It is the subject of a meet and confer and case management.

Judge Smith does not have any particular rules or particular limits on written discovery in most cases. In asbestos cases, there are certain protocols that the parties must follow. Judge Smith does not have any particular rules or limits on fact witness depositions or expert depositions. Instead, the parties should follow all relevant rules.

Judge Smith finds that, as to electronic discovery, the lawyers in her cases know what they are doing and are able to figure out the correct approach for electronic discovery on their own. The parties generally create their own protocols. For that reason, Judge Smith does not have her own protocol. If there is a dispute over electronic discovery protocols, however, Judge Smith will resolve it. Also, if a protective order is necessary, Judge Smith has a model protective order available to assist the parties.

The use of special masters or discovery referees is a rare occurrence for Judge Smith. There is usually a discovery referee in construction defect cases, but it is not a process initiated by Judge Smith.

Class Certification

Judge Smith does not determine the appropriate time for filing a class certification motion. The parties generally make that decision and will alert Judge Smith to the issue during a CMC or status conference. Judge Smith does not have any special procedural requirements or limits for class certification motions.

When considering evidence in support of or opposition to class certification, Judge Smith does not find any type of evidence more compelling than another. She noted there is no one answer or single correct formula. Each cases has its own needs. However, she cautioned parties to be careful about using sampling and statistics. *See Duran v. U.S. Bank, N.A.*, 325 P.2d 916 (2014).

If appropriate, Judge Smith will hear a motion for summary judgment or a motion for summary adjudication in advance of the motion for class certification. Judge Smith has found that disputes have their own life cycle, and the attorneys that appear before her often have their finger on the pulse. This issue arises often in wage and hour class action cases.

If parties ultimately resolve a class action short of trial, Judge Smith has separate procedural guidelines for preliminary approval and final approval of class action settlements. She finds that this area can be a minefield for lawyers. When working on

preliminary or final approvals of class action settlements, lawyers should make sure they follow her procedural guidelines, as well as the Code of Civil Procedure.

Special Procedural Requirements

Judge Smith does not set page limits for briefs that are covered by the rules. If appropriate, due to the complexity of the issues or for some other reason, Judge Smith may allow oversized briefs. However, a party must ask for permission to file an oversized brief. Judge Smith recognized that lawyers could be more precise when drafting, so a party must have a good reason for requesting the extra pages. This is also not an issue she sees often with the attorneys practicing before her.

If special briefing is required or there is no applicable page limit rule, Judge Smith will set page limits. She will talk to the parties about what they need and will entertain a party's request for additional pages. Always be reasonable. Do not try to sneak in extra pages. She may reject the filing. If the filing is a trial brief or a proposed statement, Judge Smith indicated that she does not impose page limits. As to post-trial briefs, the Court will set page limits before the record closes.

Judge Smith weighed in on the text versus footnote debate. She recognized that if used properly, information in a footnote communicates an idea that does not belong in the main text of the brief. However, she further recognized that parties should not use footnotes to squeeze in information that would put the parties over the page limit. (Ask for more pages!) She also noted that lengthy footnotes with long string cites are not effective.

Generally, Judge Smith does not require parties to submit short letter briefs outlining proposed substantive motions and requesting permission to file them. Her only special procedure relates to a specific procedure parties should follow before filing a discovery motion. If a party wants to file a discovery motion because the opposing party has not responded to discovery, the parties should send an email to the Department 21 email address, copying all parties, that states (1) the relevant discovery deadline that has passed, (2) that no request for an extension of time was unreasonably denied, and (3) that counsel for the party requesting discovery has communicated with the responding party to inquire about the overdue response.

If a party wants to file a discovery motion because the responding party has provided responses that are inadequate, and the parties have exhausted the meet and confer process, the requesting party must send an email requesting a discovery case management conference to the Department 21 email address. The email must contain a concise statement, no longer than two (2) pages, that describes the nature of the dispute and when the last meet and confer occurred. The responding party may send a responsive email, also no longer than two (2) pages, as long as it is sent within 48 hours of the requesting party's email. Thereafter, Judge Smith will either set a discovery CMC, usually within a

week, or instruct the clerk to provide a motion reservation number.

When reviewing summary judgment and summary adjudication motions, Judge Smith has observed that parties file voluminous exhibits. Sometimes they are necessary, but sometimes it is just too much. She notes that it is permissible to use excerpts. Also, some motions filed could be more compact. Lawyers should not add information and arguments that are not necessary for decision. Judge Smith noted that these issues are not chronic problems among the attorneys that practice before her.

Judge Smith does not decide any substantive motion on an ex parte basis. She only receives a few ex parte requests for substantive matters. Ex parte motions are usually requesting continuances or filing a stipulation. If a party requests an order shortening time, Judge Smith may consider the request on the papers or may allow an appearance to discuss the need for shortened time and work out a briefing schedule. Otherwise ex parte requests are heard on the papers.

Judge Smith does not require a particular method for submitting briefs. The parties should follow court rules.

Settlement Conferences

Three judges who sit in Alameda handle settlement conferences for Alameda County. Judge Smith does not conduct settlement conferences in her own cases.

Trial Management Issues

Judge Smith does not have an early pretrial conference. She usually waits until the first day scheduled for trial to have it. She knows many issues and parties change as trial approaches. So in interest of judicial economy, and to help the lawyers prepare only the motions, witness, exhibits, objections, and jury instructions that are necessary for trial, Judge Smith asks the parties to present this information to her in a particular way. Parties should prioritize motions *in limine* and file as necessary to move the case forward. Parties should prepare a ruling sheet that corresponds with their briefing. There is no need to file early pretrial papers that affect issues later in the case. Judge Smith is not going to look at it until she needs to rule on it. She recommends only filing the motions, objections, and other trial documents that are going to be used. Her goal is to pare down the work, so the parties are doing what is necessary to help the trial move forward.

Judge Smith rarely pre-instructs jurors on relevant substantive law before they hear any evidence. If she does engage in this practice, she only does so in consultation with the lawyers. If a party thinks that early substantive law instructions will help the jury, the party should raise the issue, so the parties and the Court can discuss it.

Judge Smith does not have any restrictions on the use of electronic aids in the courtroom. The lawyers can use whatever they agree on. She does not have issues with this in her cases. There is an ELMO

(document camera) in her courtroom that the parties are free to use. Judge Smith generally finds that the parties will share technology so that they do not duplicate technology or take up more space than necessary. The only thing lawyers should be mindful of is not blocking jurors' sightlines.

Realtime transcripts are used in Judge Smith's courtroom. She does not have a problem with attorneys transferring transcripts via WifFi to another attorney working on the case, but she has not had a party ask her to do so yet.

Judge Smith does not permit the use of interim summations by the attorneys throughout the trial. And she has never been asked, but probably would not allow, the use of deposition summaries in lieu of reading deposition transcripts.

Jurors in Judge Smith's cases are allowed to take notes. They are cautioned about the use of notes in deliberations. She explains to them that they are memory aids and that the court reporter's records, not their notes, are accurate. She also cautions jurors to not get distracted by taking notes.

Jurors are not allowed to question witnesses. However, if the jurors have questions, they may ask questions in writing. The question will be given to Judge Smith, who in turn, gives the question to the lawyers. Judge Smith instructs the jurors that they can ask questions in writing, but the question may not be answered and the juror cannot question the answer or lack of answer.

As to any other innovative approaches, Judge Smith seemed flexible. If the parties agree on the approach, they should raise it with her.

Judge Smith does not generally impose time limits for examining a witness, opening statements, or closing arguments. She allows the lawyers to work out time management issues. But she cautioned lawyers to be mindful about the jurors' attention spans. After an hour or so, it is likely that the jurors are no longer listening. But long examinations may be appropriate with an important witness, and longer openings and closing may be appropriate for, say, a six-week trial.

Generally, the parties must give notice of which witnesses will be called 24 hours in advance of testimony. Judge Smith does not require an order of proof.

Judge Smith understands that it takes time to try a case, but she likes to get an idea of how long the lawyers think the case is going to take. She is mindful of the jury's time and tries to ensure that her cases get to the jury by the date she told the jury they would get the case. However, she has not had a problem with time. The parties usually give good time estimates, so trial usually runs ahead of schedule. She also has ongoing conversation with counsel throughout trial.

Interview of Hon. George C. Hernandez

Personal Background

Judge Hernandez was appointed as a commissioner to the Fremont Municipal Court when he was 34 years old, and appointed as a judge to the Fremont Municipal Court 4 years later. His first, civil, unlimited jury trial was in 1992 (a medical malpractice case) as a special assignment, when he was still on the Municipal Court. "I was one of the young attorneys Governor Deukmejian appointed to the bench during his terms," Judge Hernandez explained. Governor Deukmejian "believed in a 'career judiciary' so he often appointed young attorneys to be career judges. I was part of that 'project.'" Governor Pete Wilson appointed Judge Hernandez to the Alameda County Superior Court in 1996. Before entering government service, Judge Hernandez spent 8 years in in private practice. He attended law school at UC Hastings.

Alameda County Complex Litigation Court

Alameda County has three complex judges: Judge Hernandez, Judge Brad Seligman, and Judge Winifred Smith. Judge Hernandez and Judge Smith each handle approximately 200 cases per year. Judge Seligman has a greater number of cases as a result of overseeing the asbestos docket.

Since starting in the complex department nearly 5 years ago, Judge Hernandez's caseload had declined from a high of approximately 300 cases per year. Some of this decline is attributable to a general reduction in the number of civil cases being filed in Alameda County, but the drop also seems related to litigants' increased reliance on private ADR and particularly arbitration.

Judge Hernandez handles a mix of complex cases: roughly 13% asbestos, 15% construction defect, 19% toxic tort/Prop. 65, 24% employment (mostly wage and hour), and 30% other. Approximately 1/3 of the cases in Department 17 are class actions (mostly employment cases and some toxic tort).

Alameda County does not publish statistics on the types and number of cases. However, a judge's current docket is available through the Court website, so it is possible to make some general conclusions about the numbers and types of cases each judge handles.

Alameda's complex judges previously handled unlimited jurisdiction cases not designated as complex. Beginning this year, the complex judges now handle asbestos

trials, and preference asbestos trials—cases that receive a trial date within 120 days—drive the distribution of cases among Alameda's complex departments.

Professional Standards in Judge Hernandez's Courtroom

The value of creativity cannot be understated in a complex case. Judge Hernandez in particular "lives" for custom tailored case management. The attorneys that appear in Department 17 are generally excellent and Judge Hernandez encourages counsel to come up with novel, "even crazy," solutions to the thorny issues that often arise in complex cases. "Everything is on the table" he says. And, where the Court is unfamiliar with an issue, be it some new technology or an obscure subject for expert testimony, Judge Hernandez has been known to allow the parties to conduct "science days" where attorneys bring in their experts and educate the Court on the topic.

Few would disagree that courtroom appearances are crucial to a new litigator's development. On the other hand, Judge Hernandez acknowledges the tensions that exist given the realities of civil litigation—high costs and fewer case filings and hearing opportunities just to name a few. Ultimately though, junior lawyers are the future of the profession, and they must learn to take the reins. For these reasons, Judge Hernandez strongly supports junior lawyers' participation at court hearings and trials.

Judge Hernandez does not issue any formal notice to the parties regarding such participation but encourages senior attorneys to defer to their junior colleagues where appropriate. Particularly where junior attorneys "did the work" on a discrete issue, Judge Hernandez notes it can be very helpful to speak directly with that person, even if he or she may be a less polished oral advocate.

Applicable Rules and Guidelines

Alameda County had one of the first complex departments in California and Judge Hernandez personifies the flexibility and creativity that was front of mind when the Complex Courts were created in 2000. Indeed, Judge Hernandez was the Presiding Judge when Alameda set up the County's second complex department.

In his view, hard and fast rules interfere with what the judge and the lawyers are here to do—resolve the case. Attorneys should look for opportunities to push complex judges to try new and different things. "Everything is on the table."

In the absence of creativity by the lawyers, Judge Hernandez has Department Guidelines. To the extent Judge Hernandez's Guidelines come off as more directive, he says, it is only to help focus the lawyers on key issues. Many of the Guidelines will appear familiar to practitioners; he largely 'inherited' them from his predecessor, Judge Brick.

Alameda is, out of necessity, moving towards greater uniformity among its complex departments. Judge Hernandez

predicts that statewide budget cuts to the Complex Courts will yield integrated rules and procedures and result in less flexibility for litigants.

Case Management Conferences

Complex judges have many more tools available than standard civil departments and the more creative the attorneys are, the better use it is of the complex designation. Judge Hernandez requires a joint narrative style case management statement. Attorneys should use the statement to preview anticipated issues, particularly around discovery. The "best part" about the Complex Courts is the flexibility judges have. Counsel should outline proposals—no matter how unusual—in the CMC statement and come to the initial CMC prepared to persuade the Court. Judge Hernandez has "done it all."

Of course, he notes, this requires attorneys to actually know what they want and be able to clearly articulate the reasons why.

Most cases have regular interim CMCs after the initial conference and before trial. While Judge Hernandez prefers a personal appearance, he will approve court call appearances and sees it as a useful cost saving tool, particularly where counsel represents a party with only a minor role in the case. He notes, however, that attorneys on the phone miss out on valuable insights. "If I'm rolling my eyes, you should know" he says.

Discovery

In the absence of creativity by the parties, the Department 17 Guidelines detail Judge Hernandez's suggested process for staggering discovery prior to class certification. As a general matter, Judge Hernandez suggests the parties focus their efforts on documents and depositions, rather than interrogatories and requests for admission. But again, Judge Hernandez will take full advantage of the tools available to him, and as appropriate in a particular case.

He has no recommended approach for electronic discovery, but Judge Hernandez notes the important role younger attorneys play in electronic discovery given their greater comfort with the technology.

To allow the parties flexibility in discovery, Judge Hernandez has no special rules or limits on fact witness depositions or expert depositions.

Judge Hernandez handles discovery issues himself. In the event of a discovery dispute between the parties, counsel must participate in an informal process before Judge Hernandez will grant permission to file a motion to compel or other discovery motion. First, the parties must meet and confer in person or via telephone regarding every disputed item. After the parties narrow the outstanding issues, the "aggrieved" party must submit a 3-page letter (no attachments) to the Court by email and hand delivery that outlines the dispute. The other side has 2 court days to submit a response. Judge Hernandez will then provide informal guidance to the

parties, and if appropriate, grant permission to file the motion.

Judge Hernandez expects that the defunding of the Complex Courts will necessitate changes to the informal procedure next year, and likely result in a greater number of motions being filed.

Class Certification

Whether class certification is adjudicated before or after summary judgement will depend on the specifics of a particular case. Generally though, Judge Hernandez will specially set class certification motions as outlined in his Department 17 Guidelines.

Special Procedural Requirements

Judge Hernandez has no unique rules around page limits, and if a party requests to file an over-length brief, it is generally granted. Attorneys, however, should be extremely cognizant of the burden unnecessarily long motions and voluminous exhibits impose on the Complex Departments' dwindling staff of research attorneys. To paraphrase Judge Hernandez, counsel is doing something wrong if he or she cannot get it under the page limit.

In Judge Hernandez's view, Code of Civil Procedure section 437c(t) is a "brilliant" and underutilized statute that can be highly effective as part of the summary judgment/adjudication process. Counsel should strongly consider it where appropriate.

Informal discovery letters are submitted by email and hand delivery. Parties must provide a hand-delivered chambers copy of every filing directly to Department 17.

Settlement Conferences

Settlement conferences are not mandatory in Department 17, although Judge Hernandez observes that most parties do engage in private mediation or some other ADR process. If the parties request a judicial settlement conference, they are sent to one of the dedicated settlement departments utilized in Alameda County.

Trial Management Issues

Judge Hernandez does not hold final pretrial conferences. Cases are set for trial on a Friday, and he expects the parties to be prepared in accordance with all that Local Rule 3.35 requires. The Court handles witness scheduling, jury instructions, motions in limine, jury questionnaires, and jury hardships over the course of the following week, and jury selection typically begins on a Monday—ten days after the trial date.

Jury trials are in session Monday through Thursday, from 8:30 a.m. to 1:15 p.m. Fridays are reserved for bench trials. Judge Hernandez believes his jury trial schedule results in a better jury pool, because potential jurors know from the outset they can work or handle child care obligations every afternoon and all day on Fridays.

Judge Hernandez allows jurors to ask questions, and questions are not limited to just witnesses. Jurors may take notes during trial and they receive instructions not to let notetaking interfere with paying attention.

As a general matter, Judge Hernandez does not impose or require stipulations regarding overall trial time limits, or breakdown by witness, opening statement, and closing argument. But Judge Hernandez may employ such tools if requested by the parties and appropriate to the case. He allows and encourages attorneys to show jurors instructions and the verdict form during summations. Judge Hernandez generally instructs the jury before closing arguments.

Witnesses typically receive 48-hour advance notice before being called at trial. If the parties are relying on deposition transcripts rather than live testimony, Judge Hernandez prefers attorneys read page and line designations into the record. In asbestos trials, he will allow the use of videotaped depositions.

Alameda Superior Court has wireless internet available, and each department has a screen. Attorneys may bring whatever technology they want to use (and the necessary staff to operate it) into Department 17. Alameda Superior Court does not provide a court reporter in any civil department, including Complex, for trials or hearings. Counsel must retain a court reporter for any appearance where a transcript is desired.

Interview of Hon. Brad Seligman

Personal Background

Judge Seligman is a judge for the Superior Court of Alameda County. He was appointed by Governor Jerry Brown in December 2012, and was re-elected in 2014 for a term that expires in January 2021.

Prior to becoming a judge, Judge Seligman was a civil rights attorney specializing in class action and individual employment and civil rights litigation. During this time, he successfully tried and then settled the then third largest sex discrimination class action recovery in history ($107.25 million) (*Stender v. Lucky Stores*, 803 F. Supp. 259 (N.D. Cal. 1992)), and settled the first major challenge to the use of psychological testing by a private employer (*Soroka v. Dayton Hudson Corp dba Target Stores*). He was co-lead counsel in the then largest Americans with Disabilities Act access settlement, *Arnold v. United Artists Theatre Circuit* 158 F.R.D. 439 (N.D. Cal. 1994). He settled the largest disability employment class action ever (*Glover v. Potter*, (EEOC 2007) ($61 million for class of 7,500)). He represented one of the principal objectors to the *Georgine* class action settlement before the 3rd Circuit and the United States Supreme Court, where the standards for assessing settlement classes were handed down. (*Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)). He was co-lead counsel in the epic, though unsuccessful litigation against Wal-Mart (*Wal-mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

From 1992 to 2010 Judge Seligman was the founding executive director of a public foundation, The Impact Fund, which provides financial and technical assistance and representation for complex public interest litigation. Since 1992, it has made over $5 million in grants to support such litigation. From 2011 to 2012 he was of counsel to the former Lewis Feinberg firm in Oakland. From 1988 to 1991, he was managing partner of the Oakland firm of Saperstein, Mayeda and Goldstein. He was a senior Law Clerk to Judge Lawrence K. Karlton of the Eastern District of California, and an extern to Justice Matthew O. Tobriner of the California Supreme Court.

Judge Seligman taught employment discrimination law at Hastings College of the Law and Golden Gate University Law School, and a seminar on class action litigation at Hastings. He was a 1978 graduate of Hastings College of the Law and a Teaching Fellow at Stanford Law School.

Alameda County Complex Litigation Court

The Alameda County complex litigation department has just short of 500 cases pending this year, including asbestos (which

has been merged with the complex litigation department). Judge Seligman is one of three complex litigation judges in the county. Only Judge Seligman handles pre-trial asbestos cases.

The subject matter of the pending cases is as follows: roughly 130 are asbestos, 151 are class actions (the majority of which are employment cases), 66 are PAGA employment claims, 30 are environmental tort claims (mainly prop 65), 16 are construction defect, and the balance are designated "other complex" which includes everything from mass torts to securities cases.

The court does not publish any statistics regarding its case load, but it does track them for internal case load management purposes.

Generally, the complex litigation judges do not handle unlimited jurisdiction cases that are not complex, but a few cases are being treated collectively because they are all related, even though individually they are not large. For example, there are multiple lemon law cases relating to a transmission defect and due to the volume of individual cases, the collective whole has been designated complex.

Professional Standards in Judge Seligman's Courtroom

Judge Seligman puts a high premium on parties talking with one another before coming to court. He expects parties to be active in case management before the case management conference, so that when it occurs, they can have intelligent discussions about what needs to happen in the case.

Judge Seligman expects the parties to submit joint case management statements. Individual statements are disfavored because it suggests that the parties have not been talking with another.

Judge Seligman does not like it when parties argue with one another at hearings instead of to the judge, because it again suggests they have not sufficiently met and conferred prior to the hearing. The issue with this sort of behavior is that it shows a lack of respect for the Court and other litigants' time.

With respect to encouraging younger attorneys to stand up and handle arguments at hearings, Judge Seligman does not have a formal rule, but he encourages it and when younger attorneys have arguments or roles at trial, they won't be cut off, whereas more senior attorneys might be.

Applicable Rules and Guidelines

Each of the three complex litigation judges in Alameda county has guidance on their websites. Once a case is designated complex, parties will receive a notice of assignment and an initial case management order that has the specific rules in it.

Each complex litigation judge has a standing order that parties cannot file a motion to compel without first having a discovery conference in front of the judge. Each of the complex judges has his or her own

procedures for seeking a discovery conference.

In Judge Seligman's court, the parties must meet and confer and then send a two-sentence email to the court stating the issue and certifying that the meet and confer did not resolve the issue.

The discovery conference itself is an in-person presentation to the court. The discovery conference resolves the issue 90% of the time without further briefing. At the discovery conference, the judge will typically state how he sees the issue and asks for further letter briefs or motions if required.

Case Management Conferences

In the case management statement, Judge Seligman likes to see a thought-out discovery plan, i.e., how it is going to be staged, whether there can be bifurcation of any issues. E-Discovery plans should also be discussed and handled early on. Judge Seligman's practice is to set a deadline for the filing of a class certification motion, instead of a hearing, so that the parties can then figure out if additional discovery is necessary.

Judge Seligman also likes to see the parties discuss whether there are any issues that can be broken out for early resolution to streamline the case and what information the parties need to have an intelligent settlement discussion early in the case.

Judge Seligman typically handles a lot of discovery planning at the CMC because he does not think it is very helpful to just start extensive discovery without having thought about the issues that need to be resolved to move the case forward. In Judge Seligman's court, the parties never leave without a subsequent status conference being scheduled, typically 30-90 days out on average.

Judge Seligman is open to resolving case dispositive issues early if it will actually move the case along. In class actions, however, case dispositive issues cannot be resolved pre-certification, unless the defendant consents. Additionally, in class actions, specific damages discovery typically does not occur until after certification, but everything else tends to merge.

Related Cases

Judge Seligman tries to figure out if there are related cases up front, from other judges or notices of related cases, because whether there are related cases factors into whether you treat the case as complex. The decision of whether to treat a case as complex or related happens around the same time, ideally at the outset of a case.

Discovery

In terms of phasing discovery, it typically depends on the case/issue, but it is rarely done. Judge Seligman will try and resolve threshold issues first, e.g., jurisdictional discovery when possible. But the *Williams* case in the PAGA/employment context limits the Court's ability to phase discovery limited to the named plaintiff.

In class action cases, where the class is not defined, Judge Seligman will often

encourage plaintiffs to take a PMQ deposition to define the scope of the class, but again, the *Williams* case limits the Court's ability to require it. Regardless, Judge Seligman always encourages a PMQ deposition, and it is in the defendant's interest to be upfront about different policies, if they exist, that would preclude a statewide claim.

Judge Seligman allows broad discovery, particularly post-*Williams*. Plaintiffs are going to get access to class members and defendant's policies. The question is almost always how much discovery is needed. Judge Seligman often encourages parties to try to agree to a sample for voluminous class member documents. In principle, the parties agree, but then the issue becomes what a relevant sample is.

Judge Seligman sets a class certification filing date, not a hearing date. This allows the defendant to get the class certification motion earlier and then the parties can meet and confer to figure out what additional discovery is necessary prior to the hearing and setting a hearing date.

Judge Seligman does not have specific rules for written discovery, but in general, it is rare for parties to complain about the written discovery.

Regarding e-discovery, Judge Seligman wants the parties to jump on the issue immediately. From the defendant's point of view, you want to issue a litigation hold and understand what data you have, where it is, and how to search for it. E-Discovery is always a lot of work. Judge Seligman views it as three acts: Act I – formulate initial response; Act II – meet and confer with the other side; Act III – case management conference. The parties should not think of it as an "initial" case management conference because a lot of work should have already been done by this point.

Regarding deposition number and length, the statutory rules apply. There are special rules for asbestos, e.g., Plaintiff and PMQ depositions may need to be longer. It is rare to have disputes over depositions outside of the asbestos context. The issues that come up regarding depositions typically relate more to bad conduct or privilege issues rather than time.

Special masters are standard in construction defect cases, but it is rare to appoint a discovery referee in other instances. Cases where a discovery referee has been appointed are instances where parties could not agree on what day of the week it was and a referee was the last resort.

Class Certification

The timing of the class certification motion is really case specific, but it is unusual for it to be more than a year out. It will be filed after summary judgment only if the defendant consents. If the primary relief sought is non-monetary, however, case law suggests that you could address the merits on summary judgment prior to class certification, but Judge Seligman is unlikely to do that unless the parties agree.

Prior to filing a class certification motion, the parties should meet and confer and the

motion itself should include a trial plan. Other ground rules have been laid out by the Supreme Court.

The type of evidence Judge Seligman finds compelling on class certification depends on the case, but inevitably there is a battle of employee/class member declarations. Judge Seligman views quality as more important than quantity. The parties should think about what they are trying to establish with each declaration.

Special Procedural Requirements

In some instances, Judge Seligman will give the parties extra pages on their briefs, but rarely as much as requested by the parties. At times, during case management conferences, issues will arise and letter briefs will be requested.

Judge Seligman does not require parties to submit letter briefs outlining substantive motions and requesting permission to file. Instead, it is most likely that upcoming issues will be discussed at the case management conference.

Expedited briefing is only encouraged if there is a time consideration or an issue is holding up the rest of the case. Typically, the parties will have to wait in line.

There is no e-filing yet in Alameda county, so courtesy copies are important. Filed documents are scanned and there is often a lag, so if there are no courtesy copies, the judge may not get the briefing for a while.

Motions for Summary Judgment or Summary Adjudication

Judge Seligman encourages the parties to meet and confer before filing a dispositive motion. It is a waste of time to have motions mooted by lack of opposition. And if the motion is that plaintiff lacks evidence, the plaintiff will typically produce a declarant, so it is better to just find that out in advance, rather than filing a brief.

Settlement Conferences

The settlement unit in Alameda county is 3-4 judges. All asbestos cases go to them and other types of cases as well, unless the parties use an outside mediator, which they often do. The judges in the complex litigation department do not act as settlement judges in their own cases, but will act as a settlement judge for other cases in the department.

Trial Management Issues

Judge Seligman will set a final pretrial conference to discuss most issues. His pretrial orders are very detailed and put a premium on meet and confer. He also puts limits on motions in limine. Specifically, the parties must make a good cause showing that more than 4-5 motions are required. All relevant issues are listed in the pretrial order. The pretrial conference is a serious discussion about how trial will occur and total time limits are given for both sides.

At trial, Judge Seligman will pre-instruct the jurors in a limited fashion on the basic legal elements and often on causation. He

typically will give complete jury instructions before closing argument.

In terms of equipment in the courtroom, whatever equipment it is, parties must share and there is only one screen allowed. Nothing is allowed to be displayed on the screen unless it is admitted, stipulated to, or the judge has agreed to allow it.

Judge Seligman uses Realtime streaming on the bench, and allows it in the courtroom, but he has not had parties request streaming to their offices. Judge Seligman thinks interim summations would be a good idea, but he has not had parties ask for them. Similarly, he has not had parties request to use summaries of depositions in lieu of reading the complete deposition into the record.

Judge Seligman allows jurors to submit written questions during the proceedings and take notes. He thinks it would be a good idea for the parties to provide juror notebooks with key materials in them, but again, the parties have not asked. Overall time limits are given to each side and for voir dire. Judge Seligman requires the parties to give 48-hour advance notice (or by close of business on Friday) of any witnesses they intend to call.

Contra Costa County Superior Court

Interview of Hon. Barry P. Goode

Personal Background

Judge Goode practiced with the McCutchen firm for 26 years, primarily in environmental law, worked as Legal Affairs Secretary to Governor Davis for 3 years, and has been on the Contra Costa County Bench since 2003. He commenced service as the Complex Litigation Judge in 2009, with a two year hiatus as Presiding Judge during that time.

Contra Costa County Complex Litigation Court

The Contra Costa County complex litigation department usually has between 250 and 300 active cases. Judge Goode is the only complex litigation judge in Contra Costa County.

Judge Goode handles all class, PAGA and CEQA cases, matters with 8 or more separately represented parties, and cases that raise unusually complex issues of law or procedure or that require inordinate judicial management.

Numerically, the two largest categories are construction defect and wage and hour cases (brought under PAGA and, sometimes, as class actions). Because the pretrial aspects of construction defect cases are largely handled by special masters who use developed protocols, they take less of Judge Goode's time. The wage and hour cases take more management time but tend to settle before trial.

Judge Goode also handles mass tort actions (including a refinery fire with 30,000 individually named plaintiffs), miscellaneous writ proceedings, complex tort, contract and insurance disputes, and occasional antitrust, securities, and municipal law cases. On rare occasions, he handles trade secret and asbestos cases.

The Court does not publish statistics regarding such cases.

As a general rule, Judge Goode does not handle non-complex cases. On rare occasions an unlimited jurisdiction case requires unusually close supervision and may be transferred to the complex litigation department.

Professional Standards in Judge Goode's Courtroom

In general the lawyers in Judge Goode's court are excellent, and perform at a high level.

Judge Goode encourages counsel to cut through to the heart of the case, identify dispositive issues, and determine if key questions can be teed up for decision. For example, there may be a critical legal issue

that can be decided based on stipulated facts; or an early motion in limine might test whether a particular expert opinion can be offered at trial. If these (or similar "lynch-pin issues") will help to resolve a case, Judge Goode is willing to discuss moving them to the fore.

Judge Goode notes that many complex cases involve difficult or cutting edge issues. He prefers light, not heat in briefs and at oral argument. Excessive use of adverbs and adjectives is not helpful. Difficult points or contrary authority should not be "buried" in footnotes.

Fundamentally, Judge Goode expects the attorneys appearing before him to be prepared and knowledgeable about their case. He discourages having counsel "stand-in" at a case management conference; since that tends to lead to an unproductive hearing.

And while Judge Goode welcomes "righteous" summary judgment motions, do not make a motion for summary judgment simply to "educate" him. If you believe it would be useful to take an hour or two to discuss the issues in your case or something unusual about it, Judge Goode will often set up a separate hearing for that. In fact, in most CEQA cases Judge Goode sets such a hearing so the parties can orient him to the physical setting of the controversy, unusual technical issues, and the key facts in dispute.

Judge Goode discourages wasting time on collateral matters that do not advance resolution of the case, or taking unnecessarily adversarial positions. For example, it is usually not helpful for counsel to object to *every* statement of fact in a summary judgment motion. Similarly, counsel should cooperate in discovery to uncover the facts necessary to get the case ready for settlement or trial.

Judge Goode prefers to see counsel cooperating to move a case towards resolution.

Judge Goode encourages senior lawyers to provide junior lawyers meaningful experience in arguing motions and presenting evidence at trial.

Applicable Rules and Guidelines

The applicable CRC complex litigation rules are set forth within CRC 3.400-3.771 (3.2220-2237 for CEQA).

The applicable Contra Costa Local Rules are 3.11 regarding Issue Conference (the final pretrial conference as modified by Department 17's issue conference order), and 3.15-3.16 regarding complex litigation and CEQA.

Judge Goode issues an e-filing order in each case. It should be studied and followed.

On the Contra Costa Superior Court website is "A Handy Guide to Department 17" that explains some key points about how the department functions.

Judge Goode's preliminary notice of assignment order stays all discovery until the CMC, and orders that no writings or other evidence be destroyed.

Judge Goode's Order re Issue Conference contains detailed rules regarding voir dire, jury instructions, motions in limine, witness lists and exhibit lists. It also contains a list of seven sua sponte rulings for which it is not necessary to file a motion in limine.

When considering preliminary and final approval of a proposed settlement of a class action, Judge Goode uses the Los Angeles Superior Court checklists, and refers counsel to the "plain English" forms found on the Federal Judicial Center website.

Case Management Conferences

Judge Goode especially wants to hear the parties' vision for how the case will progress, and a discussion of those issues he can help with. The standard judicial form is too abbreviated to be very helpful in a complex case. The parties need to focus on the issues set forth in CRC Sections 3.724, 3.727 and 3.750.

Discovery planning at the CMC very much depends on the nature of the case. In construction defect cases, there are standard case protocols that the parties agree upon; once an order is in place, a special master tends to handle such matters.

But in other cases, Judge Goode works with the parties to determine what discovery is needed, how much time is required to take it, and when the case can be ready for mediation and trial. In PAGA cases, Judge Goode asks whether the parties agree upon the scope and timing of discovery; if not, he works with them to frame and decide disputed questions about what discovery may be had.

In class action cases, generally he will initially limit discovery to class certification issues and allow merits discovery only after a decision on certification.

Judge Goode does not like to lose track of how the cases are proceeding. He sets periodic case management conferences about 3-4 months apart, which may be modified if major milestones are upcoming.

Judge Goode prefers to see the parties focus on lynch-pin issues that will drive the outcome of the case. He encourages counsel to consider what disagreements may be preventing resolution and whether one or more of those issues may be framed for early resolution.

Related Cases

Related cases are governed by motions and rulings under CCP 1048 and CRC 3.350 and 3.500 for consolidation and CCP 403-404 and CRC 3.501-3.550 for coordination. The procedure varies depending on whether the cases are non-complex or complex and whether the actions are pending in the same or different counties.

Judge Goode indicates that the level of coordination or consolidation comes in many varieties. Sometimes certain actions will proceed while others are stayed, and sometimes the actions may be consolidated or coordinated for discovery or trial or both. The trial format can come in many varieties as some claims or actions can be tried together or separately. If all of the actions

are in Contra Costa County, they are often brought together as related cases and either coordinated or consolidated.

Discovery

Judge Goode encourages informal discovery conferences, but does not require them. With regard to phasing of discovery, Judge Goode tries to take a practical approach to this. If the parties can agree that focused discovery will help them learn enough information to resolve the case, then he will work with them to set such limits. If the parties do not agree, then Judge Goode may explore such an approach with them. The result is usually case-specific. In some cases, phased discovery works, in others it does not.

In PAGA cases, *Williams v. Superior Court* now sets the basic rules.

In class action cases, Judge Goode usually opens discovery on class certification issues first. Those issues often tend to focus on commonality, superiority, and manageability. However, an examination of these issues may implicate substantive issues as well. Judge Goode encourages parties to try to find the line and stay on the class certification side of it initially, and keep the merits discovery to only that which is necessary to inform the class certification issues.

In employment actions, he often works with the lawyers to determine if they can stipulate to an appropriate scope of class certification discovery. He also tries to anticipate the extent to which defendant will offer declarations in response to the class certification motion so there can be time for additional discovery before the reply brief is filed.

Post-certification, there are no general limits on discovery. If there are disputes about the scope of discovery, Judge Goode hears them on a case-by-case basis.

Judge Goode's standing order stays discovery until the first CMC. In construction defect cases, discovery often remains stayed and the parties proceed with well-developed protocols for the exchange of information.

Judge Goode sees very few disputes on ESI, as the parties usually work out mutuality protocols. A few cases have raised issues of privilege in the ESI, either the e-mails or attachments, which can lead to interesting and time consuming review.

With regard to fact depositions, Judge Goode states that these are topics discussed and developed in the periodic case management conferences.

On expert depositions, his rule is that if a party files a *Kennemur* motion in limine to exclude undisclosed opinions, that party must show that the expert was asked for all his or her opinions, and the bases for them. If that was done, then the side producing the expert must show where in the expert disclosure or deposition transcript the opinion was stated.

Judge Goode states that special masters are used frequently in construction defect cases. He also uses discovery referees where there are unusually voluminous

issues to be decided, such as in large mass tort actions.

Class Certification

Absent a defense waiver, class certification issues should be decided before summary judgment, as set forth in *Fireside Bank v Superior Court* (2007) 40 Cal. 4th 1069.

Judge Goode specially sets class certification motions. He discusses with counsel how much time they need for response and reply, and whether they need to exceed the usual page limits. He prefers to have 2-4 weeks between the reply brief and the hearing depending on the volume of the filings.

Judge Goode considers whatever evidence is submitted. If a party presents statistics or surveys, he considers whether the material is challenged by the other side, and weighs the arguments on both sides. Generally, that requires consideration of questions such as: "What are you using this for?" "What is its statistical power?" "Is there expert testimony on those questions?" "If the statistical/survey information is admitted, what more remains to reach a decision?"

In addition, Judge Goode asks for a trial plan, to help the parties focus on the practical issues of superiority and manageability. What are the common questions, and how will the evidence be managed? If the trial focuses on the named plaintiff's claims, how will that decide the claims of the unnamed class members?

Special Procedural Requirements

The standard Contra Costa page limits are 15/15/10. Judge Goode is willing to discuss extending page limits for complicated motions. He typically allows longer briefs after a bench trial.

Judge Goode appreciates concision. Do not repeat things and do not bury adverse authority or difficult points in footnotes. Double space your briefs.

Judge Goode's discovery conferences are telephonic unless they are scheduled on the date of a regular case management conference.

Judge Goode does not discourage ex partes or expedited briefing if there is a demonstrated need. Since he holds periodic case management conferences he prefers that issues that can be anticipated be raised at the CMC.

There is e-filing available in Judge Goode's court. In cases with a voluminous record, he may request hyperlinked briefs.

Motions for Summary Judgment or Summary Adjudication

Reflecting on many years in the complex department, Judge Goode observes that few motions for summary judgment are granted. Motions for summary adjudication fare slightly better, but not much. Generally, if the moving party cites voluminous facts, competent opposing counsel is usually able to identify a material fact that is genuinely disputed.

CCP 437c motions are particularly useful when the parties can stipulate to a set of facts and brief an issue of law raised by those facts.

Judge Goode sees occasional CCP 437c(t) stipulations; about half the time CCP 437c(t) requests are opposed.

Settlement Conferences

Most parties in Judge Goode's court use private mediators. If not, he may ask a colleague to handle the MSC.

Judge Goode does not participate in settlement of cases assigned to him for trial except in a very rare case, and then, only upon request of all parties.

Trial Management Issues

In Judge Goode's court there is a mandatory Issue Conference. A copy of the Issue Conference order is on the Court's website.

Judge Goode's Issue Conference order requires parties to complete a spreadsheet listing each witness and the time estimated for direct, cross and redirect examination. At the Issue Conference, he scrubs the witness estimates to develop a total time estimate which he provides to the jury. He keeps time every day in every trial, and finds that trial time runs 4.2 to 4.3 hours per day. He does not enforce time limits as to any individual witness, but does tell counsel when they are running ahead or behind. His goal is to complete every trial on time and under budget. Since adopting the spreadsheet system, he has succeeded.

Judge Goode requires parties to stipulate to any reasonable advance notice rule. In the rare case in which they cannot stipulate, he will impose such a rule.

Judge Goode does not pre-instruct jurors on relevant substantive law at the outset because Judge Goode usually finds that the parties are unable to settle the jury instructions until later in the trial.

Judge Goode does pre-instruct jurors on relevant substantive law before final summations by the attorneys.

Judge Goode allows use of electronic aids in the courtroom, including computer projections. There are adequate electrical outlets and WIFI is available. Department 17 is a high tech courtroom. Judge Goode has allowed witness examination via Skype upon stipulation of the parties.

Contra Costa County no longer has official reporters, so all are private and contracted by the parties. If the lawyers are receiving Realtime transcripts, Judge Goode wants them also.

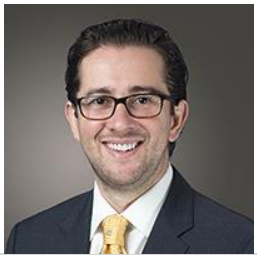
No one has ever requested interim summations by the attorneys throughout the trial. Judge Goode would be open to using this in an appropriate manner.

No one has ever requested use of deposition summaries (possibly including short quotes) in lieu of reading deposition transcripts. Judge Goode would allow this only if by stipulation.

Judge Goode allows juror questions, which he screens with counsel at sidebar. He also allows juror notetaking.

Judge Goode has suggested to counsel the use of juror notebooks, which may include selected key admitted documents, selected substantive jury instructions, photos of witnesses, timelines, glossaries of key terms, and organizational charts. No one has ever taken him up on the suggestion.

The Interview Team

Frank Burke ADR Services, Inc. fburke@adrservices.com 650-804-8300 	**Chandra S. Russell** Farella Braun + Martel LLP crussell@fbm.com 415-954-4400 
Stephanie D. Biehl Cotchett, Pitre & McCarthy LLP sbiehl@cpmlegal.com 650-697-6000 	**Adam R. Brausa** Durie Tangri LLP abrausa@durietangri.com 415-376-6420 
Adrian Canzoneri McGuireWoods LLP acanzoneri@mcguirewoods.com 415-844-1985 	**Shana Inspektor** Stradling Yocca Carlson & Rauth, P.C. sinspektor@sycr.com 415-283-2240 
Kapri L. Saunders Jones Day ksaunders@jonesday.com 415-875-5859 	**Ashley L. Shively** Reed Smith LLP ashively@reedsmith.com 415.659.5695 

PART III: APPENDIX OF GUIDELINES & SAMPLE ORDERS

San Francisco County Superior Court

Hon. Curtis E.A. Karnow

Superior Court of California
County of San Francisco
Department 304 - Judge Curtis E.A. Karnow
Complex Litigation - Users' Manual

These notes are designed to assist counsel to pursue their cases efficiently in this complex litigation department. See San Francisco Local Rule 3.6 (complex cases).

Department 304 Staff:

Clerk:	Attorneys:
Danial Lemire	Keenan Klein; Jessica Huang
Phone: 415.551.3729	

A General Approach

Counsel should be open to modifications to the usual procedures. The main job in complex is to simplify.

Case management conferences

- The first case management conference statement should focus on the topics set out in the DESKBOOK ON THE MANAGEMENT OF COMPLEX CIVIL LITIGATION §§ 2.21, 2.30 (Lexis/Nexis) & CRC 3.740. The parties should note the stakes (sums or other relief sought).
- Joint statements are due at least 3 court days in advance. As with anything you want the judge to read, on the date of filing *provide a courtesy paper copy* directly to this Department.
- The joint statements should actually reflect the results of prior conferences among counsel.
- Information to be included in the statement:
    - what has been done in the case,
    - where we should go with it,
    - what counsel wants the court to do, and
    - how best to move the case along.
- Do not argue motions and the merits in CMC statements.
- Do not ask for a continuance of a CMC in the CMC statement. For continues of up to a week, where that CMC has not previously been continued, call the clerk to reset it (with all parties' agreement); for other continuances arrange an informal call with the judge or if it's obvious there is good cause, send in a stipulated order (with explanation) for a continuance.

Motion practice

- Call the Department's clerk to get a hearing date for the motion: 415.551.3729. To avoid the risk of further delay, clear the date with other counsel. Please promptly cancel the date if you learn it will not be necessary.
- If you can, set the hearing a week after the last paper is due, and memorialize your briefing schedule with other counsel.
- For class certification and summary judgment/summary adjudication, endeavor to set the hearing 10 calendar days after last paper is due.
- Include proposed orders with your submission.
- Do not file "sur-replies" and other papers not contemplated by the rules of court.

- Parties may lodge (with notice to all parties) electronic versions with hyperlinks of filed briefs, which are most useful in cases with extensive record citations. Cf. CRC 3.2227(a)(CEQA briefs).
- You need not provide copies of federal and out-of-state cases available on Westlaw, but are free to do so, e.g., the most significant one or two cases.
- Courtesy copies must be delivered to this Department the day papers are filed. Do not rely on the e-file vendor.
- E-filing: See local rule 2.11. Because of staffing shortages, there may be a substantial delay between the time an item is e-filed and the time it is available in the court's system.
    - Some firms make mistakes when e-filing, resulting in rejected papers. The firm may not realize a paper has been rejected for days. For essential information, see the "Complex Civil Litigation" page on the court's website, click on the "Special Instructions for Electronic Filing."
    - Contact the support centers available from the e-filing vendors.
- Do not assume that motions for oversized briefs will be granted. Never ask for that on the day a brief is due. The usual *ex parte* procedures are used to secure permission for an increase in page limits.
- Court Call. If you plan to use this, arrange matters with Court Call at least 2 court days in advance. Counsel wishing to argue motions know telephone appearances can be frustrating: counsel cannot see what is happening in the courtroom and it may be difficult to engage in back-and-forth colloquy common in this Department.
- Court reporters. Counsel provide reporters, if desired. It is recommended that counsel do so, as this may be the only complete record of actions taken at the hearing.
- Hearings. Often the court will first provide an oral tentative, or outline the apparent issues, or pose questions. The court frequently interrupts counsel, for which counsel's patience is solicited. Matters are generally taken under submission.
- No hearing is required for these motions and applications, if patently unopposed: for stipulated protective orders; *pro hac vice* (see below); out of state commissions and like papers. If no hearing is set, the papers must show the other parties have no objection.
- *Pro hac vice*. Applications must note the number of times a similar application has been filed in this state (state *or* federal court) in the last two years. CRC 9.40 (d). If there have been three or more such appearances, please indicate the percentage of time over the last two years engaged with California cases. If in proper format, patently unopposed, and a proposed order is enclosed, the application may be made without a hearing date.

Discovery

Parties should consider sequencing discovery, with each phase designed to either lead directly to a motion or provide efficacies for the next phase. In some cases it will be more efficient not to sequence.

To avoid frustrating and expensive discovery motion practice:

- Agree, if at all possible, and avoid motions. The dark secret is that counsel are far better suited than a judge to know what the parties really need and what the burdens of production really are.
- The court imposes discovery fee shifting 'sanctions' when permitted do so. Include in your papers (not with the Reply) the admissible evidence needed to award fees in your favor, unless you agree the other side had at least a substantial justification for its position (even if erroneous).

- Before you resort to motion practice, consider an informal conference with the judge. This may save substantial time and money. Here's how it works:
    - Don't schedule the conference until you have done everything possible to narrow the issue. Letters alone often won't do it; pick up the phone to talk. Better yet, meet in person.
    - Agree in writing to toll the time for making motions, if needed to enable the conference.
    - Two court days in advance, provide to this Department a non-argumentative joint 1-2 page letter/memo, not to be filed (copied to all parties, of course). Have enough detail so that your time is not wasted at the conference while the judge reads materials.
    - Attend in person.
    - The conference is not recorded, and does not bind parties or the judge. You can't quote anything anyone says in e.g., a later motion.
        - As an exception, the parties may in writing make an enforceable agreement at the conference. C.C.P. § 2016.030.
    - Call the clerk to get a date and time.
    - If a party still wants to file a motion after an informal conference, it may do so.
- A highly efficient alternative to a formal motion is this Department's "one shot" procedure.
    - The parties confer on the issues and create a single joint Submission which (i) groups the issues (ii) includes *only* the relevant text of the disputed demands (e.g., deposition notices, requests for production) and responses and (iii) succinctly presents the parties' argument, once per issue. This is done in a single document, appending so much of other papers (such as relevant transcripts of earlier hearings) as the parties believe are necessary (usually none). The Submission is filed, served, and a courtesy copy provided to this Department. The court then issues an order without a hearing, usually within a few business days.
    - If a party insists on a hearing, file the Submission 4 court days in advance.
    - The process of creating the Submission is itself a meet-and-confer and often results in agreement on issues. Please omit references to these agreed-upon matters in the final version of the Submission.
    - This procedure avoids the duplication of argument in both memoranda and the traditional separate statement; it avoids the repetition of arguments made with respect to multiple demands which raise the same issue; it organizes the demands into logical groups raising similar issues; and many pages of paper are saved.
    - For further efficiencies, the parties may agree that the resolution of one demand resolves disputes as to certain others, noting this in the Submission, and presenting only the relevant demand and response.
    - The one shot procedure does not obviate the requirement of admissible evidence if otherwise required.
- Do not argue burden without admissible evidence of it. Remember C.C.P. § 2015.5.
- Consider a discovery referee in construction defect cases. But unless you have a general policy of following the referee's order, you're wasting your time to hire one.
- *ESI disputes*
    - For motions or informal conferences (in addition to counsel) consider the use of a person such as an IT professional who is personally familiar with the issues (e.g., search terms, exactly what the search steps are, how encryption is handled, where data is stored, which data formats and systems are in play, costs of reviewing archival data, etc.).

- Have a look at the N.D. Cal.'s Guidelines for the Discovery of Electronically Stored Information. <http://www.cand.uscourts.gov/eDiscoveryGuidelines>
- Consider numbering documents as exhibits once, for all uses at deposition, motions and trial.

Class actions: See **Department 304 Class Action Materials** on the webpage linking to this User Manual.

Summary judgment & adjudication

- Summary judgment/adjudication can be difficult and costly. Consider alternatives:
  - A central benefit of litigating in a complex department is the flexibility of having early resolution of key issues via a stipulated bench trial. Consider severing issues (or bifurcation) for bench trial (with or without some stipulated facts). In these contexts counsel can still raise the legal issues which would otherwise be handled in a summary judgment motion, but if there is indeed a fact issue, the court resolves it.
  - Requests for admission: the other side may simply have to admit your contentions.
  - Early motions *in limine*.
  - Early jury instruction conferences to fix the law.
  - Expedited jury trials [C.C.P. § 630.01].
  - Consider stipulations to reduce the notice period for the summary judgment motion.
- Evidentiary objections. A few suggestions to ensure the judge is spending his limited time thinking about the merits of your papers, as opposed to the minutiae of myriad pointless objections:
  - Make only objections which are truly material. Others are likely to be ignored. C.C.P. § 437c(q).
  - "[W]e encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices." *Reid v. Google, Inc.*, 50 Cal. 4th 512 (2010).

Sealing

Motions for sealing inject delays. These are often not necessary: if the court does not actually need to read the secret data to decide the motion, file a redacted version of the exhibit in the public file, without more.

While discovery motions can be sealed without a ruling under CRC 2.550, parties filing these should also file suitably redacted versions in the public file.

Stipulated protective orders must not provide for procedures on sealing different from those at CRC 2.550 *et seq.* Usually it is best to simply cite the rule.

Counsel should read *Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471 (2014). Seek only the minimum redaction: a word, a number, for example. Sealing entire documents or indeed whole pages is generally not justified.

- Where pages with little to no relevance to the underlying motion are sought to be sealed, the party should also consider *a motion to strike* (and the court may on its own make such a

motion), which may moot much of a sealing motion. *Overstock.com*, 231 Cal. App. 4th at 498, 499.

- Admissible evidence is usually required to support a sealing motion. The agreement of the parties (e.g. a stipulation or stipulated protective order, or other contract) does not control the decision to seal.
- Have a backup plan if the court rejects your application to seal.
- In addition to the items which must be filed and lodged in connection with a sealing motion, the moving party should provide (but *not* file) a "Delta document" directly in this Department (with copies to the other parties):
    - The Delta document is the original showing the redactions with redlines (by hand or otherwise), so the judge can see in a single document and in context what you wish redacted, without having to compare documents or unseal envelopes. The document usually only includes pages with redlines.
    - Mark the Delta document as such. Do not put it in an envelope marked 'lodged (or filed) conditionally under seal' or words to that effect.
    - The court destroys the Delta document after deciding the motion to seal.
- After the court rules, the parties then immediately ensure that the public record contains (1) the unredacted document, if the sealing request was denied; or (2) the redacted document but only to the extent approved by the court's order.

Excessive pages. Provide only the minimum number of pages to the court, in particular with respect to exhibits.

- Resist including exhibits for 'background' and 'context'.
- For exhibits consider providing only the cover page and the specific pages which the court must read. Not citing the page in your memorandum of points and authorities suggests the material is surplusage. *Overstock.com*, 231 Cal. App. 4th at 500 (strike irrelevant materials never referenced in motion papers).
- It is not always necessary to provide copies of each document referred to in a memorandum. Often a summary of a document in the memorandum suffices.
- Consider providing copies of voluminous exhibits on a USB device and lodging that, as well as (or, with prior court approval, instead of) lodged paper courtesy copies.
- If deposition extracts exceed a *total* of 250 pages, consider providing with respect to each deponent one paragraph summarizing the testimony and the material facts to which it pertains.
- Consider using and stipulating to Federal Rule of Evidence 1006.
- Even if unopposed, requests for judicial notice will be denied if the materials are not necessary for the determination. *Cuevas v. Contra Costa Cty.*, 11 Cal. App. 5th 163 n.14 (2017) (no notice if not necessary to decision).
- Outside the context of motions to seal (where a Delta document showing the redactions should be lodged), do not provide courtesy copies of redacted documents; only provide the unredacted version. Do not provide courtesy copies in envelopes marked to suggest they are filed or lodged conditionally under seal.

Trials

Given hearings in other cases at the beginning and end of the day, and other breaks, the parties should assume about 4.2 hours per trial day. No trial is set in this Department without also fixing the trial length.

Superior Court of California
County of San Francisco
Department 304 - Judge Curtis E.A. Karnow
Complex Litigation – Class Action Materials

Counsel in class action litigation may find these materials useful. These are only suggestions, and may not apply in many cases.

A checklist for preliminary approval is offered on page 2. Suggestions for trial plans (often useful in contested motions for certification) are provided at page 5.

Staggered briefing on certification motions: In some cases, considerable discovery cost savings are available with this procedure:

1. Plaintiffs do only the discovery they need to meet their certification needs. This is usually brief, as plaintiffs' counsel typically have what they need before the suit is filed. No discovery is taken at this stage regarding anticipated defenses to the certification motion. Then plaintiffs serve the certification motion.
2. Defendants undertake discovery they need to defend against the motion, if any, and then file the Opposition.
3. Plaintiffs then do the discovery they need, if any, to respond to the Opposition, and then file the Reply.

In this way, the filed papers define the scope of discovery. The court holds a short case management conference roughly a week after each filing to set the bounds of then pertinent discovery (absent agreement among the parties).

Manageability issues are sometimes addressed by trial plans. See page 5.

Parties preparing motions for preliminary approval of class settlements may be interested in an article outlining frequent problems. <http://works.bepress.com/curtis_karnow/18/>

Trial judges are fiduciaries for absent class members. *In re Consumer Privacy Cases*, 175 CA4th 545, 555 (2009)

These are the usual issues addressed:

CLASS CERTIFICATION

- Class definition
- Numerosity
- Ascertainability
- Superiority
- Community of interest
  There are three elements: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 435, (2000)
  - Typicality
  - Adequacy of class counsel and class representative, including addressing potential conflicts posed by subclasses or PAGA claimants

CASE SUMMARY

- Summary of the case, including the legal and factual basis for each claim, and the strength of material claims and defenses. *Kullar v. Foot Locker Retail, Inc.*, 168 CA4th 116, 133 (2008). Provide sufficient detail to allow court to make *independent* evaluation of the strengths and weaknesses of the case.
- The *Kullar* analysis should usually be undertaken separately for the class claims and any PAGA claims. (In some cases plaintiffs cite potential PAGA penalties to increase the apparent value of the case but the proposed settlement does not reflect this and may allocate only small sums to the PAGA claims. This may not be appropriate.)
- Summary of the investigation and discovery conducted by class counsel. Citations of the documents [such a documents and discovery responses] used to value the settlement.
- Reasonable estimate of the nature and amount of recovery that each class member could have obtained if plaintiffs prevailed at trial.
- Demonstration that settlement was negotiated at arms-length and is not collusive.
- Impact of settlement on other pending litigation, if any.

SETTLEMENT TERMS AND EVALUATION- FAIR, ADEQUATE AND REASONABLE

- Terms of the settlement.
- Nature of injunctive relief, and valuation of such relief. Promises to obey the law are not usually of value.
- If applicable, why coupons or equivalents are appropriate, including the extent to which class members may use the coupons without paying additional money or making additional purchases.
- Amount and manner of distribution of the compensation to each class member, including the amount, or an estimate, of what each class member will receive.
- Whether, and under what circumstances, amounts may revert to defendant.
- Justification for reversion to defendant.

- Releases
    - Scope of the release.
    - If applicable, why is there a § 1542 release as to the absent class members?
    - Is the scope of release congruent with the (1) class definition time period and (2) allegations of the complaint (i.e. not a general release)?
- If wages are involved, what is the tax treatment?
- Explain if the settlement includes terms that are outside the scope of the operative complaint.
- A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for any such obligations.
- A declaration setting forth the qualifications of the administrator. A statement of the estimated costs of administration.
- The Settlement Agreement and the Notice must not provide for "dismissal" of the action if final approval is granted (rather judgment is entered).

SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS

- Explain why the claims process, if any, is not unduly burdensome, and provide rationale for any burden.
- If class members are required to submit a claim to receive compensation, explain (i) why information is required to be furnished and (ii) explain the anticipated claims rate.
- Describe actions class counsel will take to encourage submission of claims.
- Why the time limit to object or opt-out is reasonable (usually 60 days is needed).
- Usually opt outs and objections must be *postmarked* by a set date (not "received" by the Administrator by a set date, as that is not under the control of the potential class member).
- [Objections are collected by the Administrator or class counsel and provided to the court at the time of briefing for the Final Fairness Hearing]

CY PRES DISTRIBUTION

- Why a cy pre recipient is needed, i.e. why the funds cannot be re-distributed to class members.
- Why does the distribution meet the purposes of the suit or is otherwise appropriate. C.C.P. § 384.
- Explain any proposed allocation among multiple recipients, and how recipient's geographical reach is congruent with that of the class.
- Declaration disclosing interests or involvement by any counsel or party in the governance or work of the cy près recipient
- Discussion of how the parties will handle uncashed checks
- [Cy près is not determined until Final Fairness Hearing, but Notice must identify proposed recipients]

NOTICE TO CLASS MEMBERS

- Why the content of the notice complies with CRC 3.766(d)
- Why the manner of giving notice complies with CRC 3.766(e)
- If not every class member is being notified, explain why.
- Can every class member estimate what he or she will receive?
- If printed notices are being used (e.g. in newspapers), provide actual size exemplars.
- How will notice of final judgment be given to the class. CRC 3.771(b) (e.g. posted on administrator's website; postcards to the class).
- If applicable explain why English-only notice is sufficient.

- Explain how notice specifically targets the class members.
- Extent to which notice addresses or includes these criteria and content: easily understood language; class definition; nature of the action and material claims, issues or defenses; the right to enter an appearance through private counsel; the right to request exclusion from the action; binding effect of a judgment; subclass definitions; identity of parties, class representatives and counsel; relief sought; state the court has not ruled on the merits; deadlines and methods for opt outs, objections, or filing any other required document; essential terms of the settlement; any special benefits for class representatives; requested attorneys' fees; the time and place of the final fairness hearing; methods to estimate what class members may receive if the settlement is approved; address and phone number for class counsel; information on proposed cy près distribution and rationale.
- Tells class where to find all documents (motions, orders, settlement agreement, transcript of hearing on preliminary approval) [this is usually a web site maintained by e.g., the administrator].

COSTS AND FEES

- Proposed fees to the class counsel, & preliminary justification under existing laws for such fees. CRC 3.769(b).
- All agreements on payment of attorney fees, including fee splitting and whether the client has given written approval.
- Estimate of costs.
- [Aside from notice cost, fees and costs are not approved until the Final Fairness Hearing. Declarations from counsel and class representatives (for incentive awards) are then usually necessary.]

PROPOSED ORDER INCLUDES:

- Proposed dates for (1) class notice, (2) objections and opt-outs, (3) claim submission, (4) filing papers for final approval, (5) hearing on motion for final approval and attorney fees and incentive payments.
- [The proposed order does not "preliminarily" or otherwise approve payments to class representative or counsel]

✠

Resources, checklists:

- http://www.cand.uscourts.gov/ClassActionSettlementGuidance
- http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf
- http://www.fjc.gov/public/pdf.nsf/lookup/ClassGd3.pdf/$file/ClassGd3.pdf
- http://www.lacourt.org/division/civil/CI0044.aspx
- http://www.occourts.org/directory/civil/complex-civil/cx104-motions-for-preliminary-approval-of-class-action-settlement-guidelines.pdf
- https://works.bepress.com/curtis_karnow/18/
- Wm. Rubenstein, NEWBERG ON CLASS ACTIONS, Ch. 13 (4th & 5th ed. 2015)
- Weil & Brown, et al., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL Ch.14 (Rutter: 2016)

Trial Management Plan

Most cases will have both individual and common issues, and much of the trial judge's work at the certification stage is to weigh those in an effort to determine which predominate. [*Mies v. Sephora U.S.A., Inc.*, 234 Cal. App. 4th 967 (2015).] Generally, underlying that analysis is a highly practical evaluation of whether the individual issues (whether on liability or damages) can reasonably be managed at trial. A carefully drafted trial management plan may be material to convincing the trial judge that the case can be certified, based on a showing that all the issues can be tried within a reasonable time. Counter plans from defendants may convince the judge to the contrary. Plans in support of certification forego vague generalities, and usually:

> (1) address each element of the claims and apparently material affirmative defenses, genuinely accounting for possible difficulties such as choice of law;
> (2) identify or at least describe the evidence, such as witnesses, and the number of witness, to be used for each element;
> (3) may include a proposed jury verdict form to demonstrate how the issues are to be decided by the jury;
> (4) provide realistic time estimates for the trial, based on an allocation per witness or at least witness type (i.e. the witnesses need not be identified at this stage);
> (5) propose if useful procedures such as bifurcation and phasing, the use of special masters for e.g. damages allocations, and of summaries and compilations of voluminous documents, and perhaps summaries of noncontroversial depositions;
> (6) may suggest (if appropriate) aggregate as opposed to individual damages;
> (7) where rulings are needed from both the court and a jury (such as when equitable and legal issues are presented based on overlapping evidence) the details on the timing of those rulings in the course of the trial;
> (8) where statistical evidence must be used the plan will often provide a substantive showing that the proffered statistical evidence (a) has been generated [*Duran v. U.S. Bank Nat. Assn.*, 59 C4th 1, 13 (2014)], or perhaps can be generated, (b) is valid, and (c) accommodates defenses which ordinarily require an individualized inquiry [*Duran* 59 C4th at 32]. This may require the completion of pilot study [*Duran* 59 C4th at 22]. The description of statistical evidence usually is specific enough to estimate the number of witnesses needed to present a valid sample, and explains how the jury will be entitled to extrapolate from the sample.

Jury Trial Preparation

Juries. Counsel should be ready to discuss and (if suitable) agree:

- That alternates be selected from the group of jurors immediately prior to deliberations, as opposed to naming alternates during jury selection. Under this system, if (for example) 3 alternates are to be selected, a jury of 15 is selected. The alternates are named immediately prior to deliberations.
- On the minimum number of preemptory challenges the parties will stipulate to. The parties may wish to reduce this number to allow for faster jury selection.

The following items are to be filed/lodged:

- Motions *in limine*. The parties must first meet and confer on in limine motions and file only disputed MILs.[1] The parties must also notify the court in in the MILs of the need for any hearings under Evid. C. § 402 in advance of trial.
- Exhibit lists[2]
- Witness lists in the order the witnesses are to be called, with time estimates and a brief description of the witnesses' testimony[3]
- Deposition extracts to be read to the jury, together with objections and counter designations[4]

[1] Moving parties *must* review *Kelly v. New West Federal Savings*, 49 Cal.App.4th 659 (1996), *Amtower v. Photon Dynamics, Inc.*, 158 Cal.App.4th 1582 (2008); R *& B Auto Center, Inc. v. Farmers Group, Inc.*, 140 Cal.App.4th 327, 371 (2006) (Rylaarsdam, Acting P.J., concurring) before drafting these motions. Motions which seek to exclude evidence must specify the specific evidence sought to be excluded.

[2] Prior to the pretrial conference, the parties should exchange and pre-mark all documents (except those to be used in rebuttal or impeachment). Counsel are expected to stipulate to the admissibility or at least authenticity of exhibits, if reasonable. Stipulations should be reduced to writing or placed on the record. Never ask other counsel for a stipulation on any subject in front of the jury.

[3] Indicate those appearing by deposition and whether video will be used. The court will use these (and other factors) to impose overall time limits at trial, per side or party. Time limits are strictly enforced with the use of a chess clock.

[4] The parties use a single document per deposition. The proponent indicates with one color the testimony to be read (or viewed) at trial. The objecting party uses a different color to both mark terse objections and indicate counter designations. The original proponent uses its original color to note any objections to the counter designation. This is all contained on a single document and allows the court to evaluate the objections and propriety of the counter–designations, as well as all objections, in context. These must be presented to the court sufficiently in advance to trial to

- Special verdict forms
- Jury instructions[5]
- Proposed voir dire questions to be asked by the Court (do not include here routine questions)
- Stipulations[6] as to admissibility (preferred) or at least authenticity of exhibits
- Fact stipulations
- Jury voir dire questionnaire, if any[7]

- Documents with sensitive contents:
    - Parties (and if necessary third party sources of information) should confer on the redaction of portions of documents which are not necessary for the fact finder to view and are considered sensitive; and if the parties have not agreed (because some portions re both sensitive and must be viewed by the fact finder),
    - The parties must set a hearing date when the issue of sealing or other protection is submitted to the court for resolution

Voluminous documents. Parties are strongly encouraged to introduce as evidence compilations or summaries of voluminous documents. Cf. Evid. C. § 1509. These may include diagrams and charts. The underlying documents should be designated and made available to opposing parties together with the proposed summary.[8] The parties should consider whether the underlying documents must also be admitted into evidence. Thus the following items are to be exchanged or lodged:

- Date for parties' exchange of summaries and designation of documents
- Date for submission of summary to court together with any objections. Disagreements may be handled at a pre-trial conference.

allow time for review and rulings, as well as to allow the parties' edits of any video, before trial commences.

[5] Instructions must be complete, suitable to hand to the jury, i.e., without blanks or choices in wording to be made. Counsel should be prepared to provide proposed jury instructions and special verdict forms in MS Word-editable format to the court. Counsel must promptly meet and confer on proposed jury instructions and special verdict forms.

[6] If possible, meet and confer on this should begin far enough in advance to allow parties if necessary to issue requests for admission to have the items deemed authentic, which in turn may allow parties to recover costs incurred in having items ruled authentic at trial.

[7] The use of a questionnaire at voir dire is not usually necessary, and when used generally adds about a day to the voir dire process.

[8] Compare, FRE 1006: "Summaries to Prove Content. The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court."

Jury Trial Guidelines

Trial is ordinarily scheduled 10:00 – 4:00 or 4.30 p.m., Monday-Friday. Parties must have witnesses ready to call during these periods or may be deemed to have rested their case.

Counsel should be prepared for a one to two minute [but not more] 'mini opening' just before the hardship phase. These are entirely neutral, non-argumentative statements of the case. No statement of the case will be read to the jury by the Court.

The Court will not provide court reporters. The parties may if they wish arrange for a court reporter at a party's expense; court reporter notes remain the property of the Court.

Witness exclusion orders include a bar on reading prior witnesses' trial testimony.

No proposed exhibit, chart or other item (except for admitted evidence) may be shown to the jury including during opening and closing without agreement from all parties or Court approval.

Copies of exhibits must be available for opposing counsel and the court. Never show a witness anything other than the *original* exhibit, and ensure your witnesses do not depart the courtroom with original exhibits.

Words spoken on video or audio tapes played for the jury will not be recorded by the court reporter unless counsel specifically so requests and provides a transcript of the recorded statements in advance to all parties and the Court.

Consideration of the jury's time is essential. Counsel must advise the Court prior to the commencement of trial, or as soon as the issue is apparent, of any legal or evidentiary matters that counsel anticipate may require extended time for consideration or hearing outside the presence of the jury. Sidebar conferences are discouraged, and counsel should request conferences with the Court during recesses. Sidebar and in-chambers conferences (including for cause challenges during voir dire) will not be on the record unless requested by counsel; counsel may request the results of such conferences, and any additional matter such as argument, to be placed on the record after the jury has been released for the day.

Counsel must exchange email and cell phone contact information, so that if unexpected events occur which might affect upcoming proceedings, counsel will be able to have the courtesy to inform opposing counsel.

Without seeking permission counsel may approach a witness, for the minimum time necessary, to hand an exhibit or direct the witness' attention to an item. Witnesses who use an exhibit board or make other demonstration should be asked to return to the witness stand as soon as practicable.

Counsel should normally propose the latest version of CACI instructions. The Court normally (1) preinstructs the jury including with these CACI instructions: 100, 101, 102, 104 (if apposite), 105, 106, and 107, and (2) instructs at the conclusion of the case with these CACI instructions: 5000, 5002, 5003, 5006, 5009, 5010, 5012 (or variant if a general verdict form is used). Parties must nonetheless formally request every instruction desired. The Court instructs the jury *prior* to counsel's closing argument.

Counsel should confer on providing to the jury core substantive jury instructions such as the basic elements of a cause of action, or central defense, to the jury *before* testimony.

The Court generally permits jurors to submit written questions. These are discussed with counsel at side bar (where objections may be made) before posed to the witness by the Court. Counsel may then ask brief follow up questions.

If plaintiff seeks punitive damages the trial will be bifurcated on request of any party. *The Court will not delay trial between phases in order to accommodate discovery.* All discovery issues connected with punitive damages must have been resolved prior to the jury verdict on liability.

Any need for technology or equipment set-up should be discussed with the clerk of the Department well in advance. The parties should confer and seek to use the same equipment. Counsel must plan for failure of technology and be ready to proceed immediately without it.

Pre-Trial Filing Events - Bench Trial

- Date to meet and confer on *in limine* motions and then by that date file only disputed motions *in limine*.[1] By this date the parties must also notify the court in writing of the need for any hearings under Evid. C. § 402 in advance of trial.
- Documents with sensitive contents:
  - Date by when parties (and if necessary third party sources of information) have met and conferred on the redaction of portions of documents which are not necessary for the fact finder to view and are considered sensitive; and if the parties have not agreed (because some portions re both sensitive and must be viewed by the fact finder),
  - Date when the issue of sealing or other protection is submitted to the court for resolution
- Dates to supply the court with the following:
  - Oppositions to motions *in limine* (not later than 5 court days before the hearing to argue these motions) and trial briefs;
  - Hearing date for motions *in limine*;
  - Exhibit list (the parties should have completed their exchange of exhibits by this date[2]);

[1] Moving parties must review *Kelly v. New West Federal Savings*, 49 Cal.App.4th 659 (1996), *Amtower v. Photon Dynamics, Inc.*, 158 Cal.App.4th 1582 (2008); R *& B Auto Center, Inc. v. Farmers Group, Inc.*, 140 Cal.App.4th 327, 371 (2006) (Rylaarsdam, Acting P.J., concurring) before drafting these motions. Motions which seek to exclude evidence must specify the specific evidence sought to be excluded. There may not be a need for in limine motions in a bench trial. See generally, http://judgebonniesudderth.wordpress.com/tag/motion-in-limine/; John N. Sharifi, "Techniques for Defense Counsel in Criminal Bench Trials," 28 AM. J. TRIAL ADVOC. 687, t.a.n. 12, http://www.scribd.com/doc/31439427/Bench-Trial-How-To; Randy Wilson, "The Bench Trial: It Really Is Different," ADVOCATE (2009), http://www.justex.net/JustexDocuments/12/Articles/Bench%20Trial.pdf.

[2] The parties should exchange and pre-mark all documents (except those to be used in rebuttal or impeachment). Counsel are expected to stipulate to the admissibility or at least authenticity of exhibits, if reasonable. (Stipulations should be reduced to writing or placed on the record.) Searchable electronic copies in addition to paper versions are welcome. Paper copies for the witnesses, the court, and all parties are required. Avoid introducing more pages than needed: typically the cover page and the centrally pertinent pages, only, are needed. *Cf., Overstock.Com, Inc. v. Goldman Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 498 (2014) (albeit in a different context (sealing), warning against submitting entire documents "when only a page or two were identified as containing matter relevant to the issues," or submitting "[m]ultiple documents…when one would have sufficed").

- Witness lists in the order the witnesses are to be called, with time estimates and a brief description of the witnesses' testimony;[3]
- Deposition extracts, together with objections and counter designations;[4]
- Declarations for direct testimony, if the parties agree;[5] and if so date for written (1) objections to those declarations[6] and (2) notices that the declarant must appear for live cross examination
- If a party plans on introducing more than 200 pages of depositions, short summaries of deposition testimony indicating the material disputed fact for which the testimony is being used;
- Stipulations as to admissibility (preferred) or at least authenticity of exhibits;
- Fact stipulations.
- Summaries and compilations:
  - Parties' exchange of summaries and designation of documents[7]
  - Submission of summary to court together with any objections

[3] Indicate those appearing by deposition and whether video will be used. The court will use these (and other factors) to impose overall time limits on each side at trial. *Time limits are strictly enforced.*

[4] The parties use a single document per deposition. The proponent indicates with one color the testimony to be introduced at trial. The objecting party uses a different color to both mark objections and indicate counter designations. The first party may then use its own color to indicate objections to counter-designations. This is all contained on a single document and allows the court to evaluate the objections and propriety of the counter–designations in context. The parties may introduce transcripts as exhibits (subject to objections) to save in-trial time.

[5] The parties may agree that some or all of certain witnesses' direct testimony may be provided via declarations, subject to live cross examination.

[6] Generally it is not useful to interpose objections based on Evid.C. § 352, or "asked and answered," as the testimony must be reviewed in any event to rule on the objection and judges generally can be trusted not to be sidetracked by 'prejudicial' testimony; for the same reason, relevancy objections are of limited utility. The objection 'speculation' too is often designed to save time at trial by blocking pointless questions, a goal not furthered when objecting to deposition transcripts.

[7] *Voluminous documents*. Parties are strongly encouraged to introduce as evidence compilations or summaries of voluminous documents. Cf. Evid. C. § 1509. These may include diagrams and charts. The underlying documents should be designated and made available to opposing parties together with the proposed summary. The parties should consider whether the underlying document must also be admitted into evidence. Compare, FRE 1006: "Summaries to Prove Content. The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court."

Hon. Mary E. Wiss

Standard Discovery Order Issued at Initial Case Management Conference

All deadlines to move to compel discovery from a party pursuant to the Code of Civil Procedure are vacated and suspended until otherwise ordered by the Court. No party may move to compel discovery until the parties have had a discovery conference with the Court. To schedule a discovery conference with the Court, counsel should contact the clerk of Department 305 at 415-551-3732 or email the department at complex305@sftc.org to request a telephone discovery conference. At least three court days before the conference, counsel must deliver a joint letter outlining the discovery dispute. If the discovery dispute is not resolved at the time of the conference, any party may proceed to move to compel. Counsel must have completed all meet and confer obligations before scheduling a discovery conference.

San Mateo County Superior Court

Hon. Marie S. Weiner

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

DEPARTMENT NO. 2

Marie S. Weiner, Judge
Department Line: (650) 261-5102

Judge Weiner is currently assigned as the Court's Complex Civil Litigation Judge ("Complex Judge").

COMPLEX DESIGNATION

Local Rule 2.30 governs the procedure for the determination of complex case designation. This rule should be read and followed carefully.

The Presiding Judge decides whether an action is complex within the meaning of California Rules of Court, Rule 3.400, subdivision (a), and whether it shall be assigned to a single judge for all purposes. Any party seeking a complex designation must complete, file, and serve a Certificate Re: Complex Case Designation . The certificate must include supporting information showing a reasonable basis for the complex case designation being sought. The Clerk of the Court will then set a Status Conference at which the Presiding Judge shall decide whether or not the action is complex.

If the Presiding Judge designates the action as complex and assigns it to the Complex Judge, counsel will be directed to contact the Complex Judge's clerk to set a date for the initial Case Management Conference. The regular Case Management Conference date set upon commencement of the action will be vacated.

Model Stipulated Protective Orders. For the ease of the parties and to assure compliance with the requirements of California Rules of Court, Rules 2.550 and 2.551, the Complex Court has adopted two model stipulated protective orders. If only one level of confidentiality is desired, the Stipulation and Protective Order Regarding Confidential Information (Single Level of Confidentiality) may be used. If there is a need to shield some confidential information from the parties, the Stipulation and Protective Order Regarding Confidential Information (Double Level of Confidentiality) may be used. Use of these model stipulated protective orders is recommended but not required.

Filed Documents and Courtesy Copies. All pleadings, motions, applications, briefs, and any and all other papers in complex cases shall be filed with (and related filing fees paid to) the Civil Clerk's Office located in the Hall of Justice,

First Floor, Room A, 400 County Center, Redwood City, California. **One extra copy of any such filing shall be stamped "Judge's Copy" and delivered by overnight or first class mail directly to Department 2** located at Courtroom 2E, 400 County Center, Redwood City, California 94063. DO NOT LEAVE THE JUDGE'S COPY WITH THE CLERK'S OFFICE. **PLEASE ADD DEPARTMENT 2 TO YOUR MAILING SERVICE LIST IN THE CASE AS TO ANY AND ALL PAPERS FILED WITH THE COURT.** All motions and briefs shall conform with the California Rules of Court, especially Rule 3.1113, and **indicate on the caption page that this matter is assigned for all purposes to Department 2**.

Hearing Dates. As to any and all motions or other matters requiring a hearing, the hearing date shall be obtained directly from and approved by Department 2 at **(650) 261-5102** (and not with the Civil Clerk's Office nor with the Research Attorney), **prior** to filing of the moving papers or other initial filings.

Ex Parte Applications. Ex parte applications in this matter shall heard by Department 2, **on Tuesdays and Thursday between 2:00 p.m. and 3:30 p.m.**, and the parties are required to meet the requirements of CRC Rule 3.120 et seq.. With the consent of counsel for all parties, telephone conferences on simple interim case management matters may be scheduled with the Court for a mutually convenient time and date - with the scheduling and logistics of such telephone conferences to be the responsibility of the requesting party/parties.

Discovery. As to any discovery motions, the parties are relieved of the statutory obligation under California Rules of Court, Rule 3.1345, and thus need not file a separate statement - instead the subject discovery requests (or deposition questions) and written responses (or deposition answers or objections) must be attached to the supporting declaration on the discovery motion.

Given the nature of complex cases, the Court views document production and depositions as the most effective means of discovery for adjudication. Accordingly, no party may propound more than 35 special interrogatories total and no party may propound more than 35 requests for admissions (other than as to the authenticity of documents) total, without prior court order after demonstration of need and a showing that other means of discovery would be less efficient.

In regard to all discovery disputes, counsel for the parties (and any involved third parties) shall meet and confer on any and all discovery disputes and, if there are remaining disputes, then counsel for each side shall serve on each other and mail/deliver directly to Department 2 a letter brief setting forth the dispute and attaching as tabbed exhibits to the letter the subject discovery requests and discovery responses (if any). At the time or prior to submitting (not filing) the letter briefs, counsel for the parties shall also schedule a discovery conference with the Court to occur no sooner than five court days after delivery of the last letter brief to the Court, in order to discuss the dispute. THE DISCOVERY DISPUTE LETTER BRIEFS AND THE DISCOVERY CONFERENCE SHALL BE DONE WELL PRIOR TO THE STATUTORY DEADLINES FOR FILING OF ANY MOTION TO COMPEL OR OTHER DISCOVERY MOTION. **No discovery motion may be filed by any party unless and until there is compliance with the requirement of this Order,**

i.e., (i) substantive meet and confer, (ii) exchange of letter briefs, and (iii) discovery conference with the Court. This requirement does not constitute an extension of time for any statutory time period for filing and serving any motion under the Civil Discovery Act.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

Case No.
CLASS ACTION

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

Plaintiffs,

vs.

CASE MANAGEMENT ORDER #1 and ORDER FOR PERMISSIVE E-FILING

Defendants.
_____/

Pursuant to the Order entered by the Presiding Judge on July 19, 2017, this complex action was so designated, and single assigned to Department 2 of this Court before the Honorable Marie S. Weiner.

IT IS HEREBY ORDERED as follows:

1. All pleadings, motions, applications, briefs, and any and all other papers in this case shall be filed with (and related filing fees paid to) the Civil Clerk's Office located in the Hall of Justice, First Floor, Room A, 400 County Center, Redwood City,

California. **One extra copy of any such filing shall be (1) electronically served upon Department 2 at email address complexcivil@sanmateocourt.org or** (2) stamped "Judge's Copy" and *delivered by overnight or first class mail directly to Department 2* located at Courtroom 2E, 400 County Center, Redwood City, California 94063. DO NOT LEAVE THE JUDGE'S COPY WITH THE CLERK'S OFFICE. PLEASE ADD DEPARTMENT 2 TO YOUR **E-SERVICE OR** MAILING SERVICE LIST IN THE CASE AS TO ANY AND ALL PAPERS FILED WITH THE COURT. All motions and briefs shall conform with the California Rules of Court, especially Rule 3.1113, and indicate on the caption page that this matter is assigned for all purposes to Department 2. DO NOT FAX COPIES OR CORRESPONDENCE TO DEPARTMENT 2, AS THERE IS NO DEDICATED FAX LINE FOR THE CIVIL COMPLEX DEPARTMENT.

2. As to any and all motions or other matters requiring a hearing, the hearing date shall be obtained *directly* from and approved by Department 2 at **(650) 261-5102** (and *not* with the Civil Clerk's Office nor with the Research Attorney), ***prior*** to filing of the moving papers or other initial filings.

3. Pursuant to Section 1010.6(b) of the Code of Civil Procedure, Rule 2.253(a) of the California Rules of Court, and San Mateo County Superior Court Local Rule 2.1.5, all documents in Complex Civil actions (other than the original documents specified below) may be filed electronically. Please visit www.sanmateocourt.org for further information on e-filing.

4. Until further order of the Court, the following original documents must still be filed/lodged in hardcopy paper:

Ex Parte Motions and Oppositions thereto

Exhibits to Filed Documents

Stipulation and Proposed Order

Request for Dismissal

Proposed Judgments

Abstract of Judgment

Default Judgment

Appeal Documents

Administrative Records

5. Proposed Orders should be e-filed with the motion or stipulation to which it relates in conformity with CRC Rule 3.1312(c). You must also email an editable version of the Proposed Order in Word format (not PDF) to complexcivil@sanmateocourt.org so that the judge can modify it prior to signing, if needed.

6. Correspondence to Department 2, such as discovery letter briefs, requests to take matters off calendar, and requests for rescheduling, regarding actions assigned to the Complex Civil Department may be submitted electronically, rather than paper, by e-mail addressed to complexcivil@sanmateocourt.org This email is for the Complex Civil Litigation Department to *receive* correspondence, and is not a venue for back-and-forth communications with the judge. Communications to this email address are *not* part of the official court files – just like a paper letter, they are not "filed" documents – and will be retained for at least 30 days and then be subject to deletion (destruction) thereafter.

7. All communications to the complexcivil@sanmateocourt.org email address MUST include in the header "subject line" the **Case Number and Name of Case** (e.g., CIV 654321 *Smith v. Jones*).

8. *Ex parte* applications in this matter shall heard by Department 2, **on Tuesdays and Thursday between 2:00 p.m. and 3:30 p.m.**, and the parties are required to meet the requirements of CRC Rule 3.120 *et seq.*. With the consent of counsel for *all* parties, telephone conferences on *simple* interim case management matters may be scheduled with the Court for a mutually convenient time and date – with the scheduling and logistics of such telephone conferences to be the responsibility of the requesting party/parties.

9. As to any discovery motions, the parties are relieved of the statutory obligation under CRC Rule 3.1345, and thus need *not* file a separate statement – instead the subject discovery requests (or deposition questions) and written responses (or deposition answers or objections) must be attached to the supporting declaration on the discovery motion.

10. Given the nature of this case, the Court views document production and depositions as the most effective means of discovery for adjudication. Accordingly, no party may propound more than 35 special interrogatories *total* and no party may propound more than 35 requests for admissions (other than as to the authenticity of documents) *total*, without prior court order after demonstration of need and a showing that other means of discovery would be less efficient.

11. In regard to all discovery disputes, counsel for the parties (and any involved third parties) shall meet and confer on any and all discovery disputes and, if there are remaining disputes, then counsel for each side shall serve on each other and mail/deliver *directly* to Department 2 a short letter brief setting forth the dispute and attaching as *tabbed* exhibits to the letter the subject discovery requests and discovery responses (if any). **The discovery letter brief may instead be electronically delivered**

to Department 2 via email address complexcivil@sanmateocourt.org. At the time or prior to submitting the letter briefs, counsel for the parties shall also schedule a discovery conference with the Court to occur no sooner than five court days after *delivery* of the last letter brief to the Court, in order to discuss the dispute. THE DISCOVERY DISPUTE LETTER BRIEFS AND THE DISCOVERY CONFERENCE SHALL BE DONE *WELL PRIOR TO* THE STATUTORY DEADLINES FOR FILING OF ANY MOTION TO COMPEL OR OTHER DISCOVERY MOTION. No discovery motion may be filed by any party unless and until there is compliance with the requirement of this Order, i.e., (i) substantive meet and confer, (ii) exchange of letter briefs, and (iii) discovery conference with the Court. This requirement does *not* constitute an extension of time for any statutory time period for filing and serving any motion under the Civil Discovery Act.

12. Pursuant to CRC Rule 3.1113(i), the Complex Civil Department, Dept. 2, **does not require any appendix of non-California authorities, unless specifically stated by the Court as to a particular motion.**

13. The initial Case Management Conference is set for **Wednesday, August 30, 2017 at 3:00 p.m.** in Department 2 of this Court, located at Courtroom 2E, 400 County Center, Redwood City, California. Counsel for all parties shall meet and confer on all matters set forth in California Rules of Court Rule 3.750 and Rule 3.724(8). COUNSEL TO APPEAR IN PERSON.

14. In anticipation of the Case Management Conference, counsel for the parties should be prepared to discuss at the hearing *and* file written case management conference statements **(in prose and details, *not* using the standardized Judicial Council form)** with a courtesy copy delivered *directly* to Department 2 on or before **August 23, 2017**, as to the following:

a. Status of Pleadings;

b. Status of Discovery, including the deposition of Plaintiff and the initial production of documents by all parties;

c. Status of Settlement or Mediation;

d. Status of Related Federal Action;

e. Conclusions reached after meet and confer on all matters set forth in CRC Rule 3.750 and Rule 3.724(8);

f. Proposed briefing schedule and hearing date for Plaintiff's Motion for Class Certification, and what discovery is needed prior to filing the motion and opposition;

g. Any other anticipated motions and proposed briefing schedule;

h. Setting of next CMC date; and

i. Any other matters for which the parties seek Court ruling or scheduling.

DATED: July 27, 2017

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

COMPLEX CIVIL LITIGATION

Master File No.

_____/

CLASS ACTION

This Document Relates To:
ALL ACTIONS

_____/

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

CASE MANAGEMENT ORDER #11 and ORDER SETTING JURY TRIAL

On August 10, 2017, a Case Management Conference was held in Department 2 of this Court before the Honorable Marie S. Weiner.

The Court and counsel for the parties discussed the Class Notice, and a proposed stipulated order will be submitted to Department 2 shortly.

The Court and counsel discussed and agreed upon the trial dates and pretrial dates and deadlines, which were orally stipulated by counsel for all parties on the record, and adopted herein as the order of the Court.

The Court made the following rulings at the Conference, which are set forth herein as the formal order of this Court.

IT IS HEREBY ORDERED as follows:

1. **JURY TRIAL is set to commence on THURSDAY, OCTOBER 4, 2018 at 9:00 a.m. in Department 2 of this Court.** The trial is anticipated to take 20 court days. Counsel for the parties are aware that this case is double-set for trial, but this earlier trial date was requested. If the other matter already set for trial in October 2018 does not settle, then this case is **alternatively set** and will instead **commence JURY TRIAL on THURSDAY, JANUARY 17, 2019 at 9:00 a.m.** in Department 2 of this Court.

2. The Pre-Trial Conference is set for **Thursday, September 27, 2018 at 9:00 a.m.** (all day) in Department 2 of this Court. (The alternative Pretrial Conference date is Monday, January 7, 2019 at 9:00 a.m.) At the PTC, the Court will be addressing (1) motions in limine, (2) trial exhibits, (3) deposition testimony proposed to be presented at trial, and objections thereto, (4) any motion to bifurcate, (5) jury questionnaires, (6) jury selection procedures, and (7) time limitations on presentation of evidence at trial.

3. Pursuant to stipulation of counsel for all parties, the merits discovery cut-off date is **April 25, 2018.**

4. The cut-off date for filing and serving any merits discovery motions is April 25, 2018. Any opposition shall be filed and served on or before May 2, 2018. There is no reply. Hearing on any final merits discovery motions is set for **May 16, 2018 at 9:00 a.m.** in Department 2.

5. Pursuant to stipulation of counsel for all parties, the expert witness discovery cut-off date is **May 30, 2018.**

6. The cut-off date for filing and serving any expert discovery motions is **June 1, 2018**. Any opposition shall be filed and served on or before **June 15, 2018**. There is no reply. Hearing on any final expert discovery motions is set for the Pretrial Conference.

7. Pursuant to stipulation of counsel for the parties, an expert disclosure demand pursuant to C.C.P. Sections 2034.210 and 2034.230 is DEEMED TO HAVE BEEN MADE. Counsel stipulated that the initial disclosure and exchange of expert witness information, in compliance with C.C.P. section 2034.260 and 2034.270, shall be served on or before **April 25, 2018;** and disclosure of supplemental experts shall be due **May 7, 2018**. At the same time as the disclosure, the parties shall give written offers of available dates during the month of May 2018 for deposition of each designated expert disclosed.

8. Counsel for the parties shall meet and confer to schedule the depositions of the expert witnesses, to occur during the month of May 2018, *regardless* of the formal issuance of a notice of deposition, and agreed upon the pre-deposition deadline for the production of the expert's documents.

9. Counsel for the parties stipulated on the record to waive the notice and timing requirements of Code of Civil Procedure Section 437c and stipulated to the

following briefing schedule and hearing date: Any motion pursuant to C.C.P. Section 437c shall be filed and served on or before **June 14, 2018**. Any opposition shall be filed on or before **July 12, 2018**. Any reply shall be filed and served on or before **August 2, 2018**. Hearing on Section 437c motions is set for **Friday, August 10, 2018 at 9:00 a.m.** in Department 2 of this Court.

10. On or before **September 5, 2018**, in preparation for trial, each party shall file and serve a page-and-line designation of deposition testimony anticipated to be presented at trial (whether to be presented in written or oral or videotape or DVD format). Any objections shall be filed and served on or before **September 19, 2018**. **Other than *short* counter-designations for purposes of completeness, all designations *including "cross-designations"* shall be served in the initial designation**. Counsel for the parties shall meet and confer as to whether they will be proceeding to utilize comprehensive deposition presentations at trial, or present deposition testimony piece-meal by each side.

11. All motions in limine, including any motions to bifurcate, shall be filed and served on or before **September 5, 2018**. Any opposition shall be filed and served on or before **September 19, 2018**. There shall be no reply. The motions in limine will be heard at the Pretrial Conference.

12. Trial exhibits will be marked in sequential order at trial (or the numbers that counsel have stipulated to use as to particular documents), such that there will only be *one* document using the same exhibit number (thus, there will be *no* "Plaintiffs'" Exhibit #1 and "Defendants'" Exhibit #1).

13. On or before **August 1, 2018**, the parties shall exchange their lists of proposed trial exhibits. **Counsel for the parties shall meet and confer regarding trial**

exhibits, and attempt reach stipulations on foundation and admissibility of all proposed trial exhibits.

14. On or before the Pretrial Conference, the parties shall file and serve their joint stipulations as to the admissibility of any trial exhibits and/or foundation and authentication of trial exhibits – *by pre-designated trial number* – in order to streamline the presentation of evidence at trial.

15. On or before the Pretrial Conference, the parties shall lodge their trial exhibits with proposed trial exhibit numbers; and present the Court with a tabbed binder of exhibits for its own use.

16. On or before the Pretrial Conference, the parties shall exchange or make available for viewing their demonstrative evidence, such as posters, blow-ups, and Power Points, for use in Opening Statements and for use during the trial itself.

17. On or before **September 5, 2018**, the parties shall file and serve their trial briefs.

18. On or before the Pretrial Conference, the parties shall file and serve their witness lists of all potential witnesses in the case, whether live, by video, or by deposition.

19. The parties shall exchange proposed jury instructions on or before the Pretrial Conference, and counsel for all parties shall meet and confer regarding jury instructions thereafter. The parties shall file and serve joint proposed jury instructions, and separately file and serve any additional proposed jury instructions for which there is no stipulation, on or before the Pretrial Conference.

20. If any party seeking to use a jury questionnaire, the parties shall exchange proposed jury questionnaires on or before **August 15 8, 2018**, and counsel for all parties

shall meet and confer regarding the jury questionnaire thereafter. The parties shall file and serve a joint proposed jury questionnaire on or before the Pretrial Conference, and separately file and serve any additional proposed jury questions for the questionnaire for which there is no stipulation. Counsel for the parties shall meet and confer to reach a stipulation as to the collection, copying, and distribution of the jury questionnaires of counsel for all parties, and the sharing of expenses for copying the jury questionnaires filled out by prospective jurors.

21. Any proposed jury verdict form(s) shall be lodged with the Court on or before the first day of trial, and served accordingly.

22. Upon commencement of the trial, counsel shall inform opposing counsel by 4:00 p.m. the *prior business day* of the identity of the witnesses he/it anticipates presenting at trial the next court day, regardless of whether the witnesses will be presented live, or by video/DVD, or by deposition transcript.

23. A Discovery Conference is set for **Monday, October 2, 2017 at 10:00 a.m.** in Department 2 of this Court, to discuss ALL outstanding discovery disputes. Counsel for the parties shall submit *directly* to Department 2, and serve upon counsel for all parties, a *short* letter brief (not filed) on outstanding issues, *after meet and confer*, with supporting information for the Court, on or before **September 25, 2017.** If there are no discovery disputes, counsel should so notify the Court and the Discovery Conference will be taken off calendar.

DATED: August 10, 2017

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

Plaintiff, vs. Defendants.	Case No. _____ **STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION** (Single Level of Confidentiality)

In order to protect confidential information obtained by the parties in connection with this case, the parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as "Confidential Information" (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or confidential business or financial information, including personal financial information about any party to this lawsuit, putative class members or employee of any party to this lawsuit, information regarding any individual's banking relationship with any banking institution, including

information regarding the individual's financial transactions or financial accounts, and any information regarding any party not otherwise available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Where a document or response consists of more than one page, the first page and each page on which confidential information appears shall be so designated.

2. A party or non-party may designate information disclosed during a deposition or in response to written discovery as "Confidential" by so indicating in said responses or on the record at the deposition and requesting the preparation of a separate transcript of such material. In addition, a party or non-party may designate in writing, within thirty (30) days after receipt of said responses or of the deposition transcript for which the designation is proposed, that specific pages of the transcript and/or specific responses be treated as "Confidential Information." Any other party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in Paragraph 8 below. After any designation made according to the procedure set forth in this paragraph, the designated documents or information shall be treated according to the designation until the matter is resolved according to the procedures described in Paragraph 8 below, and counsel for all parties shall be responsible for marking all previously unmarked copies of the designated material in their possession or control with the specified designation. A party that makes original documents or materials available for inspection need not designate them as Confidential Information until after the inspecting party has indicated which materials it would like copied and produced. During the inspection and before the designation and copying, all of the material made available for inspection shall be considered Confidential Information.

3. All Confidential Information produced or exchanged in the course of this case (not including information that is publicly available) shall be used by the party or parties to whom the information is produced solely for the purpose of this case. Confidential Information shall not be used for any commercial competitive, personal, or other purpose.

4. Except with the prior written consent of the other parties, or upon prior order of

this Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any person other than:

(a) counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for this litigation;

(b) employees of such counsel;

(c) individual parties or officers or employees of a party, to the extent deemed necessary by counsel for the prosecution or defense of this litigation;

(d) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information, and provided that if the party chooses a consultant or expert employed by the defendant or one of its competitors, the party shall notify the opposing party, or designating non-party, before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

(e) any authors or recipients of the Confidential Information;

(f) the Court, court personnel, and court reporters; and

(g) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document. Confidential Information may be disclosed to a witness who will not sign the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that

Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Any persons receiving Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any Confidential Information to persons who are not authorized to use or possess such material, the party shall provide immediate written notice of the disclosure to the party whose material was inadvertently disclosed. If a party has actual knowledge that Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was disclosed or obtained by such person, the party shall provide immediate written notice of the unauthorized use or possession to the party whose material is being used or possessed. No party shall have an affirmative obligation to inform itself regarding such possible use or possession.

6. In connection with discovery proceedings as to which a party submits Confidential Information, all documents and chamber copies containing Confidential Information which are submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the outside of the envelopes, a copy of the first page of the document shall be attached. If Confidential Information is included in the first page attached to the outside of the envelopes, it may be deleted from the outside copy. The word "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the following form shall also be printed on the envelope:

"This envelope is sealed pursuant to Order of the Court, contains Confidential Information and is not to be opened or the contents revealed, except by Order of the Court or agreement by the parties."

If another court or administrative agency subpoenas or orders production of Confidential Information, such party shall promptly notify counsel for the party who produced the material of the pendency of such subpoena or order and shall furnish counsel with a copy of said subpoena or order.

7. A party may designate as "Confidential Information" documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. Any party or non-party may voluntarily disclose to others without restriction any information designated by that party or non-party as Confidential Information, although a document may lose its confidential status if it is made public. If a party produces materials designated Confidential Information in compliance with this Order, that production shall be deemed to have been made consistent with any confidentiality or privacy requirements mandated by local, state or federal laws.

8. If a party contends that any material is not entitled to confidential treatment, such party may at any time give written notice to the party or non-party who designated the material. The party or non-party who designated the material shall have twenty (20) days from the receipt of such written notice to apply to the Court for an order designating the material as confidential. The party or non-party seeking the order has the burden of establishing that the document is entitled to protection.

9. Notwithstanding any challenge to the designation of material as Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

(a) the party or non-party who claims that the material is Confidential Information withdraws such designation in writing; or

(b) the party or non-party who claims that the material is Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a

written challenge to such designation; or

(c) the Court rules the material is not Confidential Information.

10. All provisions of this Order restricting the communication or use of Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information, other than that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of this action to counsel for the party or non-party who provided such information, or (b) destroy such documents within the time period upon consent of the party who provided the information and certify in writing within thirty (30) days that the documents have been destroyed.

11. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those Rules.

12. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

13. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information by anyone other than itself, and who does not seek to have the record

containing such information sealed, shall comply with either of the following requirements:

(a) At least ten (10) business days prior to the filing or use of the Confidential Information, the submitting party shall give notice to all other parties, and to any non-party that designated the materials as Confidential Information pursuant to this Order, of the submitting party's intention to file or use the Confidential Information, including specific identification of the Confidential Information. Any affected party or non-party may then file a motion to seal, pursuant to California Rule of Court 2.551(b); or

(b) At the time of filing or desiring to use the Confidential Information, the submitting party shall submit the materials pursuant to the lodging-under-seal provision of California Rule of Court 2.551(d). Any affected party or non-party may then file a motion to seal, pursuant to the California Rule of Court 2.551(b), within ten (10) business days after such lodging. Documents lodged pursuant to California Rule of Court 2.551(d) shall bear a legend stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the filing of a motion to seal pursuant to Rule 2.551(b) or Court order.

14. In connection with a request to have materials sealed pursuant to Paragraph 12 or Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1) shall contain sufficient particularity with respect to the particular Confidential Information and the basis for sealing to enable the Court to make the findings required by California Rule of Court 2.550(d).

IT IS SO STIPULATED.

Dated: _____. By: _____.

Dated: _____. By: _____.

ORDER

IT IS SO ORDERED.

Dated: _____.

_____
JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 200__, in San Mateo County Superior Court Case No. _____ ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ___ day of _____, 200__, at _____.

By: _____

Address: _____

_____

Phone: _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

Plaintiff, vs. Defendants.	Case No. _____ **STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION** (Double Level of Confidentiality)

In order to protect confidential information obtained by the parties in connection with this case, the parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as "Confidential Information" (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or confidential business or financial information, including personal financial information about any party to this lawsuit, putative class members or employee of any party to this lawsuit; information regarding any individual's banking relationship with any banking

institution, including information regarding the individual's financial transactions or financial accounts, and any information regarding any party not otherwise available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Any party or non-party may designate as " Highly Confidential Information" (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving highly sensitive trade secrets or confidential business or financial information, the disclosure of which would result in the disclosure of trade secrets or other highly sensitive research, development, production, personnel, commercial, market, financial, or business information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Where a document or response consists of more than one page, the first page and each page on which confidential information appears shall be so designated.

2. A party or non-party may designate information disclosed during a deposition or in response to written discovery as "Confidential" or "Highly Confidential" by so indicating in said responses or on the record at the deposition and requesting the preparation of a separate transcript of such material. In addition, a party or non-party may designate in writing, within thirty (30) days after receipt of said responses or of the deposition transcript for which the designation is proposed, that specific pages of the transcript and/or specific responses be treated as "Confidential Information" or "Highly Confidential." Any other party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in Paragraph 9 below. After any designation made according to the procedure set forth in this paragraph, the designated documents or information shall be treated according to the designation until the matter is resolved according to the procedures described in Paragraph 9 below, and counsel for all parties shall be responsible for marking all previously unmarked copies of the designated material in their possession or control with the specified designation. A party that makes original documents or materials available for inspection need

not designate them as Confidential or Highly Confidential Information until after the inspecting party has indicated which materials it would like copied and produced. During the inspection and before the designation and copying, all of the material made available for inspection shall be considered Confidential or Highly Confidential Information.

3. All Confidential or Highly Confidential Information produced or exchanged in the course of this case (not including information that is publicly available) shall be used by the party or parties to whom the information is produced solely for the purpose of this case. Confidential or Highly Confidential Information shall not be used for any commercial competitive, personal, or other purpose.

4. Except with the prior written consent of the other parties, or upon prior order of this Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any person other than:

(a) counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for this litigation;

(b) employees of such counsel;

(c) individual parties or officers or employees of a party, to the extent deemed necessary by counsel for the prosecution or defense of this litigation;

(d) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information, and provided that if the party chooses a consultant or expert employed by the defendant or one of its competitors, the party shall notify the opposing party, or designating non-party, before disclosing any Confidential

Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

(e) any authors or recipients of the Confidential Information;

(f) the Court, court personnel, and court reporters; and

(g) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document. Confidential Information may be disclosed to a witness who will not sign the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Except with the prior written consent of the other parties, or upon prior order of this Court obtained after notice to opposing counsel, Highly Confidential Information shall be treated in the same manner as "Confidential Information" pursuant to Paragraph 4 above, except that it shall not be disclosed to individual parties or directors, officers or employees of a party.

6. Any persons receiving Confidential or Highly Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any Confidential or Highly Confidential Information to persons who are not authorized to use or possess such material, the party shall provide immediate written notice of the disclosure to the party whose material was inadvertently disclosed. If a party has actual knowledge that Confidential or Highly Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was

disclosed or obtained by such person, the party shall provide immediate written notice of the unauthorized use or possession to the party whose material is being used or possessed. No party shall have an affirmative obligation to inform itself regarding such possible use or possession.

7. In connection with discovery proceedings as to which a party submits Confidential or Highly Confidential Information, all documents and chamber copies containing Confidential or Highly Confidential Information which are submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the outside of the envelopes, a copy of the first page of the document shall be attached. If Confidential or Highly Confidential Information is included in the first page attached to the outside of the envelopes, it may be deleted from the outside copy. The word "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the following form shall also be printed on the envelope:

> "This envelope is sealed pursuant to Order of the Court, contains Confidential Information and is not to be opened or the contents revealed, except by Order of the Court or agreement by the parties."

If another court or administrative agency subpoenas or orders production of Confidential or Highly Confidential Information, such party shall promptly notify counsel for the party who produced the material of the pendency of such subpoena or order and shall furnish counsel with a copy of said subpoena or order.

8. A party may designate as "Confidential Information" or "Highly Confidential Information" documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. Any party or non-party may voluntarily disclose to others without restriction any information designated by that party or non-party as Confidential or Highly Confidential Information, although a document may lose its confidential status if it is made public. If a party produces materials designated Confidential or Highly Confidential Information in compliance with this Order, that production shall be deemed

to have been made consistent with any confidentiality or privacy requirements mandated by local, state or federal laws.

9. If a party contends that any material is not entitled to confidential treatment, such party may at any time give written notice to the party or non-party who designated the material. The party or non-party who designated the material shall have twenty (20) days from the receipt of such written notice to apply to the Court for an order designating the material as confidential. The party or non-party seeking the order has the burden of establishing that the document is entitled to protection.

10. Notwithstanding any challenge to the designation of material as Confidential or Highly Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

(a) the party or non-party who claims that the material is Confidential or Highly Confidential Information withdraws such designation in writing; or

(b) the party or non-party who claims that the material is Confidential or Highly Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or

(c) the Court rules the material is not Confidential or Highly Confidential Information.

11. All provisions of this Order restricting the communication or use of Confidential or Highly Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential or Highly Confidential Information, other than that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of this action to counsel for the party or non-party who provided such information, or (b) destroy such documents within the time period upon consent of the party who provided the information and certify in writing within thirty (30)

days that the documents have been destroyed.

12. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential or Highly Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those Rules.

13. A party that files with the Court, or seeks to use at trial, materials designated as Confidential or Highly Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

14. A party that files with the Court, or seeks to use at trial, materials designated as Confidential or Highly Confidential Information by anyone other than itself, and who does not seek to have the record containing such information sealed, shall comply with either of the following requirements:

(a) At least ten (10) business days prior to the filing or use of the Confidential or Highly Confidential Information, the submitting party shall give notice to all other parties, and to any non-party that designated the materials as Confidential or Highly Confidential Information pursuant to this Order, of the submitting party's intention to file or use the Confidential or Highly Confidential Information, including specific identification of the Confidential or Highly Confidential Information. Any affected party or

non-party may then file a motion to seal, pursuant to California Rule of Court 2.551(b); or

(b) At the time of filing or desiring to use the Confidential or Highly Confidential Information, the submitting party shall submit the materials pursuant to the lodging-under-seal provision of California Rule of Court 2.551(d). Any affected party or non-party may then file a motion to seal, pursuant to the California Rule of Court 2.551(b), within ten (10) business days after such lodging. Documents lodged pursuant to California Rule of Court 2.551(d) shall bear a legend stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the filing of a motion to seal pursuant to Rule 2.551(b) or Court order.

15. In connection with a request to have materials sealed pursuant to Paragraph 12 or Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1) shall contain sufficient particularity with respect to the particular Confidential or Highly Confidential Information and the basis for sealing to enable the Court to make the findings required by California Rule of Court 2.550(d).

IT IS SO STIPULATED.

Dated: _____. By: _____.

Dated: _____. By: _____.

ORDER

IT IS SO ORDERED.

Dated: _____.

_____
JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 200__, in San Mateo County Superior Court Case No. _____ ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order. I will not reveal the Confidential or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ___ day of _____, 200__, at _____.

By: _____

Address: _____

_____

Phone: _____

Santa Clara County Superior Court

Superior Court of California,
County of Santa Clara
191 North First Street
San Jose, CA 95113

GUIDELINES AND PROTOCOLS

COMPLEX CIVIL LITIGATION DEPARTMENT

Welcome to the Complex Civil Litigation Departments of the Superior Court of California, County of Santa Clara. Ours is one of few Superior Courts selected by the California Judicial Council where case management principles designed to reduce the time and expense normally associated with complex civil litigation cases have been employed.

Counsel's familiarity with the applicable *California Rules of Court*, *Local Rules – Superior Court of California, County of Santa Clara* and the *Deskbook on the Management of Complex Civil Litigation* is expected. In addition, familiarity with these guidelines and protocols will answer common procedural questions and should assist you in your appearances in this Department. ***Note: These Guidelines and Protocols are revised from previous versions. Your thoughts and suggestions are always welcome. Significant practice highlights include:***

The website for the Complex Departments is now integrated into the Court's site, www.scscourt.org.

Tentative rulings on motions of all types are posted online by 2:00 p.m. the day prior to the hearing, and, unless an objection is properly raised by 4:00 p.m. the day prior to the hearing, the ruling will automatically become the Court's order the next day. For specific information, go to: http://www.scscourt.org/online_services/tentatives/tentative_rulings.shtml and select the appropriate department.

Ex parte hearings require advance reservation with the Coordinator. Letter briefs are not acceptable.

Case management conference statements are to be in a combined format; see VII. 3.

No discovery motions may be filed until the parties have meaningfully met and conferred AND met with the Court for a face-to-face Informal Discovery Conference.

The Court requires detailed JOINT pre-trial statements in advance of a pre-trial conference where counsel are expected to make concrete suggestions as to efficient trial management; see XI.

Complex Civil Guidelines

PLAINTIFF MUST SERVE A COPY OF THESE GUIDELINES WITH THE SUMMONS AND COMPLAINT.

TABLE OF CONTENTS

Complex Civil Guidelines

I. CONTACT INFORMATION

Departments 1 and 5 – Downtown Superior Courthouse, 191 N 1st Street, San Jose, CA 95113.

Department 1:

Judge	Hon. Brian C. Walsh	408-882-2110
Courtroom Clerk	Jee Jee Vizconde	408-882-2113
Reporter	Aura Clendenen	408-882-2115
Bailiff and Deputy Sheriff	Frankie Taranto	408-882-2111

Department 5:

Judge	Hon. Thomas E. Kuhnle	408-882-2150
Courtroom Clerk	Jessica Crabtree	408-882-2153
Reporter	Rose Ruemmler	408-882-2155
Bailiff and Deputy Sheriff	Daniel Enright	408-882-2151

Coordinator for Complex	Rowena Walker	408-882-2286	rwalker@scscourt.org

E-Filing Web Site: http://www.scscourt.org/forms_and_filing/efiling.shtml

II. INTRODUCTION

Complex cases suitable for assignment to the Complex Civil Litigation Department are defined in Rule 3.400, California Rules of Court ("Rules" or CRC). Cases will be assigned to the Complex Civil Litigation Department, **for all purposes, including discovery and trial**, by the Court's own motion, or on application of any of the parties, pursuant to the procedures specified in Rule 3.400. Applications for complexity determination shall be heard in the Complex Civil Litigation Department. It is within the Court's discretion to accept or reject a case for complex designation.

In general, cases assigned to the Complex Civil Litigation Department will be managed in accordance with the principles set forth in the *Deskbook on the Management of Complex Civil Litigation* ("Deskbook").

III. COURTROOM DEMEANOR, CONDUCT AND ETIQUETTE

1. The Court expects formality, civility and proper decorum at all times. Witnesses and parties are to be addressed and referred to by their surnames. COURTESY AND RESPECT TOWARDS EVERYONE IN THE COURTROOM IS REQUIRED. Advise all witnesses and parties to observe appropriate courtroom demeanor and punctuality. The civil and courteous treatment of courtroom staff and opposing counsel is a paramount professional obligation of counsel.

2. All pagers, cell phones and other audible electronic devices must be TURNED OFF while in the courtroom whether or not court is in session.

3. Do not approach the clerk or reporter while court is in session for any reason.

4. Objections, statements and arguments must be addressed to the Court rather than opposing counsel. Counsel may speak from the lectern (if present) or the counsel table. Counsel must stand when objecting or addressing the Court. Counsel may approach any witnesses as necessary only with leave of Court.

5. At the end of each day, counsel must clear work areas including the area in the rear of the courtroom.

6. Use of the department's copier or telephone requires the Court's permission.

7. It is counsel's responsibility to note the date and time set for any future hearing. Hearing dates are set by contacting the Coordinator.

8. Courtroom staff will not make copies at counsel's request unless directed to do so by the Court. Copy work completed by courtroom staff is subject to the current per-page copy fee.

9. If a peremptory challenge or challenge for cause is upheld, the case will be referred to the Civil Supervising Judge for reassignment.

IV. GENERAL MATTERS

1. The Court expects all counsel to maintain regular communication with each other regarding hearing dates, progress of the case, and settlement possibilities. A condition of remaining in the complex department is that counsel will behave toward all counsel and other participants with civility, courtesy and professionalism, both in and out of Court. Meeting and conferring with opposing counsel on both procedural issues as well as substantive issues is mandated.

2. The Court believes in open discovery in accordance with the law, but expects counsel to refrain from engaging in excessive and abusive discovery. ***See discussion of discovery below***

3. Continuances of hearing or trial dates are discouraged but may be necessary from time to time. Continuances of hearings and trial dates by stipulation are not permitted without prior approval of the Court, and only to a date pre-approved by the Court. Please call the Coordinator for available dates before contacting other counsel. If preliminary approval is given, a written stipulation must be provided before the hearing or trial date. Faxed signatures on stipulations are permitted.

4. In the event a case settles prior to a court hearing or trial date, parties must telephonically notify the Court as soon as the disposition is agreed upon and must file with the Complex Litigation Department either a Notice of Settlement, Request for Dismissal, a Stipulation for Entry of Judgment or a Judgment on Stipulation that is ready for the Court's signature. If the applicable document is not ready, counsel must appear at the time scheduled for hearing and recite the settlement for the record.

5. Cross-complainants must serve a copy of these guidelines upon any new parties and give notice of any scheduled hearings and depositions at the time the cross-complaint is served.

6. All actions classified as complex or provisionally complex are subject to the Court's Electronic Filing and Service Standing Order, unless exempted by order of the Court for good cause. Further information is posted on the Court's website at *http://www.scscourt.org/forms_and_filing/efiling.shtml* .

V. EX PARTE APPLICATIONS

1. Ex parte appearances are discouraged except in unusual situations. Hearing dates must be coordinated with the Complex Coordinator. Strict compliance with CRC Rules 3.1200-3.1207 is required. In addition, the ex parte application and all supporting papers, including any proposed pleading, motion or order shall be electronically submitted to the Court's website by noon the Court day prior to the scheduled ex parte hearing date.

2. The Court is eager to assist counsel when specific problems arise that may not require a formal motion. To arrange a conference with the Court when all counsel agree to the advisability of such a discussion, please contact the Coordinator to reserve a time for the conference. In these instances "letter briefs" are not acceptable, but briefs on court pleading paper not exceeding 3 pages may be submitted. The Court prefers that discovery conference briefs be lodged via the Court's efiling website at *http://www.scscourt.org/forms_and_filing/efiling.shtml* at least two court days in advance of the scheduled conference.

3. Though the Court prefers personal appearances by counsel, counsel may appear by telephone, with the Court's prior permission, at counsel's expense.

VI. LAW AND MOTION

1. Law and Motion matters are generally heard Fridays at 9:00 a.m.

2. Counsel must first clear the hearing date with the other parties prior to contacting the Coordinator. You must provide the Court with the name of the case, the case number, type of hearing, hearing date requested and name and telephone number of the filing attorney.

3. Prior to the hearing of **any** motion, petition or application all counsel and parties representing themselves shall communicate in a good faith effort to eliminate the necessity of the hearing.

4. **The Court values the importance of the training of the next generation of trial lawyers, which must include substantive speaking opportunities in court. The Court strongly encourages the parties and senior attorneys to allow the participation of junior lawyers in all court proceedings, particularly in arguing motions where the junior lawyer drafted or contributed significantly to the motion or opposition.**

5. Discovery meet and confer obligations require an in-person conference between counsel. If a resolution is not reached, parties are required to meet and confer in person with the Court for all discovery-related hearings **prior to filing of any discovery motion, unless otherwise authorized by the Court**. Each side must serve and lodge a short brief, **limited to no more than 3 pages**,

briefly discussing the issues to be discussed two court days in advance of the meeting. To schedule an informal discovery conference (IDC) with the Court, please contact the Coordinator.

6. **Any dates given by the Court relating to this IDC process have no impact on statutory deadlines for filing motions or any other papers, including, but not limited to, the 45-day deadline for filing a motion to compel further responses. The party that files a discovery motion must address the motion's timeliness in its moving papers.**

7. Motions or applications to seal must be heard no later than any motion relying on the materials for which sealing is sought. Upon demand of a motion or application to seal, the moving party must notify the Court that the materials are to be filed unsealed (CRC Rule 2.551(b)(b)) or refrain from relying on the materials, which will not be part of the record.

8. Counsel for moving parties must notify the Court as soon as possible regarding any matter to be taken off calendar or continued. Notice of continuances of hearings must be provided by the moving party.

VII. CASE MANAGEMENT CONFERENCE

1. The first case management conference is generally scheduled one hundred twenty (120) days after the action is filed. Plaintiff is required to give notice of this conference date to all other parties.

2. Case Management Conferences are generally heard Fridays at 10:00 a.m. and are scheduled as necessary to monitor the progress of the case and to assist counsel and the parties as the matter progresses. The parties should expect the Court to schedule a status conference approximately every 120 days.

3. Judicial Council Form CM-110, Civil Case Management Statement (required by CRC 3.725(c)), is not well-suited for complex cases. Instead, the parties shall file a joint case management statement no later than five calendar days prior to the hearing for each conference addressing the following subjects:

(a) a brief objective summary of the case,
(b) a summary of any orders from prior case management conferences and the progress of the parties' compliance with said orders,
(c) significant procedural and practical problems which may likely be encountered,
(d) suggestions for efficient management, including a proposed timeline of key events, and
(e) any other special consideration to assist the Court in determining an effective case management plan.

A status conference statement may be filed as an alternative to the case management statement when appropriate. A status conference statement is generally less detailed than a case management statement and is to be used to advise the Court of progress or developments in the case which have occurred since the last review hearing.

VIII. CASE MANAGEMENT AND REFERENCE ORDERS

1. Case Management Orders are not required in all cases, but may be helpful in cases where the sequencing and timing of key events are necessary in the management of the litigation and preparation of the case for trial. However, even if a case management order is not necessary in a particular case, all complex cases must be managed by counsel, or the court, or both.

2. Mediation and Reference matters should not commence until all parties are before the Court but not later than six months after the original complaint was filed, except for good cause.

3. Mediation and Reference matters should be concluded 12 months after their initiation (approximately 18 months after the original complaint was filed), except for good cause.

4. Brevity in drafting the Order may help focus your case and assist in reaching the desired goal (i.e., early informed resolution of your case in a cost-effective manner).

5. After a date is scheduled with the Court, it may not be continued by stipulation of the parties without the Court's consent.

IX. MANDATORY SETTLEMENT CONFERENCES (MSC)

1. If there is an objection to the trial judge's participation in the mandatory settlement conference, counsel must advise the Court as soon as possible, and in no event, later than the date the MSC is set. No case will be tried before a good faith effort is made to settle. Mandatory settlement conferences set on the court's calendar are typically set at the time the trial is set, and generally, the final mandatory settlement conference takes place a week to two weeks before the first day of trial, typically on a Wednesday.

2. Trial counsel, parties and persons with full authority to settle the case must personally attend unless excused by the Court. If insurance coverage is available to satisfy the plaintiff's settlement demand and a representative of defendant's insurer with full settlement authority attends the mandatory settlement conference with defendant's trial counsel, named defendants need not attend unless their personal consent is necessary to settle the case. Named defendants must also personally attend the mandatory settlement conference when (a) there is an insurance coverage dispute; (b) plaintiff seeks to recover damages not covered by insurance; or (c) plaintiff's demand

exceeds insurance policy limits. Failure to appear will result in the imposition of sanctions. Settlement Conference Statements must be filed at least five (5) court days before the scheduled conference (Rule 3.1380).

3. Any request for a waiver of the requirement to personally appear at the MSC, whether conducted by the Court or a special master, must be made by written application to the Court.

X. MINI-TRIALS

There may be a pivotal issue, such as a special defense or evidentiary ruling, upon which the rest of the case depends. If counsel agree, the Court will set aside time before or during the trial to hear mini-trials on such issues. Time will be appropriately limited. Briefs and factual stipulations must be submitted in advance. Limited testimony may be taken, for example, as in an Evidence Code § 402 situation. Contact the Coordinator to schedule a date and submit a stipulation signed by all counsel.

XI. PRE-TRIAL CONFERENCE

There will be a detailed pre-trial conference 10-15 days before trial to discuss procedural issues and preliminary matters in order to make the trial process as predictable and smooth as possible.

The conference may be a time for the Court to discuss trial evidence presentation and use of audio-visual equipment. The conference is not for the purpose of hearing motions in limine. An example of an issue for the conference: Product liability case in which the manner of presenting the underlying case is of concern. Will the Court allow counsel to read the transcript into the record? Live testimony? A combination of transcript and live testimony? Is a trial by jury requested?

At least 10 days before the pretrial conference, counsel shall meet and confer and execute necessary documents listed below. Counsel shall meet in person at a mutually agreeable time and location.

At the meet and confer, the parties shall:

1. Prepare a **Joint Statement of the Case.**

2. Prepare a **Joint Witness List**, excluding impeachment or rebuttal witnesses, with accurate time estimates.

Witness lists should not be exaggerated. Only witnesses that a party expects to actually call should be listed, with a brief synopsis of the proposed testimony. In addition to the list contained in the statements, each list should also be prepared in the form attached as follows. Witnesses should be listed last name first. Titles (e.g. Dr., Officer) should be placed after the comma following the last name. This is so that lists can be sorted correctly.

As noted above, Counsel should include in their witness list the amount of time they expect to spend on direct examination of each witness. The amount of time should be stated in minutes (*not* days or hours). Counsel must also be prepared to state at the conference how much time they will require for cross-examination of each witness identified on the other party's list.

At the conference the Court will make separate arrangements for the preparation of a joint list, for jury selection purposes, of possible witnesses and persons or entities who might otherwise be mentioned at trial.

Format for Witness Lists

Plaintiffs' List

Witness	**Party (P or D)**	**Direct (min.)**	**Cross (min.)**	**Redirect (min.)**	**Total**	**Subject**
Smith, John	P	20	30	5	55	Formation of contract
Brown, Nancy	P	15	20	5	40	Breach of contract
White, Ron	P	70	10	15	95	Damages
Black, Peter	P	60	30	15	105	Formation of contract
Garcia, Dr. Ruth	P	120	100	30	250	Damages
Rogers, Officer Ted	P	60	30	10	100	Arrest of Susan Petersen

Defendant's List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Doe, Edward	D	20	10	5	35	Formation of contract
Chang, Sam	D	75	30	15	120	Damages
Martin, Dr. Eric	D	120	60	30	210	Damages

3. Exchange **exhibits** and inspect photos and diagrams (to be submitted on the date of trial), excluding those contemplated to be used for impeachment or rebuttal. **Stipulate to all facts amenable to stipulation.**

4. Prepare a **Joint List of Controverted Issues.** If all the parties fail to agree to an issue as controverted or uncontroverted, then the issue is controverted. (Required for both jury and non-jury trials).

5. Exchange all **motions** in limine.

6. Prepare ***voir dire*** **questions** for the Court to include when examining the panel.

7. Execute the **Statement of Compliance** indicating counsel has complied with the Local Rules and these Guidelines.

8. Prepare joint proposed **jury instructions** (CACI only) and verdict forms, and exchange disputed instructions.

The above items, including opposition to motions in limine, trial briefs and the Statement of Compliance signed by all counsel, shall be submitted to the Complex Civil Litigation Coordinator or to the courtroom clerk in the department of the judge to whom the case has been assigned for trial, **no later than noon on the 1st court day before the date set for trial.**

XII. TRIALS - GENERALLY

1. **General Matters – the following applies to all trials (jury and non-jury):**

   a. Trials generally will proceed four days a week as follows: Monday through Thursday (9:00 a.m. to 4:30 p.m.). The Court will provide the parties, generally at the conclusion of the Mandatory Settlement Conference, a proposed trial schedule.

   b. Jury deliberations will proceed five days a week, from 9:00 a.m. to 4:30 p.m.

   c. Trial attorneys should be in the courtroom 30 minutes prior to the start of each morning session, unless another time is agreed upon by the Court. Counsel should expect that the court will take appropriate action if counsel is late for any appearance and does not have a justification for a late appearance.

   d. Before rearranging tables or other courtroom furniture, or installing equipment such as projectors or screens, permission must first be obtained from the bailiff or the Court.

   e. Unless the Court expressly advises otherwise, counsel may not approach a witness who is testifying to hand the witness exhibits, or to help the witness locate portions thereof, without first obtaining the Court's permission.

   f. Counsel must advise opposing counsel and the Court of the identity of each witness intended to be called by 4:30 p.m. the day preceding the time for the witness or witnesses to testify.

   g. Counsel presenting their case shall be expected to have witnesses ready to call through at least 4:30 p.m., and may be deemed to have rested their case if they are not prepared to proceed. Counsel shall advise the Court immediately of any circumstances which may prompt a request for a modification of the established trial schedule.

   h. Counsel should advise the Court at the outset of the proceedings, or as soon as the issue becomes apparent, of any legal issues or evidentiary matters that counsel anticipate will require extended time for consideration or hearing outside the presence of the jury.

   i. If during the course of trial, counsel wish to discuss a matter with the Court and opposing counsel outside of the presence of the jury, counsel MUST advise the Court of this request at the conclusion of the preceding court session and NOT immediately before proceedings are scheduled to resume.

j. The amount of jury fees required to be posted in advance of a jury trial is $150.00. CCP §631(b). If a case settles after jury fees have been deposited, the jury fees will not be returned unless the Court is notified of the settlement by 2:00 p.m. on the court day preceding the trial date for which the deposit was made.

k. The court reporter per diem fees in civil proceedings lasting one hour or less is $30. GC 68086(a)(1)(A). The court reporter per diem fees in civil proceedings lasting more than one hour are $350 for half-day, or $700 for full day. GC 68086(a)(1)(B).

l. Counsel must confer in advance of the trial, attempt to stipulate on as many issues and facts as possible, and reduce all stipulations to writing. The written stipulation is filed and during jury trials is read aloud into the record.

m. **The Court strongly encourages the parties and senior attorneys to permit junior lawyers to have an important role at trial, including the examination of witnesses.**

2. **Documents**

Unless the case was settled at the Mandatory Settlement Conference or dismissed in full prior thereto, or unless otherwise ordered by the Court, the following items must be lodged in the department of the trial judge or, if none, with the Complex Civil Coordinator, and served on all other parties by noon on the last court day before the date set for trial:

(1) all in limine motions and a list of the in limine motions;

(2) exhibit lists/indices, except impeachment exhibits;

(3) witness lists, except impeachment witnesses, and unusual scheduling problems; each witness listed shall include a succinct (no more than one or two sentences) statement of the general subject matter of the witness' testimony and an estimate of the time that will be required for the direct examination of each such witness;

(4) jury instruction requests, except for instructions that cannot reasonably be anticipated prior to trial;

(5) proposed special verdicts;

(6) any stipulations on factual or legal issues;

(7) a concise, non-argumentative statement of the case to be read to the jury in jury trials;

(8) trial briefs;

(9) the original of all deposition transcripts to be used during the course of the trial. If counsel anticipates reading from the deposition transcript for any purpose other than impeachment, counsel must deliver to opposing counsel a written specification of the pages and lines proposed to be read.

An extra copy of all the above documents (except deposition transcripts) shall be delivered to the courtroom clerk on the morning of the trial for use by the clerk.

Counsel seeking to display to the jury any exhibit which required time and equipment to observe, such as slides, transparencies, movies, videotapes and audiotapes, MUST make such exhibit available to opposing counsel for review prior to commencement of the session of court at which the exhibit will be used. Proceedings will not be delayed to permit such a review if the review has not occurred by the time court is scheduled to begin.

3. **Technology**

Counsel must meet and confer regarding the use of computers, projectors, screens and other forms of equipment for showing evidence to the jury or Court. Counsel must confer with court staff regarding the placement and use of any such equipment.

4. **Stipulations**

Prior to the commencement of trial, all counsel will be requested to stipulate:

1. At the commencement of each session of the Court, all parties, attorneys and jurors are present unless otherwise indicated.

2. After the first occasion on which the jury has been admonished not to discuss or prejudge the case in conformity with CCP § 611, the jury will be deemed to have been so admonished at every subsequent recess or separation without the need for further admonition; and

3. Reporting of juror voir dire and jury instructions are waived.

5. **Opening and Closing Arguments**

   a. Counsel should avoid discussing routine matters of court procedure, such as the sequence of trial, in opening statements and closing arguments. These matters will be covered by the Court and need not be repeated by counsel.

   b. Do not display charts, diagrams or proposed exhibits to the jury until they have been shown to opposing counsel outside of the presence of the jury. If opposing counsel indicates no objection, the exhibits or other object may be displayed to the jury without first requesting Court approval. If opposing counsel objects, the exhibit or object may not be displayed without Court approval, which must be requested outside the presence of the jury.

6. **Examination of Witnesses**

   a. Objections: Counsel should only state the legal ground(s) of objection and, unless the Court specifically requests explanation or argument, should refrain from argument, elaboration, or any other form of extended objection-making. Counsel may request permission to approach the side bar to present argument, but should not approach unless and until the Court grants the request.

   b. When calling a witness to testify under Evidence Code section 776, do not announce in the presence of the jury that the witness being called under this provision or as a "hostile" or "adverse" witness. Simply proceed with the examination of the witness; the Court will rule upon the applicability of section 776 only if such a ruling is required by an objection asserted by opposing counsel.

   c. Do not propose a stipulation to opposing counsel in the hearing of the jury unless there is prior agreement of counsel.

7. **Transcripts**

   a. The court reporter is under no obligation to provide transcripts of any portion of the proceedings to counsel during the course of trial. If counsel anticipates requesting a transcript of the testimony of any witness or other proceedings during the course of

trial, arrangements should be made with the court reporter in advance so that arrangements can be made to obtain a second court reporter if necessary.

b. If counsel requests any court reporter to prepare a transcript of any portion of the proceedings, counsel MUST contemporaneously advise opposing counsel of the request and of the precise portions that will be transcribed.

8. **Jury Trials**

a. Motions in limine and other trial-related preliminary motions (such as Evidence Code § 402) must be submitted in writing before answering ready. Motions in limine may be ruled on by the Court without hearing. Such motions should be brief and should address specific subject matter. See *Amtower v. Photon Dynamics, Inc.*, (2008) 158 Cal.App.4th 1582.

b. CACI instructions are to be used. Submit proposed instructions in Word format. When reasonably possible, mark up the official version rather than retyping so the changes are apparent to the Court and other counsel. The Court may send at least 4 "clean" sets of instructions provided by counsel into the jury room. "Clean" means just the text of the instruction, as corrected. Plaintiff has the primary, but not exclusive, responsibility to provide the "clean" sets, in binders.

c. Counsel should consider stipulating to fewer than 12 jurors to try the case. They should also consider stipulating to continue with the trial with fewer than 12 jurors, should one or more be unavailable. Counsel should be prepared to identify the number of alternates that they intend to recommend.

d. Hardship Requests - Requests by members of the panel to be excused on the ground of undue hardship will be considered by the court prior to beginning voir dire examination.

e. Jury selection proceeds generally under the "6 pack" method, modified to fit the case. Court and counsel will work out the management of voir dire in accordance with CCP § 225.5 to fit the circumstances of the case. Counsel may submit specific juror questions for the Court to consider asking during voir dire.

f. Voir dire examination will initially be directed to 18 or more members of the jury panel seated in the jury box. Any of these 18 or more panel members excused for cause will be replaced by additional panel members before peremptory challenges begin. Peremptory challenges will then proceed, directed to the first 12 panel members, who will be replaced by the next six panel members in order as any of the 12 are peremptorily challenged. The peremptory challenges will continue until the panel seated in the jury box is reduced to 11 members, at which time additional

panel members (normally an additional seven) will be selected and examined prior to resuming peremptory challenges. Whenever there are successive passes from all parties who have not exhausted their challenges, or all parties exhaust their challenges, the jury has been selected and will be sworn. The same process will then continue for the selection of alternate jurors.

g. All challenges for cause will be heard out of the hearing of the jury panel.

h. The Court will initiate voir dire examination. Before concluding questioning, the Court will ask counsel at the side bar whether they wish the Court to address any additional questions to any or all of the panel members, and will permit counsel to examine the panel. An appropriate time limit will be fixed by the Court.

i. The Court preinstructs the jury once it is empaneled. CACI Instructions relating to the basic responsibilities of the jurors, management of evidence and the like will be given and, in most cases, repeated at the close of trial.

j. Objections of any kind are to be addressed to the Court (not to other counsel) with a concise statement of the legal grounds. Argument on the objection without invitation by the Court is not permitted. Advise the Court if argument is necessary for the record.

k. Make no references to charts, models, blowups or other demonstrative evidence in front of the jury unless: (a) it is in evidence; (b) counsel have previously stipulated the item is in evidence; or (c) you have leave of Court to use the reference.

XIII. TRIAL EXHIBITS

1. Introduction

a. The electronic representations of such exhibits may be presented to the Jury/Court as substitutes for the exhibits themselves. Counsel should keep in mind that one of the purposed of the complex project is to enhance the orderly presentation of evidence to the fact finder, and to maintain the record for potential post trial proceedings.

b. Exhibits may be in either electronic or physical form. Physical exhibits are not required to be presented in a digitized format. However, at the conclusion of trial the court may order that a photo be substituted and stored electronically in lieu of the physical evidence.

c. Parties must exchange exhibits excluding documents for bona fide impeachment at the Pre-Trial Meet and Confer. Each counsel must provide the Court with an EXHIBIT LIST

describing each exhibit, indicating whether the exhibit is to be admitted into evidence by stipulation.

d. Counsel must submit to the Clerk original negotiable instruments for cancellation pursuant to Rule 3.1806, unless otherwise ordered by the Court.

2. **Submission of Exhibits**

a. Counsel must provide the Court with the exhibits, plus one copy. Exhibits will be marked by the Clerk, as they are identified, in chronological order. Exhibits shall not be pre-marked by counsel.

b. Enlargements and transparencies normally will not be admitted into evidence. Any large exhibit or transparency should be accompanied by an 8½ x 11 version to which the exhibit tag is attached. Models, etc. should be photographed if proposed as exhibits. Be sure to discuss evidentiary issues of this nature with opposing counsel.

c. Interrogatories and Requests for Admissions which are expected to be used at trial must be extracted and lodged with the Court, and a copy given to counsel, at the appropriate time. In jury trials, questions and answers must be read into the record, subject to proper objections. The extracts may be submitted as exhibits in a Court trial. In no case will entire sets of written discovery documents be lodged or received.

d. Before trial commences, counsel will be asked to sign a stipulation for the return and maintenance of exhibits when the trial is completed. Plaintiff will maintain joint exhibits, unless otherwise stipulated.

3. **Use of Deposition Transcripts**

a. Deposition transcripts which are expected to be used at trial must be lodged with the Court on the first day of trial. Pertinent provisions must be read into the record in jury trials, subject to proper objections. In Court trials, extracts may be submitted and marked as exhibits. In no case will an entire transcript be received.

CURRICULUM VITAE FOR JUDGE BRIAN C. WALSH

Judge Brian C. Walsh
Superior Court of California
County of Santa Clara
191 North First Street
San Jose, California 95113
Department 1
408-882-2110

JUDICIAL CAREER:

Appointed to the Superior Court December 15, 2000
--Elected to 6-year terms (unopposed): 2002, 2008, 2014
Complex Civil Litigation, 2017-
Presiding Judge, 2013-14
Assistant Presiding Judge, 2011-12
Civil Trials, 2003-04, 2007-09, 2011-12, 2015-16
Family Law, 2009-10
Felony Trials, 2005-07
Appellate Division, 2005
Supervisor, Misdemeanor Direct Calendars, 2002-03
Misdemeanor Direct Calendar, 2001

6th DCA, Pro Tem Justice:
June 1-November 30, 2016
June 1-September 30, 2015
July 1-December 31, 2011
May 1, 2004-January 17, 2005

California State-Federal Judicial Council, 2003-present
Language Access Plan Implementation Task Force, 2015-present
Chair, Trial Court Presiding Judges' Advisory Committee, 2013-2014
Member, Judicial Council of California, 2013-2014
Chair, Task Force on Trial Court Fiscal Accountability 2013-2014
Supreme Court Judicial Ethics Advisory Comm., 2002-2013
Financial Accountability & Efficiency Comm. ("A & E"), 2011-2013
Trial Court Budget Advisory Committee, 2013-2014
--Funding Methodology (WAFM) Subcommittee, 2012-2014

Judicial Branch Budget Advisory Committee, 2002-03
Chief Justice Task Force on ACA 1 (Judicial Elections), 2001
California Judges' Association, 2000-present
State Bar Attorney Civility Task force, 2006-08
State Bar Task Force on Support for Legal Services, 2006-08

2016 State Bar of California Professional Responsibility Award
2014 Outstanding Jurist Award, Santa Clara County Bar Association
2012 Trial Judge of the Year, Santa Clara County Trial Lawyers
2002 Salsman Award: Contributions to Community/Profession

EDUCATION:

Boalt Hall School of Law
University of California at Berkeley
J.D., 1972

University of Notre Dame
B.A., 1969

Date of Birth: November 11, 1947 (San Jose, California)

CURRICULUM VITAE JUDGE THOMAS E. KUHNLE

THOMAS E. KUHNLE
Judge
Superior Court of California
County of Santa Clara
191 North First Street
San Jose, California 95113
408-882-2150

The Honorable Thomas E. Kuhnle was appointed in December 2010 to serve as a Superior Court Judge in Santa Clara County. His assignments have included misdemeanors in 2011, family violence from 2012 to 2014, civil trials in 2014, and probate in 2015 and 2016. He currently serves as a complex civil litigation judge. Since his appointment, Judge Kuhnle has participated in a number of law-related activities in our community including Santa Clara County's High School Mock Trial Program (2011-present), the Domestic Violence Council's Court Systems Committee (2012-14), Stanford Law School's Trial Advocacy Workshop (2012-present), various committees of the Santa Clara County Bar Association, and the California Judges Association Probate and Mental Health Committee (2015-2016). Judge Kuhnle graduated from Stanford Law School in 1995.

ADA

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

ELECTRONIC FILING (E-FILING)

E-filing for all Civil cases will be mandatory starting Tuesday, February 13, 2018. An E-filing seminar will be held January 12, 2018 for the Civil bar, click here for the flyer .

E-filing for Family, Complex Civil, Unlawful Detainer, Civil Harrasment, Small Claims, and Probate cases is now mandatory.

The Court has published local rules regarding electronic filing.

Click to view the Summary of Proposed Fee: E-filing Technology .

Documents in Complex Civil Litigation cases are available at no cost at this time. The Court may charge fees to access documents in the future.

Click for schedule information below on Civil, Family, Probate and Small Claims. (Note: currently there is no planned date to start electronic filing in criminal case types.)

How to E-File

The e-filing link is:
www.odysseyefileca.com/service-providers.htm .

To start e-filing you must select your service provider. An electronic filing service provider (EFSP) provides an online service to help you file your documents, and acts as the intermediary between you and the Court's Case Management System. Each EFSP offers a variety of additional services and you should evaluate which provider meets your filing needs. Once you pick the EFSP you would like to use for electronic filing, you will be able to go through their tutorial on how to do electronic filing.

For more information on how to start e-filing go to our self-help video page for videos or the FAQ's page.

The Court has published local rules regarding electronic filing.

Document Standards

Documents should be submitted in searchable PDF format, and searchable PDF/A is preferable. PDF/A is a format which excludes those PDF features that give rise to concerns about the ability to archive documents. Newer scanners allow users to directly create a PDF/A. Users with older scanners can use a conversion tool (such as Acrobat 9) to convert scanned documents to PDF/A.

Proposed Orders

Pursuant to Local General Court & Administration Rules of Court Rule 6 (Proposed Orders section I), a version of the proposed order in an editable word-processing format shall be submitted to the Court using the appropriate email address listed below:

Dept #	Judicial Officer	Email address

1	Judge Walsh	Department1@scscourt.org
5	Judge Kuhnle	Department5@scscourt.org
11	Judge Overton	Department11@scscourt.org
12	Judge Pichon	Department12@scscourt.org
64	Judge Lie	Department64@scscourt.org
65	Judge Hayashi	Department65@scscourt.org
66	Judge Pennypacker	Department66@scscourt.org
72	Judge Pegg	Department72@scscourt.org
73	Judge Greenwood	Department73@scscourt.org
74	Judge Emede/Judge Scott	Department74@scscourt.org
75	Judge McGowen	Department75@scscourt.org
76	Judge Rudy	Department76@scscourt.org
77	Judge Towery	Department77@scscourt.org
78	Judge Grilli	Department78@scscourt.org
79	Judge Huber	Department79@scscourt.org

The Court will continue to accept the following documents in hard copy form:

Ex Parte Filings
Judgments
Defaults
Writs
Abstracts

E-Filing Schedule

Civil

E-filing is now mandatory for all Complex Civil cases.
E-filing is now mandatory for all Unlawful Detainer cases.
E-filing is now mandatory for Civil Harassment subsequent filings.
For all other Civil case types, including Limited and Unlimited, e-filing will be mandatory Tuesday, February 13, 2018.
The Court has migrated complex civil documents from the previous e-filing provider to the Court's Case Information Portal . Due to the sheer volume of documents in the three cases listed below, the documents may be accessed faster through these links:
Antelope Valley Groundwater Litigation - Case 105CV049053
Santa Maria Valley Groundwater Litigation - Case 197CV770214
Cilker Apartments, LLC v. Western National Construction - Case 113CV258281

Documents in Complex Civil Litigation cases are available at no cost at this time. The Court may charge fees to access documents in the future.

Family

E-filing is now mandatory for Family cases.

Probate

E-filing is now mandatory for Probate cases.

Small Claims

E-filing is now mandatory for Small Claims cases.

If you have questions about your e-filing at our court, please contact the appropriate division using the information located on our Contact page.

Hon. Brian C. Walsh

I. RULES OF SAFE PASSAGE—Judge Brian C. Walsh, Dept 1

1. Stand while addressing the Court when on the record.

2. No speaking objections: If necessary, I will ask you to approach the bench.

3. Witnesses:

    a. Treat everyone with respect/no first names (unless . . .);
    b. Ask to approach adverse witness;
    c. Before releasing witness, notify other side/make necessary arrangements.

4. Abide by SCCBA Rules of Professionalism.

5. Exhibits:

    a. Transcripts of CDs, DVDs or audio/video tapes due prior to trial.
    b. Show all exhibits to adverse side prior to call for jury:
        i. Meet and confer re all objections;
        ii. Proponent not to show an exhibit to jury (in opening or during testimony) until any objection to it is resolved.;
        iii. Pre-mark/pre-admit?

6. Advise Court/deputy if weapons, dangerous devices, or recording equipment must be brought into court.

7. Court schedule: 9:00 a.m. to 4:30 p.m.; breaks at approx 10:30 a.m. and 3:00 p.m. No unnecessary delays – treat jurors time like "gold".

8. Counsel and litigant schedule: Arrive at 8:30 a.m. Expect Court/counsel chambers discussion at beginning and end of each day. Be on time. Parties should be present at beginning of first day case set in trial department.

9. Food for jurors?

10. Jury instructions/verdict forms submitted (electronic and hard copy) by:_____. Counsel meet and confer. Conference with Court @: _____. Court pre-instruct on counts/causes of action. Court instruct before or after closing? Copies for jurors.

11. Time limits:

    a. For voir dire?
    b. For opening/ argument?
    c. For presentation of witnesses and evidence?

12. Post Verdict conversations with jurors: court/counsel.

13. Prevailing party prepare judgment and submit within 24 hours.

JURY SELECTION

1. Court uses a "Six pack" (18, 19 or more jurors called up to box).

   Number of alternates.
   Select alternate by drawing name just before deliberations?

2. Mini opening? Or, statement of case (by Court or by counsel)?

3. Court voir dire:

   a. Court's standard questions.
   b. Counsel request particular questions to be asked by the Court?
   c. Hardships: Do not inquire in open court--Court will deal with at first recess.

4. Counsel voir dire:

   a. Voir dire entire Six-pack. Plaintiff first, then Defendant
   b. Be brief. Be interesting. Be appropriate.
   c. Do not try to define standard of proof any differently than instruction.
   d. When subsequent group of 7 called up, focus on them (unless . . .).

5. Challenge for cause at bench or in chambers, as to all (18, 19 or more).

6. Peremptory challenges:

   a. Peremptory Challenge to first 12 (13, 14 or more) only. Plaintiff first, then defense – 6 each. "Pass" peremptory by both sides consecutively = jury selected.

   b. Multiple Defendants or Sides– 8 challenges per "Side" (CCP 231(c)). Joint __; Separate __. Must ID whether challenge is joint or separate .

   c. One peremptory challenge for each alternate juror. [Add to regular peremptories if alternate(s) chosen by drawing.]

   d. California Code of Civil Procedure §231.5 states: "A party shall not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of [his or her race, color, religion, sex, national origin, sexual orientation,] or similar grounds."

7. Juror questions: During voir dire. During trial.

Alameda County Superior Court

Hon. Winifred Smith

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

GENERAL GUIDELINES

USE EMAIL - Dept21@alameda.courts.ca.gov -

Email is the preferred method of communicating with court staff in Department 21, particularly for scheduling of law and motion, ex parte application, and case management events. Telephone communications are possible, but use of email will greatly facilitate a prompt response to your inquiries. When a copy of a document must be transmitted to court staff, an email attachment is preferable to fax. Neither should be used to send voluminous documents. Use of an email attachment or fax, however, is not a substitute for filing of pleadings or other documents.

All email communications should be copied to all parties for whom an email address is available, so inclusion of available email addresses in the caption of all filed papers, as required by California Rule of Court ("CRC") 2.111(1), is critical.

HEARING DATES -

Before contacting the clerk to request a hearing date or continuance, always meet and confer with opposing counsel regarding all counsel's availability. It is strongly suggested that you jointly contact the clerk by email with multiple dates on which all counsel are available.

COURTESY COPIES -

Paper courtesy copies of all documents filed in connection with law & motion matters and ex parte applications must be hand-delivered (not mailed or sent by overnight courier) directly to Department 21as close to the time of filing as practicable. Absent prior permission, courtesy copies should not be sent to Department 21 via email.

ELECTRONIC SERVICE -

Parties should stipulate to electronic service early in the case, and each party should file and service notice pursuant to CRC 2.251(a)(2)(A). This will also facilitate

electronic service of orders, notices, etc. on the parties by the court, pursuant to CRC 2.251(h) if the court chooses to do so.

CASE MANAGEMENT CONFERENCES ("CMC") -

CMC Statements ("CMS") should be in joint, narrative form and should identify the issues that the parties want to discuss with the court. Do not use CM-110s. Statements may be submitted using E-Delivery (emailing to EDelivery@alameda.courts.ca.gov). If otherwise filed in person or by fax, a courtesy copy must be hand delivered to Dept. 21. Statements should always be submitted at least five (5) court days before the CMC. Always check DomainWeb before the conference to see if a tentative case management order ("TCMO") has been posted.

PROTECTIVE ORDERS -

A protective order should be entered as early in the case as practicable. Counsel should meet and confer about the form of order before the initial case management conference if possible. For a suggested form of order, see "Model Protective Order - Complex" in Department 21's "List of Documents."

DEMURRERS -

Demurrers are often a poor use of resources, both private and judicial. To avoid wasting time, the parties should thoroughly meet and confer, including exchanging drafts of proposed demurrers and amended complaints, until they are at impasse. Only when the complaint is truly the best that the plaintiff can muster should a challenge be filed, and then only if it either will result in a complete dismissal or will significantly narrow the scope of discovery.

DISCOVERY -

In most cases, counsel should focus their efforts on documents and depositions, and utilize interrogatories and requests for admission in a selective fashion. Consider numbering all documents once, good for all uses at deposition, motions and trial.

The parties are expected to be familiar with the document entitled "Discovery" in Department 21's List of Documents that outlines the court's Informal Discovery Dispute Resolution Process and explains that reservations for discovery motions are only given after a specially set Discovery CMC has been conducted.

CLASS CERTIFICATION -

There is typically significant overlap between so-called "class certification" and "merits" discovery, and thus little or no basis to "stay merits discovery" early in the case. However, counsel should consider "staggering" discovery prior to class certification in the following manner:

1) Plaintiff takes all discovery needed to prepare and file the class certification motion, obtains a reservation number for a "placeholder" hearing date within a month after the motion will be filed and served, and files and serves the motion. A CMC will be set within 10 to 14 days after the motion is filed to set a briefing schedule.

2) Defendant evaluates the motion and determines the scope of discovery needed

to oppose; the parties meet and confer about defendant's discovery and due dates for the opposition and reply and submit a joint CMS. At the CMC, the Court sets the due dates and continues the class certification motion and CMC to the agreed hearing date.

3) After defendant files the opposition, plaintiff determines what, if any, further discovery is needed, and whether the proposed hearing date is still viable. If plaintiff needs more time for discovery and reply, the parties must meet and confer on those issues and a new hearing date, and should then either submit a stipulation to reset the hearing and reply dates or request a CMC to resolve their disputes.

DISMISSAL OF CLASS CLAIMS -

Any application that requests dismissal or has the effect of dismissing class claims or parties (e.g., stipulation to file an amended complaint) must comply with CRC 3.770, requiring court approval. This is why Judicial Council form CIV-110 expressly states that it may not be used in class actions (or in derivative actions). Approval may be obtained (a) by noticed motion, (b) by ex parte application, or (c) by presenting a declaration that complies with CRC 3.770(a) together with a proposed order of dismissal to the court at a CMC. In all of these scenarios, sufficient evidence must be presented upon which the court may base its CRC 3.770(c) findings regarding notice to the class.

EVIDENTIARY OBJECTIONS -

Formal objections to evidence are unnecessary in the context of most motion practice, including motions for class certification. (See, e.g., *Gonzales* v. *Millard Mall Services, Inc.*, 281 F.R.D. 455, 459-460 (S.D. Cal. 2012) [citing, inter alia, *Alonzo* v. *Maximus, Inc.*, 275 F.R.D. 513, 519 (C.D. Cal. 2011)].) The clear exception, of course, is motions pursuant to Code of Civil Procedure section 437c. Even in that context, however, parties are encouraged "to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices." (*Reid* v. *Google, Inc.* (2010) 50 Cal. 4th 512, 532.)

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

DISCOVERY DISPUTES

Obtaining Reservation Number(s) for Discovery Motion(s)

Reservations numbers for discovery motions will not be given by the Dept. 21 clerk unless and until directed to do so by Judge Smith.

When a discovery motion is necessary because no responses to the subject discovery have been provided at all, then an email requesting a reservation number should be sent the Dept. 21 email address (dept21@alameda.courts.ca.gov), copied to all parties, stating (a) that the subject discovery deadline has passed, (b) that no request for an extension of time was unreasonably denied, and (c) that counsel for the prospective moving party has communicated with the responding party to inquire about the overdue responses.

When a discovery motion is necessary because responses are considered inadequate and counsel believe they have exhausted the meet and confer process, the prospective moving party must send an email requesting a Discovery CMC to the Dept. 21 email address, copied to all parties. This email must include a concise statement, not to exceed 2 pages, describing the nature of the dispute and when the last meet and confer in person or by phone regarding the dispute occurred. The court will also entertain a responsive email from counsel for the opposing party, also limited to 2 pages, so long as it is received within 48 hours of the moving party's email. The court will then either (A) set a Discovery CMC, typically within a week of the initial request; or (B) instruct the clerk to provide a motion reservation number without setting a Discovery CMC. Discovery CMCs may be attended in person or via CourtCall.

The intent underlying the above procedure is to avoid situations where discovery motions are prepared and filed before there has been an adequate meet and confer process. In the court's experience discovery motions are too often filed prematurely, when the dispute could have been narrowed substantially, if not resolved completely. Once counsel are invested in a motion, and the fees incurred in preparing it, they find it more difficult to negotiate a compromise.

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

PROCEDURAL GUIDELINES
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Parties submitting class action settlements for preliminary approval should be certain that the following procedures are followed and that all of the following issues are addressed. Failure to do so may well result in unnecessary delay of approval. It is also strongly suggested that these guidelines be considered during settlement negotiations and the drafting of settlement agreements.

1) NOTICED MOTION - Pursuant to California Rule of Court ("CRC") 3.769(c), preliminary approval of a class action settlement must be obtained by way of regularly noticed motion. A motion reservation number must be obtained from the Department 21 clerk before filing. Doing so will ensure proper handling in the court's electronic calendaring system and provide the mechanism for the issuance of a tentative ruling..

2) CLAIMS MADE VS. CHECKS-MAILED SETTLEMENT – The court typically finds that settlement distribution procedures that do not require the submission of claim forms, but rather provide for settlement checks to be automatically mailed to qualified recipients, result in greater benefit to the members of most settlement classes. If a claims-made procedure is proposed to be used, the settling parties must be prepared to explain why that form is superior to a checks-mailed approach. Under either procedure, the agreement regarding disposition of residual funds, including uncashed settlement checks, must comply with Code of Civil Procedure ("CCP") 384 (revision effective June 27, 2017).

3) REASONABLENESS OF SETTLEMENT AMOUNT – Admissible evidence, typically in the form of declaration(s) of plaintiffs' counsel, must be presented to address the potential value of each claim that is being settled, as well the value of other forms of relief, such as interest, penalties and injunctive relief. Counsel must break out the potential recovery by claims, injuries, and recoverable costs and attorneys' fees so the

court can discern the potential cash value of the claims and how much the case was discounted for settlement purposes. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.) Where the operative complaint seeks injunctive relief, the value of prospective injunctive relief, if any, should be included in the *Kullar* analysis. The court generally requires that this analysis be fully developed and supported at the preliminary approval stage.

4) ALLOCATION – In employment cases, if the settlement payments are divided between taxable and non-taxable amounts, a rationale should be provided consistent with counsel's *Kullar* analysis. The agreement and notice should clearly indicate whether there will be withholdings from the distribution checks, and who is paying the employer's share of any payroll tax. If the operative complaint and the settlement include penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), proof of submission to the LWDA must be provided. (Labor Code §2999(l)(1).)

5) RELEASE - The release should be fairly tailored to the claims that were or could be asserted in the lawsuit based upon the facts alleged in the complaint. Releases that are overbroad will not be approved. Furthermore, while the court has no problem, conceptually, with the waiver by the named Plaintiff of the protection of Civil Code §1542, a 1542 waiver by the absent class members is generally inappropriate in the class settlement context. A comprehensive description of released claims as those arising out of the allegations of the operative complaint generally provides an adequate level of protection against future claims. A 1542 waiver, which by its own terms is not necessary circumscribed by any definition of "Released Claims," goes too far. Also, although the court will not necessarily withhold approval on this basis, it generally considers a plain language summary of the release to be better than a verbatim rendition in the proposed class notice.

6) SETTLEMENT ADMINISTRATION - The proposed Settlement Administrator must be identified, including basic information regarding its level of experience. Where calculation of an individual's award is subject to possible dispute, a dispute resolution process should be specified. The court will not approve the amount of the costs award to the Settlement Administrator until the final approval hearing, at which time admissible evidence to support the request must be provided. The court also generally prefers to see a settlement term that funds allocated but not paid to the Settlement Administrator will be distributed to the class pro rata.

7) NOTICE PROCEDURE - The procedure of notice by first-class mail followed by re-sending any returned mail after a skip trace is usually acceptable. A 60-day notice period is usually adequate.

8) NOTICE CONTENT - The court understands that there can be a trade off between precise and comprehensive disclosures and easily understandable disclosures and is willing to err on the side of making the disclosures understandable. By way of illustration, parties should either follow, or at least become familiar with the formatting and content of The Federal Judicial Center's "Illustrative" Forms of Class Action Notices at http://www.fjc.gov/, which conveys important information to class members in a

manner that complies with the standards in the S.E.C.'s plain English rules. (17 C.F.R. § 230.421.)

Notices should always provide: (1) contact information for class counsel to answer questions; (2) a URL to a web site, maintained by the claims administrator or plaintiffs' counsel, that has links to the notice and the most important documents in the case; and (3) for persons who wish to review the court's docket in the case, the URL for the court's electronic filing and calendaring system known as DomainWeb. Further information and suggested language to be included in class notices is set forth in the court's document entitled Dept. 21 Court Contact Info (Class Notices).

9) CLAIM FORM - If a claim form is used, it should not repeat voluminous information from the notice, such as the entire release. It should only contain that which is necessary to elicit the information necessary to administer the settlement.

10) EXCLUSION FORM - The notice need only instruct class members who wish to exclude themselves to send a letter to the settlement administrator setting forth their name and a statement that they request exclusion from the class and do not wish to participate in the settlement. It should not include or solicit extraneous information not needed to effect an exclusion.

11) INCENTIVE AWARDS - The court will not decide the amount of any incentive award until final approval hearing, at which time evidence regarding the nature of the plaintiff's participation in the action, including specifics of actions taken, time committed and risks faced, if any, must be presented. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

12) ATTORNEY FEES - The court will not approve the amount of attorneys' fees until final approval hearing, at which time sufficient evidence must be presented for a lodestar analysis. Parties are reminded that the court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the time spent on the case, even if the parties have agreed to the fees. (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 450-451.) Further information regarding fee approval is set forth in the court's Procedural Guidelines for Final Approval of Class Action Settlements.

13) PROPOSED ORDER GRANTING PRELIMINARY APPROVAL – All proposed orders should include the requisite "recital," "finding," and "order" language, including adequate information to provide clear instruction to the settlement administrator. The proposed order should also attach the proposed notice and any associated forms as exhibits.

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

PROCEDURAL GUIDELINES
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

Parties submitting class action settlements for final approval should be certain that the following procedures are followed, and that all of the following issues are addressed. Failure to do so may well result in unnecessary delay of final approval.

1) Since the date and place of final approval hearings are set by the preliminary approval order, notice of which is typically included in the notice to class members of the settlement itself (California Rules of Court ["CRC"] 3.769(e) & (f)), the final approval hearing is outside the scope of Code of Civil Procedure §1005. Nevertheless, settling parties should caption their papers submitted in support of final approval as a "Motion for Final Approval," and should obtain a motion reservation number from the Department 21 clerk before filing. Doing so will ensure proper handling in the court's electronic calendaring system, and provide the mechanism for the issuance of a tentative ruling.

2) With rare exceptions, the court will expect all issues related to final approval to be heard at the same time, including, without limitation, (a) final approval of the settlement itself, (b) approval of any attorneys fees request, (c) approval of incentive awards to class representatives, and (d) approval of expense reimbursements and costs of administration. If the settling parties elect to file separate motions for any of these categories, separate reservation numbers must be obtained, but the motions must be set to be heard concurrently.

3) All requests for approval of attorneys fees awards, whether included in a Motion for Final Approval or made by way of a separate motion, must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. The court generally finds the declarations of class counsel as to hours spent on various categories of activities related to the action, together with hourly billing

rate information, to be sufficient, provided it is adequately detailed. It is generally not necessary to submit copies of billing records themselves with the moving papers, but counsel should be prepared to submit such records at the court's request.

4) Requests for approval of enhancement/incentive payments to class representatives must include evidentiary support consistent with the parameters outlined in *Clark* v. *American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

5) For all settlements that include a distribution to settlement class members, the court's custom and practice is to require that a portion of any attorneys' fees award (typically the greater of 10% or $5,000) be held in an interest-bearing account, maintained either by the claims administrator or by class counsel, pending the submission and approval of a final compliance status report after completion of the distribution process. A compliance hearing will be set when final approval is granted, so the moving papers should include a suggested range of dates for this purpose. The compliance status report must generally be filed (with a courtesy copy delivered directly to Dept. 21) at least 5 court days prior to the compliance hearing.

6) In light of the requirements of CRC 3.769(h), all final approvals must result in the entry of judgment, and the words "dismissal" and "dismissed" should be avoided not only in proposed orders and judgments, but also in settlement agreements.

7) To ensure appropriate handling by the court clerk, the court prefers the use of a combined "order and judgment," clearly captioned as such (e.g. "Order of Final Approval and Judgment" or "Order and Judgment of Final Approval"). The body of the proposed order and judgment must also incorporate the appropriate "judgment is hereby entered" language, and otherwise fully comply with California Rule of Court ("CRC") 3.769(h), including express reference to that rule as the authority for the court's continuing jurisdiction. The proposed order and judgment should also include the attorneys' fees holdback provision and compliance hearing provision (with date and time to be filled in by the court) discussed, above.

8) If the actions that are being settled are included in a Judicial Council Coordinated Proceedings ("JCCP"), termination of each included action by entry of judgment is subject to CRC 3.545(b) & (c), and proposed orders and judgments must so reflect. Language must also be included to the effect that compliance with CRC 3.545(b)(1 & 2) shall be undertaken by class counsel, and that a declaration shall be filed confirming such compliance.

9) All proposed orders and judgments should include all the requisite "recital," "finding," "order" and "judgment" language in a manner that clarifies the distinctions between these elements, and care must be taken that all terms that require definition are either defined in the proposed order and judgment itself or that definitions found elsewhere in the record are clearly incorporated by reference. No proposed order and judgment should be submitted until after review by senior class counsel and counsel for

all settling defendants.

10) Electronic versions (Microsoft Word read/writeable) of all proposed orders and judgments should be submitted via email attachment to Dept.21@alameda.courts.ca.gov as far in advance of the time of the hearing as practicable.

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

RECOMMENDED COURT CONTACT INFORMATION
LANGUAGE TO INCLUDE IN CLASS NOTICES

All notices to class members should include information regarding the Alameda County Superior Court's website, known as DomainWeb. Because the court charges a fee for viewing documents on DomainWeb, notices should also include directions for viewing the court's electronic case files in person at no charge by way of computer terminal kiosks that are available at court locations that include facilities for civil filings, specifically the René C. Davidson Courthouse and the Hayward Hall of Justice. Settlement class notices should also provide the court's mailing address for sending objections and notices to appear.

Below, for purposes of illustration only, is language that has been approved by this court for use in class notices in the past.

POST CERTIFICATION NOTICES:

> "The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as 'DomainWeb,' at
>
> https://publicrecords.alameda.courts.ca.gov/PRS/
>
> After arriving at the website, click the 'Search By Case Number ' link, then enter ******* as the case number and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge.
>
> You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings."

SETTLEMENT CLASS NOTICES:

Further Information -

"The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court's website, known as 'DomainWeb,' at

https://publicrecords.alameda.courts.ca.gov/PRS/

After arriving at the website, click the 'Search By Case Number ' link, then enter ******* as the case number and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge.

You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!"

Objections and/or Notices of Intention to Appear -

"You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number ([*** v. ***], Case Number [*****]), (b) be submitted to the Court either by mailing the to: Clerk of Court, Superior Court of California, County of Alameda, Rene C. Davidson Alameda County Courthouse, 1225 Fallon Street, Oakland, California 94612, or by filing in person at any location of the Superior Court, County of Alameda that includes a facility for civil filings, (c) also be mailed to the law firms identified [*********] and (d) be filed or postmarked on or before _____, 20**."

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

GUIDELINES FOR SEALED RECORDS (DOCUMENTS) and COMPLIANCE WITH CALIFORNIA RULES OF COURT 2.550 & 2.551

I - WHEN NO COURT ORDER REQUIRED

Pursuant to California Rule of Court ("Rule") 2.550(a)(2)&(3), a court order is *not* required to permit filing or lodging records under seal that

(A) are required to be kept confidential by law, or

(B) are filed or lodged in connection with discovery motions or proceedings.

Although Rule 2.551 technically does not apply when filing or lodging such records, parties should follow the procedures set forth in Rule 2.551(d) anyway, except that the envelope or container containing the records should be labeled appropriately. To avoid confusion, it is strongly recommended that the label state "UNDER SEAL" (without the word "conditionally"), clearly identify the nature of the records, and include the following language: **"NO COURT ORDER IS REQUIRED BECAUSE RULES OF COURT 2.550-2.551 DO NOT APPLY."**

****

II - WHEN COURT ORDER REQUIRED

For all records for which a sealing order *is* required under Rule 2.550(a)(1) and 2.551(a), the procedures set forth in Rule 2.551 must be scrupulously followed. Specifically, compliance with Rule 2.551 shall include the following:

1) A **PUBLIC REDACTED VERSION** of *all* records lodged conditionally under seal, whether lodged by the party requesting that a record be filed under seal (Rule 2.551(b)(1)&(2)), or lodged by a party *not* intending to file a motion or application for

sealing order (Rule 2.551(b)(3)), **MUST BE PREPARED AND FILED** in connection with the underlying motion or trial.[1] This requirement also applies to any records lodged conditionally under seal in connection with the motion or application for sealing order. (Rule 2.551(b)(4) & (5).) After the public redacted versions are filed, the **COMPLETE VERSIONS** of the subject records **SHOULD BE LODGED** (NOT FILED) **DIRECTLY WITH THE COURTROOM CLERK** in Department 21.

2) When records are submitted conditionally under seal by the party seeking a sealing order, a **RULING MUST BE OBTAINED** on the motion or application for sealing order **PRIOR TO** the motion hearing or trial in which the records will be used. This is to ensure that the party seeking the sealing order is given the opportunity to withdraw the confidential documents from the record if the sealing order is denied. (Rule 2.551(b)(6).) The preferred procedure to ensure that this is accomplished is to reserve a hearing date for the sealing motion or application **AT LEAST ONE WEEK BEFORE** the underlying motion hearing or trial date. In the event that this is impossible or impractical, a sealing motion or application may be heard together with the underlying motion, with advanced approval from the court.

Motions or applications for sealing orders pursuant to Rule 2.551(b)(3)(B) may be heard at the same time and place as the underlying motion hearing or trial, but should be filed at least three court days before the hearing or trial date. The parties should bear in mind that when records are lodged conditionally under seal pursuant to Rule 2.551(b)(3)(A) in connection with the reply papers in a noticed motion situation, a continuance of the underlying motion will be necessary unless the party that produced the documents agrees to expedite its application for a sealing order under Rule 2.551(b)(3)(B), and should meet and confer on this issue when such a situation arises.

3) A sealing order will *not* be issued based solely on the fact that the subject records were designate by the producing party as "confidential" pursuant to a stipulated protective order. (Rule 2.551(a).)

4) All motions or applications for sealing orders must include a proposed form of order that complies with Rule 2.550(d) & (e), as well as Rule 2.551(e). The requisite express factual findings will only be made based on admissible evidence (hearsay attorney declarations are generally not acceptable).

****

[1] Service of redacted or unredacted records is governed by Rule 2.551(b)(2).

DEPARTMENT 21 - COMPLEX LITIGATION
THE HONORABLE WINIFRED Y. SMITH PRESIDING

COMPLIANCE WITH CALIFORNIA RULE OF COURT 3.1113(i)
(Copies of Non-California Authorities)

Effective July 1, 2011, California Rule of Court ("CRC") 3.1113(i) was amended.

Before amendment, CRC 3.1113(i) required that copies of any authority other than California cases, statutes, constitutional provisions, or state or local rules ("non-California authorities") cited in a memorandum in support of a motion be lodged with the papers that cite the authority.

After amendment, CRC 3.1113(i)(1) reads as follows:

"(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority. If in paper form, the authority must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the authority must be electronically bookmarked as required by rule 3.1110(f)(4)."

Unless explicitly directed in advance by Judge Smith to do so on a case or hearing specific basis, parties submitting memoranda in connections with motions to be heard in Department 21 should NOT lodge copies of non-California authorities.

EXCEPTION:

Because the court only has access to federal cases via Westlaw, and NOT via LEXIS, when federal cases that are not reported in an official reporter are cited as persuasive authority, either (a) a Westlaw citation must be provided, or (b) a printed copy of the case should be submitted.

Updated 11/09/2017

Hon. George C. Hernandez

DEPARTMENT 17 - COMPLEX LITIGATION
THE HONORABLE GEORGE C. HERNANDEZ, JR. PRESIDING

GENERAL GUIDELINES FOR LITIGATING IN DEPT. 17

Dept. 17 Staff and Communications

Clerk - Yolanda Estrada - Dept17@alameda.courts.ca.gov
Court Attendant - Russ Knox - Dept17@alameda.courts.ca.gov
Research Attorney - Jenna Whitman - jwhitman@alameda.courts.ca.gov

Email is the preferred method of communicating with Department 17. Do not send attachments without prior permission, as they can fill the department's in-box, causing it to shut down and be unavailable to the court or litigants. Chambers copies must be delivered as set forth below.

Hearing Dates

Before contacting the clerk to request a hearing date or continuance, always meet and confer with opposing counsel regarding all counsel's availability. It is strongly suggested that you jointly contact the clerk by email with multiple dates on which all counsel are available.

Chambers copies

A chambers copy of each paper filed in connection with motions, applications, case management and other proceedings should be hand-delivered directly to Department 17 as close as possible to the date of filing. Time-sensitive documents, including reply memoranda, should not be sent via U.S. Mail or overnight courier, as routing the documents to Department 17 typically takes an additional 2-3 business days.

Electronic Service ("e-service")

Parties should stipulate to electronic service early in the case. (See CRC 2.251.)

Case Management Conferences

Statements should be in joint, narrative form and identify the issues counsel wish to discuss at the conference. Do not file CM-110s. The joint statement should be submitted at least five (5)

court days before the CMC. Statements may be submitted using E-Delivery by submitting directly to the E-Delivery Fax Number (510) 267-5732. . A chambers copy should also be hand delivered to Dept. 17 at the time of filing. Always check DomainWeb before the hearing to see if a tentative case management order has been posted.

Protective Orders

A protective order should be entered as early in the case as practicable. Counsel should meet and confer about the form of order before the initial case management conference if possible. For a suggested form of order, see "Model Protective Order - Complex" on Department 17's "documents" page (under the "Complex Litigation" tab at http://apps.alameda.courts.ca.gov/domainweb/html/index.html).

Demurrers

Demurrers are often a poor use of resources, both private and judicial. To avoid wasting time, the parties should thoroughly meet and confer, including exchanging drafts of proposed demurrers and amended complaints, until they reach an impasse. Only when the complaint is truly the best that the plaintiff can muster should a challenge be filed, and then only if it either will result in a complete dismissal or will significantly narrow the scope of discovery. If a demurrer or motion for judgment on the pleadings is filed, the moving party should, with the chambers copy only, include a copy of the challenged pleading.

Discovery

In most cases, counsel should focus their efforts on documents and depositions, and utilize interrogatories and requests for admission in a selective fashion. Consider numbering all documents once, good for all uses at deposition, motions and trial.

Usually there is significant overlap between so-called "class certification" and "merits" discovery and thus no basis to stay "merits discovery" early in the case. Counsel should, however, consider phasing discovery before class certification motions, as discussed below.

Before obtaining a reservation from the clerk for a motion to compel or other discovery motion, counsel must:

(a) meet and confer in person or via telephone (not just an exchange of emails or letters) regarding every disputed item, doing everything they can to narrow the issues; and

(b) comply with the court's informal discovery protocol, as follows: The aggrieved party shall submit to Dept. 17 via email and hand delivery a 3-page letter, without any attachments, outlining the dispute(s), with a copy to opposing counsel and to Dept. 17's research attorney; Dept. 17 will wait 2 court days for a response, before providing informal guidance and, when appropriate, provide permission to file the appropriate motion(s).

Dismissal of Class Claims

Any application that requests dismissal or has the effect of dismissing class claims (e.g., stipulation to file an amended complaint) must comply with CRC 3.770. This may be done by ex parte application with supporting declaration(s). Judicial Council form CIV-110 should not

be used. Sufficient evidence must be presented upon which the court may base its CRC 3.770(c) findings regarding notice to the class. Supporting declarations should also describe any informal notice class members may have received regarding the proceedings through press releases, media coverage, word-of-mouth, communications with plaintiff(s) or their counsel, etc., and whether notice of dismissal must be given (and to whom) in order to avoid prejudice to persons who may be relying on the pendency of a (putative) class action..

Class Certification

The parties should consider "staggering" discovery prior to class certification as follows:

1) Plaintiff takes all discovery needed to prepare and file the motion, obtains a reservation number for a "placeholder" hearing date 2-3 weeks after the motion will be filed and served, and files and serves the motion. A CCMC is set for the placeholder hearing date.
2) Defendant evaluates the motion and determines the scope of discovery needed to oppose; the parties meet and confer about defendant's discovery and a due date for the opposition and submit a joint CMS; at the CCMC, the Court sets the due date and continues the class certification motion and CCMC to a date two weeks after the opposition is due.
3) After defendant files the opposition, plaintiff determines what, if any, further discovery is needed, the parties meet and confer and submit their joint CMS, and at the CCMC, the court sets a reply due date and hearing date for the motion.

In all cases, the reply brief should be filed 10 days before the hearing.

Evidentiary Objections (Class Certification, Summary Judgment, etc.)

Evidentiary objections are unnecessary in the context of most motion practice, except summary judgment/adjudication. To that end:

> ... we encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices.

(*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532-33.)

FOLLOWING IS A MODEL PROTECTIVE ORDER FOR SUGGESTED USE IN COMPLEX CASES ASSIGNED TO DEPARTMENTS 17 & 21. USE OF THIS MODEL IS VOLUNTARY AND THE MODEL MAY BE REVISED PER THE CIRCUMSTANCES AND NEEDS OF A PARTICULAR CASE. ALL PROTECTIVE ORDERS MUST EXPLICITLY PROVIDE FOR COMPLIANCE WITH CALIFORNIA RULES OF COURT 2.550, 2.551 AND 8.46 TO THE EXTENT APPLICABLE, AND MUST BE SUBMITTED FOR COURT APPROVAL, WHETHER OR NOT BASED ON THIS MODEL, WITH THE PROPOSED ORDER AS A SEPARATE DOCUMENT FROM THE STIPULATION.

****

[MODEL] PROTECTIVE ORDER RE: CONFIDENTIAL INFORMATION

[INTRO FOR STIPULATION]

[WHEREAS the parties in the action pending in the Superior Court of California, County of Alameda entitled *** v. ***, Case No. *** ("the Litigation"), anticipate that during the course of the Litigation documents and/or information of a sensitive, private and confidential nature may be produced in the course of discovery or otherwise disclosed or provided, and the parties wish to protect the confidentiality of such documents or information while ensuring that discovery may be pursued with a minimum of delay and expense,

THEREFORE the following parties, ***, ***, ***, ... (hereafter "Party or Parties") hereby stipulate and agree to the following proposed Protective Order Re: Confidential Information ("Protective Order"), subject to court approval:]

[INTRO FOR PROPOSED ORDER]

[WHEREAS the parties in the action pending in the Superior Court of California, County of Alameda entitled *** v. ***, Case No. *** ("the Litigation"), ***, ***, *** (hereafter "Party or Parties") have entered into a Stipulation for Protective Order re: Confidential Information ("Protective Order"), and good cause appearing therefore, the court HEREBY ORDERS AS FOLLOWS:]

1. SCOPE OF PROTECTIVE ORDER

(a) The protection of this Protective Order may be invoked with respect to any documents, testimony, information, and things (collectively "materials") produced or created in this action that contain Confidential Information. As used herein, the term "Confidential Information" includes testimony and records, including but not limited to discovery responses, whether hardcopy or electronic, that contain confidential and/or proprietary trade secret information, including, but not limited to, technical and competitively-sensitive information protected by law, and information protected by

California's constitution and common law right to privacy. As set forth below, materials containing Confidential Information may be designated as "Confidential." Such designation may be made by any Party or non-party producing materials in this action ("Producing Party"), or may be made by a Party who determines, in good faith, that materials produced by a non-party contain "Confidential" information ("Designating Party") even though not so designated by the Producing Party.

(b) In the event that additional Parties join or are joined in this litigation, they shall not have access to materials designated as "Confidential" pursuant to this Protective Order until they have executed and, at the request of any Party, filed with the court their agreement to be bound by this Protective Order.

2. DESIGNATION OF MATERIALS AS CONFIDENTIAL.

(a) "Confidential" materials shall include only such information as the Producing or Designating Party in good faith contends should be protected pursuant to this Protective Order on the grounds that the information is properly subject to protection under existing California or federal law.

(b) In making the designation of materials pursuant to this Protective Order, the Producing or Designating Party shall give due consideration to whether the information contained in the materials (1) has been produced, disclosed or made available to the public in the past, (2) has been published, communicated or disseminated to others not obligated to maintain the confidentiality of the information contained therein, (3) has not been preserved or maintained in a manner calculated to preserve its confidentiality, or (4) is available from a third party or commercial source that is not obligated to maintain its confidentiality or privacy. The Producing or Designating Party shall also give due consideration to the age of the materials.

(c) The protection of this Protective Order may be invoked with respect to materials in the following manner:

> (i) Documents when produced or otherwise designated shall bear the clear and legible designation "Confidential" on each page of the document, except that in the case of multi-page documents bound together by staple or other permanent binding, the "Confidential" legend need only be affixed to the first page in order for the entire document to be treated as "Confidential." Documents produced prior to the entry of this Protective Order may be designated as "Confidential" within thirty (30) days after entry, and documents produced by non-parties may be designated "Confidential" by a Party within thirty (30) days after such production.
>
> (ii) As to discovery requests or the responses thereto, the pages of such requests or responses containing "Confidential" materials shall be so marked, and the first page of the requests or responses shall bear a legend substantially stating that "This Document Contains 'Confidential' Material";

(iii) As to deposition testimony, "Confidential" treatment may be invoked by: (1) declaring the same on the record at the deposition with instructions to so designate the cover of the deposition transcript, or (2) designating specific pages as "Confidential" and serving such designations within thirty (30) days of receipt of the transcript of the deposition in which the designations are made. All deposition testimony shall be treated as "Confidential" pending receipt of a transcript of the deposition.

(d) If any Producing Party inadvertently produces or discloses any "Confidential" information without marking it with an appropriate legend, the Producing Party or a Designating Party shall promptly notify the receiving party that the information should be treated in accordance with the terms of this Protective Order, and shall forward appropriately stamped copies of the items in question. Within five (5) days of the receipt of substitute copies, the receiving party shall return the previously unmarked items and all copies thereof. The inadvertent disclosure shall not be deemed a waiver of confidentiality, and such designation shall be made as soon as possible after the discovery of the inadvertent production or disclosure.

3. CHALLENGES TO "CONFIDENTIAL" DESIGNATION.

(a) Any Party believing materials designated as "Confidential" by another is not entitled to such designation shall notify the Producing or Designating Party of that belief in writing, provide a brief statement of the basis for that belief with service on all other Parties, and allow ten (10) days for the Producing or Designating Party to respond.

(b) If a Producing or Designating Party does not modify its designation of the materials in response to a notice pursuant to paragraph 3(a) of this Protective Order, then the Party challenging the "Confidential" designation may move the court for an order modifying or removing such designation. To maintain "Confidential" status, the burden shall be on the proponent of confidentiality to show that the material or information is entitled to protection under applicable law. Unless and until a "Confidential" designation is voluntarily withdrawn by the Producing or Designating party, or the court issues an order modifying or removing such designation, the provisions of the Protective Order shall continue to apply.

4. DISCLOSURE OF MATERIALS DESIGNATED AS CONFIDENTIAL

(a) Materials designated "Confidential," as well as summaries, excerpts and extracts thereof, shall not be disclosed to or made accessible to any person except as specifically permitted by this Protective Order. Materials designated "Confidential" shall be used solely in the preparation for trial and/or trial of the Litigation, and shall not be used at any time for any other purpose.

(b) Materials designated as "Confidential" may be disclosed only to:

(i) The court, its clerks and research attorneys;

(ii) Attorneys actively involved in the representation of a Party, their secretaries, paralegals, legal assistants, and other staff actively involved in assisting in the Litigation;

(iii) In-house attorneys employed by any Party and working on the Litigation, and their secretaries, paralegals, legal assistants, and other staff actively involved in assisting in the Litigation;

(iv) The Parties, potential or actual class members, officers and employees of the Parties assisting counsel in the preparation of the case for trial, motion practice or appellate proceedings, provided that the materials designated "Confidential" may be disclosed to such persons only to the extent such disclosure is, in the judgment of counsel, reasonably necessary to counsel's preparation of the case;

(v) Any expert or consultant who is retained by any of the Parties or their counsel of record to assist counsel in the Litigation, and any employee of such an expert assisting in the Litigation (hereafter, "Experts");

(vi) Any person called to testify as a witness either at a deposition or court proceeding in the Litigation, but only to the extent necessary for the purpose of assisting in the preparation or examination of the witness, and also only if such persons are informed of the terms of this Protective Order, provided with a copy of the Protective Order and agree, on the record, that they are bound by the terms of the Protective Order and are required not to disclose information contained in the materials designated as "Confidential";

(vii) Deposition and court reporters and their support personnel, for purposes of preparing transcripts;

(viii) Employees of outside copying services and other vendors retained by counsel to assist in the copying, imaging, handling or computerization of documents, but only to the extent necessary to provide such services in connection with the Litigation and only after being informed of the provisions of this Protective Order and agreeing to abide by its terms;

(ix) Mediators or other Alternative Dispute Resolution neutrals (including their employees, agents and contractors) to whom disclosure is reasonably necessary to their involvement in the Litigation; and

(x) Any person who created a document or was the recipient thereof.

(c) Each person to whom "Confidential" materials are disclosed (other than persons described in paragraphs 2(b)(i), (vii), and (viii)) shall execute a non-disclosure agreement in the form attached hereto as Exhibit A prior to their receipt of the Confidential materials, and shall agree to be bound by this Protective Order and to be subject to the

jurisdiction of this court for the purposes of enforcement, except that individuals identified in paragraphs 2(b)(ii) and (iii) shall not be required to execute such an agreement, provided that counsel making disclosure to such individuals advise them of the terms of the Protective Order and they agree to be bound thereby. Counsel disclosing "Confidential" materials to persons required to execute non-disclosure agreements shall retain all such executed agreements. Copies of the executed agreements shall be preserved by counsel and shall be provided to the opposing party if the court so orders upon a showing of good cause.

5. USE IN COURT PROCEEDINGS - FILING OF COURT PAPERS.

(a) Nothing contained in this Protective Order shall be construed to prejudice any Party's right to use at trial or in any hearing before the court any Confidential Information, provided that reasonable notice of the intended use of such material shall be given to all counsel of record in order to enable the parties to arrange for appropriate safeguards, and provided that the rules applicable to sealing records, as further addressed below, are followed. Likewise, nothing in this Protective Order shall be dispositive of any issues of relevance, discoverability or admissibility.

(b) The submission of any materials designated as "Confidential" pursuant to this Protective Order to the court in the Litigation must comply with California Rules of Court ("CRC") 2.550, 2.551 and 8.46 to the extent applicable. If the materials are required to be kept confidential by law or are submitted in connection with discovery motions or proceedings, no court order is required. (CRC 2.550(a)(2) and (3).) However, if the materials are submitted for use at trial or as the basis for adjudication of matters other than discovery motions or proceedings, a court order sealing the materials is required and may only be obtained by careful compliance with the procedures set forth in CRC 2.551.

If either Party seeks to file Confidential material or disclose the contents of Confidential material designated as such by the opposing Party as a basis for adjudication other than discovery motions or proceedings (e.g., motions within the scope of CRC 3.1350 and 3.764), the filing Party must meet and confer with the designating Party at least 10 calendar days prior to the intended filing date to offer the designating Party the opportunity to evaluate whether the designated materials fall within the parameters of CRC 2.550(d), and to either (a) remove the Confidential designation, or (b) prepare a motion or application pursuant to CRC 2.551(b).

The Parties understand that failure to comply with the procedural requirements of CRC 2.551 or failure to present evidence sufficient to support the findings set forth in CRC 2.550(d) may result in the placement of confidential materials in the public file. The Parties further understand that no sealing order will be issued solely on the basis of the existence and applicability of this Protective Order. (CRC 2.551(a).)

6. MODIFICATION.

Nothing in this Protective Order shall preclude any Party from applying to the court to modify this Protective Order to provide for additional safeguards to ensure the confidentiality of materials produced in this action or otherwise modify this Protective Order for good cause shown. In the event that documents or information that warrant heightened protection as for "Attorney's Eyes Only" are requested to be produced, the Parties agree to negotiate in good faith to modify this Protective Order to provide for such protection.

7. DISPOSITION OF MATERIALS AT CONCLUSION OF CASE.

All materials designated as "Confidential" shall remain in the possession of the counsel of record of the Party to whom such materials are produced, and they shall not permit any such materials to leave their possession, except that copies of such materials may be made for the use of persons to whom disclosure may be made under paragraph 4(b) of this Protective Order, or for the purpose of submission to the court under paragraph 5 of this Protective Order. Within sixty (60) days after this action is concluded, including the expiration or exhaustion of all rights to appeal, each Party to whom "Confidential" materials were produced shall, at the election of the Party receiving the materials, (a) return all documents and copies containing "Confidential" materials (including, but not limited to, copies in the possession or control of any expert or employee) to the Producing Party, or (b) promptly destroy all such materials and copies and provide a written certification under oath to the Producing Party and to any Designating Party to that effect.

8. RETENTION OF JURISDICTION.

The court shall retain jurisdiction over all persons to be bound by the terms of this Protective Order, during the pendency of this action and for such time thereafter as is needed to carry out its terms.

Hon. Brad Seligman

THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Log In

your resource for case filing information

DomainWeb How This Site Works FAQ

Department Information

Complex Litigation

Judge	Seligman, Brad
Department	23
Address	Administration Building 1221 Oak Street Oakland, CA 94612
Phone Number	(510) 267-6939
Fax Number	() -
Email	Dept.23@alameda.courts.ca.gov

Court Reporter - New Information

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date

indicating whether the party requests the presence of an official court reporter."

List of cases | List of documents | Back

Department Information

Effective Date	September 7, 2017
General Procedures	You may schedule case management hearings, law & motion hearings and other calendar events with Department 23 by EMAIL ONLY. The use of email is not a substitute for filing pleadings or filing other documents. You must provide copies of all email communications to each party (or the party's attorney if the party is represented) at the same time that you send the email to the Court and you must show that you have done so in your email. Courtesy copies of all moving, opposition and reply papers should be delivered directly to Dept. 23 in the Administration Building 1221 Oak St. 4th Floor Oakland, CA 94612.
Trial Schedule	Mondays through Thursdays from 9:00 am - 1:30 pm.
CMC Schedule	Tuesdays beginning at 3:00 pm. Asbestos Cases Fridays 9:15 am
L&M Schedule	Friday mornings beginning at 9:30 a.m. in exceptional circumstances, motions may be set at other times.
Settlement Conference Schedule	N/A
ExParte Schedule	Fridays at 9:00 a.m.
L&M Reservations, Email	Dept23@alameda.courts.ca.gov
L&M Reservations, Other	Reservations by email only. No discovery motions will be scheduled prior to conference with the court. Email to

Information	schedule a conference.
ExParte, Email	Dept23@alameda.courts.ca.gov
Ex Parte, Other Information	Reservations by email only.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

, et.al. Plaintiffs	Case No. RG17870963
, ET. AL, Defendants	ORDER DESIGNATING CASE COMPLEX LITIGATION PER CRC 3.400 AND ORDER RE: COMPLEX CASE FEE ASSIGNED FOR ALL PURPOSES TO: JUDGE BRAD SELIGMAN DEPARTMENT 23

THE COURT HAS ORDERED THE FOLLOWING:

Upon review of the pleadings in the above captioned matter, pursuant to California Rules of Court (CRC) 3.400 and 3.403(b), the Court hereby determines that the above captioned asbestos litigation is "complex" and shall be governed pursuant to CRC 3.501 et. seq. and 3.750 providing for the coordination and management of complex cases. Counsel are advised that Government Code Section 70616 provides that, in addition to the first appearance fee required by sections 70611, a complex case fee of shall be paid to the clerk by each party to the litigation. Pursuant to Government Code section 70616(c) all parties are required to pay the complex case fee prescribed to the clerk of the court within ten (10) calendar days of the filing of the complex determination order.

To make sure your payment of this fee is receipted correctly, please submit the check to the attention of the Complex Litigation Clerk, RCD Room 109, Alameda County Superior Court, 1225 Fallon Street, Oakland, CA 94612.

The clerk is directed to serve a filed-endorsed copy of this order upon all parties. Counsel for Plaintiff shall serve a copy of this order with the Complaint in future service of the Complaint on additional or new parties.

SO ORDERED.

DATED:AUGUST 16, 2017

_____

Brad Seligman, Judge

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

, et. al. Plaintiffs	Case No. RG17870963 ORDER re: APPOINTMENT OF PROVISIONAL DESIGNATED DEFENSE COUNSEL AND ORDER
, et al. Defendants	ASSIGNED FOR ALL PURPOSES TO: JUDGE BRAD SELIGMAN DEPARTMENT 23

THE COURT HAS ORDERED THE FOLLOWING:

Pursuant to California Rules of Court (CRC) 3.400 and 3.403(b), the Court hereby determines that the above captioned asbestos litigation is a "complex case" and shall be governed pursuant to CRC 3.501 et. seq. and 3.750 providing for the coordination and management of complex cases. Pursuant to CRC Rule 3.750, the Court finds that the appointment of a "Designated Defense Counsel" to coordinate certain discovery by and between the multiple parties involved in this complex litigation is necessary to curtail and prevent unnecessary, repetitious and/or burdensome discovery and motion practice, and will assist parties to reasonably prepare for trial in the most efficient, rational and least oppressive manner. The Court further finds that the law firm of Berry & Berry has acted as Designated Defense Counsel in asbestos litigation in Alameda County, by prior General Orders of this Court, for more than a decade and in that time has developed working relationships with plaintiff and defense counsel, service providers, government entities, and others and has in place the procedures necessary to immediately initiate critical medical and employment records discovery required under the circumstances of this case. Berry & Berry has changed its name to Spanos Przetak.

WHEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED:

1. The law firm of Spanos Przetak Oakland, CA is PROVISIONALLY designated by the Court as Designated Defense Counsel to coordinate defense medical and employment records discovery in this action and is authorized to immediately initiate necessary medical and/or employment records discovery on behalf of all defendants.
2. Plaintiff shall meet and confer with Spanos Przetak to provide all necessary information and execute and provide all necessary authorizations, stipulations, subpoenas

for procurement of relevant medical and employment records and other medical evidence (specimens, photographs, radiographs, etc.).

3. Any party moving for rescission of this order, appointment of an alternative Designated Defense Counsel, or alternative defense coordination procedure and/or any other relief in connection with this provisional designation of Spanos Przetak as Designated Defense Counsel shall serve said motion on all parties and upon Spanos Przetak. Moving party shall meet and confer with other defendants concerning the alternative designation and/or relief requested and present the results of that meet and confer in any affidavit accompanying any motion for alternative designation.

4. Until further or other order is issued by the Court, said Designated Defense Counsel shall coordinate the procurement, exchange and scheduling of certain joint pre-trial discovery, as specified below:

(a) The Designated Defense Counsel herein is appointed solely to coordinate the procurement and scheduling of certain pretrial discovery activities described herein and to report progress of said coordinated discovery activities to the Court as required. Designated Defense Counsel shall not be deemed an attorney for any defendant solely as a result of such activities. Designated Defense Counsel's activities under this Order do not include, among other things, case evaluation or medical evaluation; calendaring or preparation of motions; and/or appearing at or taking of depositions.

(b) Nothing done by Designated Defense Counsel under this Order shall be deemed to be a waiver by participating defendants of the attorney-client privilege and/or disclosure of confidential attorney work product, including but not limited to receiving, generating, and/or disseminating notes of conversations with medical expert witnesses.

(c) This order does not preclude Designated Defense Counsel from providing, performing or contracting with any defendant or defense counsel for services beyond those authorized in this Order in connection with this action, so long as there is no conflict of interest or other impropriety that does or may result from said activities or representation and/or conflict(s) have been waived by all interested and affected parties. Any such additional services shall be charged only to defendants requesting and contracting for said additional services.

(d) Upon written notification, with service upon Plaintiff's counsel and the Court, that all defendants remaining in this action no longer elect to utilize the services of the Designated Defense Counsel and/or no longer elect to schedule or coordinate with the Designated Defense Counsel, the Court shall promptly make a determination whether to set aside this Order, or any parts thereof, and/or whether to replace this Order with any other order that will achieve and/or maintain cost-effective, efficient and reasonable case management of this action. Upon said notification Designated Defense Counsel shall have no further responsibility to perform the functions authorized under this Order until and unless further ordered by the Court to resume said duties. However Designated

Defense Counsel shall be paid for the reasonable costs and fees incurred by participating defendants up to the time this order is or has been withdrawn, or modified.

5. **SERVICE OF PLEADINGS AND OTHER CORRESPONDENCE.** All counsel shall serve the Designated Defense Counsel with copies of all pleadings and correspondence concerning discovery in this action. Designated Defense Counsel shall appear on the service list of pleadings filed pursuant to this Order as "Designated Defense Counsel."

Designated Defense Counsel's performance of the functions listed below shall not constitute a general appearance in this matter.

6. **DEFENSE STEERING COMMITTEE.** A Defense Steering Committee should be established composed of and open to any interested defense counsel to work with the Designated Defense Counsel in the coordination of defense discovery and for the purpose of resolving any dispute which may arise among defendants regarding discovery. Designated Defense Counsel shall meet with the Defense Steering Committee, if such a committee is established by defendants, on a regular basis in the execution of its duties and responsibilities under this Order. Absent the existence of a Defense Steering Committee, Designated Defense Counsel shall meet and confer with all defendants on a regular basis in the execution of its duties and responsibilities under this Order. Any dispute that cannot be resolved among and between defendants, or among and between defendants and Designated Defense Counsel, after reasonable meet and confer, shall be referred to the Court upon noticed motion.

7. **DOCUMENT DEPOSITORY AND COPYING SERVICE.** Designated Defense Counsel shall be responsible for the identification and selection of a document depository for all documents, materials and records procured and maintained by the Designated Defense Counsel pursuant to this order. Upon request of the Designated Defense Counsel a party shall allow Designated Defense Counsel to copy any records obtained by a party, without the assistance of Designated Defense Counsel. All parties shall have access to documents, materials and records maintained in the document depository for inspection or copying upon reasonable notice to Designated Defense Counsel and as otherwise provided in this order. Designated Defense Counsel may arrange for a copying service in carrying out the functions set forth in this order. Any defendant requesting copies of records from Designated Defense Counsel shall pay for the reasonable costs and fees for said copies as further detailed below.

All records produced pursuant to authorizations and stipulations obtained by Designated Defense Counsel are presumed to be authenticated and to satisfy the business records exception to the hearsay rule under Cal. Evid. Code sections 1270 - 1272 unless the party objecting establishes the contrary by a preponderance of the evidence. This order does not deem any record admitted or preclude any party from objecting to the admission of any records or part of said records on other grounds, including that the record contains inadmissible hearsay.

8. **OPT-OUT PROVISIONS.** Any defendant may opt not to participate in all or part of certain discovery functions under this Order by providing timely, written notice to Designated Defense Counsel as further provided herein.

Notwithstanding the foregoing, all defendants shall be required to share the Designated Defense Counsel's reasonable fees and costs for certain functions required of Designated Defense Counsel under this Order which the Court deems benefit all defendants equally. Said "non-optional" functions are delineated and identified below.

9. **DESIGNATED DEFENSE COUNSEL FUNCTIONS.** Designated Defense Counsel shall perform the following functions:

A. **STANDARD INTERROGATORIES**

(1) Plaintiff (s) Responses to Standard Interrogatories to Plaintiff(s) shall be served upon the office of the Designated Defense Counsel who shall maintain the original of said responses. Copies of the Plaintiff(s) responses to Standard Interrogatories shall be served by Plaintiff(s) on all defendants through their counsel.

(2) Requests for extension of time to respond to standard interrogatories shall be addressed to Designated Defense Counsel. No extension shall be for more than two (30) day extensions without court order and with notice to all parties. No extensions will be granted, absent court order, where settlement conferences, motions to advance, motions for preference, trial setting conferences, or trials have been set. Notice of all extensions shall be provided by plaintiff's counsel to all defendants. Defendants shall notify Designated Defense Counsel of any motion being made to the court respecting responses to Standard Interrogatories, prior to filing said motion(s), as part of the statutory "meet and confer" required prior to filing discovery motions.

B. **PLAINTIFF(S) DEPOSITIONS**

(1) Designated Defense Counsel shall meet and confer with the Defense Steering Committee and any other interested defense counsel respecting the scheduling, timing, priority and protocol for the taking of Plaintiff(s) deposition(s). Designated Defense Counsel will disseminate a proposed deposition schedule to all defense counsel (in its monthly report or otherwise) and specify the deadline for any defendant to opt out from attending or participating in any scheduled deposition(s). Upon expiration of the time specified for defendants to communicate with Designated Defense Counsel the election not to participate, Designated Defense Counsel shall schedule, notice and coordinate the deposition(s).

(2) Designated Defense Counsel will meet and confer with plaintiff counsel to schedule and coordinate the depositions of plaintiff(s). No defendant shall notice, schedule, cancel or withdraw notice of any plaintiff(s) deposition without prior coordination with and approval of the Designated Defense Counsel, absent court order.

C. **DEFENSE MEDICAL EXAMINATIONS AND JOINT DEFENSE REVIEWS.**

(1) The Defense Steering Committee and any other interested defense counsel shall meet and confer with Designated Defense Counsel to identify and discuss coordination of and protocols for joint defense medical examinations and/or joint medical reviews. The results of any agreements reached following this meet and confer shall be provided by Designated Defense Counsel to all defense counsel. Upon expiration of the time specified for defendants to opt out of participating in any said medical examination, test, screening or review, Designated Defense Counsel shall schedule, notice, and coordinate these procedures.

(2) All reports resulting from such medical examination, assessment, or reviews shall be obtained by Designated Defense Counsel and disseminated to those defendants who have agreed to participate in and pay for this function.

D. **RECORD PROCUREMENT**

(1) Designated Defense Counsel shall be responsible for initiating the procedures necessary to obtain plaintiff(s) medical and employment records and related medical evidence (e.g. radiographs, x-rays, photographs, pathology specimens) and advise all defendants, in its monthly report or otherwise, that initial procurement has commenced in this case. Upon expiration of the time specified for defendants to communicate to Designated Defense Counsel the election not to participate in this function, the Designated Defense Counsel shall initiate and obtain stipulations, authorizations, subpoenas and waivers as necessary to procure and shall procure the identified relevant medical and employment records and related medical evidence.

(2) No other defendant shall initiate procedures to obtain the records and evidence herein described, absent court order.

(3) Any request by a defendant for inspection or copying of records described herein made to Designated Defense Counsel shall constitute an election by said defendant to participate in this function of the Designated Defense Counsel and said defendant shall pay its per capita share of the costs of obtaining said records or evidence.

(4) Designated Defense Counsel shall be the sole repository of radiographs, pathology materials, and other related medical evidence for the defendants. Designated Defense Counsel. shall be responsible for arranging for the orderly inspection of and/or access to said medical evidence among and between the parties. Plaintiff(s) and those defendants participating in this function shall have reasonable and timely access to said materials. Any request for inspection or access to medical materials deposited with Designated Defense Counsel shall constitute an election by said defendant to participate in this function.

E. **DEPOSITION OF PLAINTIFF(S)' MEDICAL WITNESSES**

(1) The term "medical witnesses" shall include plaintiff(s)' treating doctors and other medical providers, medical consultants, and/or medical experts retained by parties.

(2) The Defense Steering Committee and any interested defendant shall meet and confer with Designated Defense Counsel to compile a list of jointly requested depositions of Plaintiff(s) medical witnesses and, if appropriate, agree upon the protocol among defendants for taking said depositions. Designated Defense Counsel shall disseminate the results of this meet and confer to all defense counsel (through a monthly report or otherwise). Individual defendants may also submit a request for the deposition of specified plaintiff's medical experts or providers directly to Designated Defense Counsel.

(3) Designated Defense Counsel shall coordinate the date, time, place and protocol if applicable, for the depositions of plaintiff-designated medical witnesses, after meeting and conferring with the Defense Steering Committee and/or individual defendants, and plaintiff's counsel. Designated Defense Counsel shall thereafter timely serve notice of the scheduled depositions of plaintiff-designated medical witnesses upon all parties.

(4) No defendant shall schedule or notice any deposition of a plaintiff's medical expert without coordination with and approval of the Designated Defense Counsel, absent court order.

(5) Defendants may elect not to participate in one or more depositions scheduled by Designated Defense Counsel by written notice to Designated Defense Counsel at least one full business day before the start of the deposition. Attendance at any portion of the deposition is an election to participate. The procurement or use by any defendant or defense counsel of any transcript or videotape of the deposition proceeding, or parts thereof, scheduled and taken pursuant to these provisions, from any other source (other than through court pleadings) shall be deemed an election to participate in said deposition, and said defendant shall share in the costs and fees associated with said deposition (as further delineated below), unless otherwise ordered by the Court.

F. **DESIGNATION OF JOINT DEFENSE MEDICAL EXPERTS**

(1) Designated Defense Counsel shall prepare and distribute to defense counsel a preliminary list of defense medical experts on common issues for review and consideration. On behalf of those defendants who so authorize, the Designated Defense Counsel shall timely serve the agreed upon "Joint Defense Medical Expert Disclosure" in compliance with C.C.P. section 2034 and said disclosure shall identify all authorizing defendants on whose behalf the disclosure is made. Service of this disclosure shall not constitute a general appearance by Designated Defense Counsel. This joint defense medical expert disclosure shall not constitute the "pared down" expert witness list, if any, ordered by the court and all defendants shall be responsible for service of their own "pared down" witness list. Any defendant not identified on the joint disclosure shall be responsible for timely serving its own expert disclosure pursuant to C.C.P. section 2034 and may not rely on or incorporate by reference the Joint Defense Medical Expert Disclosure in fulfilling its obligations under C.C.P. section 2034. No defendant shall be

precluded from serving its own expert disclosure , including any supplemental expert disclosure, permitted by statute or rule of court.

(2) Designated Defense Counsel shall serve a written notice to all parties of either the withdrawal in whole of the joint defense disclosure of medical experts or withdrawal of any expert witness from said joint disclosure. Any party may re-designate an expert within five (45) days after service of the withdrawal, and in no event not later than five (5) days before the date set for trial. Any defendant re-designating a medical expert shall make such expert available for deposition.

(3) Plaintiff(s) counsel shall serve Designated Defense Counsel with any notice or request for the deposition of any medical witness identified on the Joint Defense Medical Expert Disclosure.

(4) Designated Defense Counsel shall meet and confer with counsel for Plaintiff(s) and counsel for authorizing defendants to coordinate and schedule the dates, times, places, and protocol if applicable, for requested joint defense medical expert witness depositions.

(5) No defendant shall schedule or notice any deposition of a jointly designated defense medical expert without coordination with and approval of the Designated Defense Counsel, absent court order.

G. **REPORTS TO THE COURT AND ATTENDANCE AT COURT PROCEEDINGS.**

(1) Unless otherwise ordered by the Court, at least five (5) court days before any Case Management Conference scheduled in this action, Designated Defense Counsel shall serve and file a written report to the Court summarizing the status of medical and employment discovery prescribed herein and shall bring to the Court's attention any discovery issues or disputes within the purview of this case management order. Unless otherwise ordered. no defendant shall be required to file individual Case Management Conference Statements with the Court but any defendant may do so (individually or jointly with other defendants) if there is an issue that defendant wishes to bring to the Court's attention.

(2) Unless otherwise ordered by the Court, Designated Defense Counsel shall appear at each Case Management Conference to provide an oral report to the Court and/or answer questions by the Court concerning the discovery covered by this Order.

(3) As required and requested by the Court, Designated Defense Counsel shall provide additional reports and/or information or data to the Court concerning any issue arising under this Order and/or appear at court proceedings in connection with any matter concerning functions or duties provided in this Order.

H. **PERIODIC REPORTS TO DEFENDANTS**. Designated Defense Counsel shall provide periodic reports to all defense counsel, on a monthly basis or more often as the case may warrant, updating defense counsel as to the status of discovery functions covered in this order and shall include a summary of Designated Defense

Counsel's actions and activity, the status or progress of scheduled procedures and depositions and other developments of common interest and concern relating to the medical and employment discovery functions covered by this order.

10. **DESIGNATED DEFENSE COUNSEL FEES AND COSTS.**

A. NON OPTIONAL FUNCTIONS. Unless otherwise ordered by the Court, Designated Defense Counsel costs and reasonable fees shall be shared equally among all defendants appearing in this action and allocated on a per capita basis (one defendant equals one share of the costs and fees) for the following functions provided to all defendants in compliance with this Order:

(1) Services rendered in connection with the Standard Interrogatory function described in paragraph 6A, above.

(2) Providing reports, memoranda or updates to the Court, or responding to Court inquiries as described in paragraph 6G above

(3) Attending court-ordered case management conferences or other court proceedings as described in paragraph 6G, above.

(4) Providing notice to all defendants required by this Order or by statute, including but not limited to, serving parties notice of scheduled depositions and deposition schedules, joint defense medical examinations, tests, or other procedures as described in paragraph 6 above.

(5) Preparation for and participation in conferences or meetings of the Defense Steering Committee in connection with all functions covered by this Order.

(6) Reasonable costs and expenses to prepare and disseminate to all defendants any reports providing the status of discovery and discovery issues as required under this Order and described in paragraph 6 above.

(7) Miscellaneous expenses reasonably incurred in the administration of the scheduling and coordinating activities, in connection with functions covered in paragraph 6 above.

B. **OPTIONAL FUNCTIONS.** The following are "optional" functions which, by the terms of this Order, any defendant may elect not to participate in by providing timely written notice of said election to Designated Defense Counsel. Designated Defense Counsel's reasonable fees and costs incurred in executing the following specified optional functions shall be shared by all "participating defendants" (i.e. defendants who have not timely communicated to Designated Defense Counsel an election not to participate in a given optional function or function activity). Designating Defense Counsel shall allocate per capita its reasonable fees and costs incurred in connection with optional functions only among the "participating defendants" in the following optional functions:

(1) Noticing, scheduling and coordination of Plaintiff(s)' depositions, including cost of the court reporter and original transcript, videoconferencing and/or videotaping of said deposition(s), and plaintiff(s)' reasonable travel expenses when

plaintiff(s) deposition takes place at a more distant location as provided in C.C.P. section 2025.250, in connection with the function set forth in paragraph 6B, above.

(2) Noticing, scheduling and coordination of joint defense medical examinations and reviews, dissemination of resulting reports, and joint medical expert fees or costs incurred in connection with functions set forth in paragraph 6C, above.

(3) Coordination, compilation, creation and service of the Joint Defense Medical Expert Disclosure including experts' fees and costs associated with this function, as set forth in paragraph 6F, above.

(4) Procurement, processing, inventorying, storage, retrieval, maintenance and return of medical and employment records or medical evidence (radiographs, pathology specimens, etc.) in connection with functions set forth in paragraph 6D above, including costs of a copy service, costs associated with electronic storage or preservation, or payments and costs to obtain the original and one copy of records.

(5) Noticing and scheduling of depositions of plaintiff(s) medical expert and/or defendants' joint medical experts, including the cost of the court reporter and original transcript, videotaping or teleconferencing costs, expert witness fees and costs, and other related fees and costs in connection with the functions set forth in paragraph 6E above.

(6) Miscellaneous expenses reasonably incurred in the administration of optional scheduling and coordinating activities.

(7) Any defendant who has timely elected not to participate in any optional function or activity ("opted out" function or activity) is deemed to have waived statutory notice requirements applicable to any such procedure and shall not be billed any share of the costs and fees incurred in connection with said "opted out" function or activity. A defendant may also elect not to receive notice of any future optional procedures by providing notification to Designated Defense Counsel and specifying the case name and docket number.

(8) When a defendant appears at a deposition, requests or orders the results of any medical examination or review, joins in or incorporates by reference experts disclosed in the Joint Defense Medical Expert Disclosure, requests or obtains deposition transcripts of defense depositions coordinated and scheduled by Designating Defense Counsel, or otherwise participates in a specified optional function or activity, said Defendant shall be considered a "participating defendant" for purposes of cost sharing and billing for services as to that function, notwithstanding said Defendant's prior election to opt out of the specified function or activity.

(9) Any defendant who requests a procedure which relies upon earlier-performed procedure(s) in which said defendant did not participate or requests work product from a procedure which said Defendant had previously elected not to participate shall also be deemed a "participating defendant" for purposes of per capita share of the fees and/or costs associated with that function or activity, including initial costs

associated with acquiring the records or materials plus any actual costs and fees of processing what is deemed to be a later request to participate. The amounts billed to the late requesting defendant, minus any billing for processing the late request, shall be credited per capita to each defendant which previously paid or was billed for said functions.

C. BILLING.

(1) A defendant who is no longer an active party to a case shall provide written advisement to Designated Defense Counsel and within one (1) working day of receipt of said written communication, Designated Defense Counsel shall cease billing that Defendant for any function(s) pursuant to this Order.

(2) Designated Defense Counsel shall submit monthly statements to Defendants of its costs and reasonable fees. Said statements shall include the case name, category/job title of persons performing the work, time charged, total charged, function(s) performed, allocation among defendants, and credits to defendants. Designated Defense Counsel billings may provide for reasonable payment terms, consistent with the industry norm, including payment due dates, late fees and/or interest

(3) Defendants and defense counsel are obligated to provide Designated Defense Counsel with current contact information during the pendency of this action and failure to do so may subject any credits due to said defendant or defense counsel to forfeiture, upon application to the Court by Designated Defense Counsel.

NOTICES

Counsel for Plaintiff must serve a copy of this order on all counsel of record and self-represented parties forthwith. The clerk is directed to served filed endorsed copy of this order upon counsel for Plaintiff.

Dated: AUGUST 16, 2017

Brad Seligman
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

, ET.AL. Plaintiffs	Case No. RG17870963
, et al, Defendants	PRELIMINARY FACT SHEET NEW FILING – ASBESTOS LITIGATION ASSIGNED FOR ALL PURPOSES TO: JUDGE BRAD SELIGMAN DEPARTMENT 23

TO: Counsel for Plaintiff(s):

You have filed an action which the Court has determined is complex litigation pursuant to Standard 3.10 of the California Rules of Court. Accordingly, the following information in connection with the above captioned matter is critical for the Court to determine if early and prompt Court intervention is needed, to fashion an appropriate case management schedule, and otherwise effectively manage this case from the outset of litigation.

Please fill out this Preliminary Fact Sheet. The information supplied herein by counsel is not a representation, statement, admission, or allegation of any plaintiff, it does not constitute a response to discovery, and it not admissible in any proceeding. The information herein provided is for administrative purposes and to assist parties' initial evaluation and investigation. Plaintiff(s) shall file and serve this fact sheet upon all defendants with a courtesy copy to Dept. 30 within 10 days. This Preliminary Fact Sheet shall be served with the complaint on any subsequently served defendants.

SO ORDERED.

DATED: AUGUST 16, 2017

Brad Seligman, Judge

1. Do you anticipate filing a motion for preferential trial date within the next four months?

_____ Yes _____ No

2. Do you anticipate serving notice of Plaintiff's deposition for preservation purposes within the next 60 days?

_____ Yes _____ No

3. Specify the nature or type of asbestos-related disease alleged by each exposed person.

_____ Asbestosis _____ Mesothelioma _____ Pleural Thickening/Plaques

_____ Lung Cancer other than Mesothelioma _____ Other: _____

4. Provide the full name, gender, date of birth, current address and, if applicable, date of death, of each person alleged to have been exposed to asbestos:

FULL NAME GENDER ADDRESS D.O.B. D.O.D.

_____

_____

_____

_____

5. Provide EMPLOYMENT information, to the extent known at this time, for each person alleged to have been exposed to asbestos (attach additional pages if necessary):

FULL NAME DATES EMPLOYER JOB SITE ADDRESS JOB TITLE

_____

_____

_____

_____

_____

_____

7. Please provide any other information that you wish to bring to the Court's attention for case management purposes.

_____

_____

_____

Dated: _____

_____
Counsel for Plaintiff(s) (Print name and sign)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

, ET AL Plaintiffs	Case No. RG17870963
, et al. Defendants	INITIAL CASE MANAGEMENT ORDER ASBESTOS ASSIGNED FOR ALL PURPOSES TO: JUDGE BRAD SELIGMAN, DEPARTMENT 23 [1]

Pursuant to California Rules of Court (CRC) 3.400 and 3.403(b), the Court hereby determines that the above captioned asbestos litigation is a complex case and pursuant to CRC 3.750 will hold an Initial Case Management Conference to consider necessary orders for the appropriate coordination and management of this action. Parties shall familiarize themselves with Alameda County Superior Court Local Rules of Court (LRC), Rule 3.250 et seq. governing asbestos cases including service requirements and the conduct and timing of case management conferences and certain discovery.

The following order shall apply to all parties in this action:

1. CASE MANAGEMENT CONFERENCES

At Case Management Conferences the Court will address discovery issues, schedules, and other subjects pursuant to CRC 3.750. Counsel thoroughly familiar with the case shall attend the Case Management Conferences. See LRC, Rule 3.290.

The court prefers (but does not require) parties file Case Management Conference Statement(s) on pleading paper, in lieu of the Judicial Council Form CM-110, summarizing the status of pleadings, discovery, trial readiness and other subjects for consideration, and propose further dates. Parties may file a JOINT Case Management Statement in lieu of separate Statements from each party pursuant to CRC 3.725(b). If a Designated Defense Counsel has been appointed by the Court, individual Defendants may, but are not required to file a Case Management Conference Statement; rather, the

[1] Cases may be assigned for trial or for all purposes to other departments during the course of this litigation.

Designated Defense Counsel shall be responsible for filing a Case Management Conference Statement respecting the status of discovery and other related case management issues on behalf of all defendants. The Case Management Statement(s) shall be filed and served no later than seven (7) court days prior to the scheduled conference.

Parties are advised to check the court's register of action before appearing at any case management conference, including the Initial Case Management, at least one day before any scheduled appearance to determine if the court has issued a tentative case management order. If published, this tentative case management order will become the order of the Court unless counsel or self represented party notifies the Court and opposing counsel/self-represented party by email not less than one court day prior to the CMC that s/he intends to appear in person at the CMC to discuss some aspect of the order, and specifies the nature of the party's concern. (Please note that the Tentative Rulings posted on the website are for tentative rulings on law and motion matters and will not display tentative Case Management Orders. The tentative Case Management Orders are found in the Register of Action). Department 30 may be reached at Dept.30@alameda.courts.ca.gov.

2. NOTICE OF FEE CHANGES - JURY TRIAL FEE

Effective July 2, 2012, the advance jury fee is fixed at $150.00, and is no longer refundable. With certain exceptions, the jury trial fee is due on or before the date scheduled for the initial case management conference. See, C.C.P. 631(b).

3. COMPLIANCE WITH LOCAL RULE OF COURT 3.285.

Local Rule of Court (LRC) 3.285 governing use and service of "standard interrogatories" in asbestos cases shall apply in this case. Pursuant to LRC 3.285(a) "standard interrogatories" to plaintiff(s) are DEEMED SERVED on Plaintiff(s) as of the date of the filing of the Complaint. The reference in Local Rule of Court 3.285(a) and this order to "standard interrogatories to plaintiff" are "Defendants' Standard Interrogatories to Plaintiff" published on the Spanos Przetak website (http://www.berryandberry.com/main/default.aspx?PageID=4) and also published on the Alameda County Superior Court - Dept. 30 website in the "documents" folder.

Plaintiff(s) shall serve verified responses to said interrogatories upon defendant(s)

within 60 days of the filing of the Complaint and, after the 60-day deadline has elapsed, Plaintiff(s) shall serve its responses with service of the Complaint. However, if Plaintiff(s) intend to file a motion for preferential trial setting within four (4) months of filing of the Complaint, the time to file responses to Standard Interrogatories is modified, as follows: Plaintiff(s) shall serve plaintiff(s) verified responses to Standard Interrogatories upon defendant(s) within 30 days of the filing of the Complaint and, after the 30-day deadline has elapsed, Plaintiff(s) shall serve its responses with service of the Complaint. If Designated Defense Counsel has been appointed, Plaintiff(s) shall serve one original upon Designated Defense Counsel.

Pursuant to LRC 3.285(b) "standard interrogatories" to defendants and cross-defendants will be DEEMED SERVED with the Complaint or Cross-Complaint and responses. The reference in Local Rule of Court 3.285(b) and this Order to "standard interrogatories to defendants and cross-defendants" are the "Plaintiff's First Set of Interrogatories to Defendant" published on the Spanos Przetak website (http://www.berryand berry.com/main/default.aspx?PageID=4) and also published on the Alameda County Superior Court - Dept. 30 website in the "documents" folder.

4. MOTION FOR TRIAL PREFERENCE

As soon as a party is aware of facts sufficient to petition the Court for a trial preference, the party shall immediately reserve a hearing date from Dept. 30. Because the Court recognizes the need for expedited discovery of plaintiff's relevant medical and employment records are critical in these cases when a trial preference is granted, unless good cause is shown, parties shall comply with the following orders in cases where a motion for trial preference is contemplated within four (4) months of the filing of the complaint and/or when the motion is filed:

(a) Contemporaneous with the filing of any motion for preference, Plaintiff(s) shall serve verified responses to Standard Interrogatories to Plaintiff(s) per paragraph 3, above (if said responses have not previously been served upon defendants).

(b) If a party contemplates filing a motion for preferential trial setting within four (4) months of the filing of the Complaint, Plaintiff(s) shall execute and deliver the following to Designated Defense Counsel (or comparable coordinating defense counsel or document depository) within thirty (30) days of the filing of the Complaint, or

contemporaneous with the filing of said motion if the 30 days has not yet elapsed: (1) authorizations and stipulations for all relevant medical and employment records and (2) a copy of all medical and employment records in plaintiff(s)' possession. If a Designated Defense Counsel or comparable coordinating defense counsel and/or document depository is not yet in place at the time the motion is made, the Court will expect defense counsel to meet and confer to work out an orderly, expedited and efficient process for obtaining, receiving, copying, sharing and providing access to these materials among and between all the parties, pending hearing and convey to plaintiff's counsel where documents and authorizations/stipulations are to be delivered. Defense counsel shall submit a proposed Order for the court's signature that should, at the minimum, address the need for a single depository/entity to act on behalf of all defendants to obtain, receive, maintain and copy plaintiff's records and materials as ordered herein and provide access to defendants. Further, the order should identify at a minimum a single entity/defense counsel to obtain records or materials on behalf of all defendants pursuant to the executed stipulations/authorizations ordered herein and coordinate with Plaintiff's counsel with regard to said records and materials. The Court will order that defendants share equally for the costs associated with obtaining, receiving, maintaining, and providing access to records and materials ordered herein (unless otherwise stipulated by defendants counsel). Costs of copying will be borne by individual parties requesting copies. If this matter cannot be resolved between parties, any party shall promptly contact Dept. 30 to have a case management conference advanced for this purpose.

Pending hearing on the motion for preference and until further court order is signed, Plaintiff(s) shall not be required to respond to individual document requests for the same materials or records ordered herein, make the documents or materials ordered herein available for inspection or copying, or to deliver the executed authorizations/stipulations to any individual requesting defendant but shall only be required to deposit the ordered documents and materials, authorizations and stipulations with the identified single designated defense counsel/ coordinating defense counsel and/or document depository. This order is not meant to preclude document or other discovery, not covered by this order, to be conducted by any party pending hearing on the motion for preference.

(c) A motion for preference shall be accompanied by an affidavit in compliance with C.C.P. § 36 and § 36.5 and shall delineate with specificity the status of pleadings and discovery, including whether relevant, non-privileged medical and employment reports and materials have been made available to the defense and whether plaintiff(s) deposition and/or medical examinations (if applicable) have been taken or are scheduled. Failure to provide this information in compliance with this order may result in delay or continuance of the hearing on the motion for trial preference.

5. E-SERVICE.

Unless undue hardship is claimed or other good cause, the Court will execute an order mandating the use of e-service in this complex case. Parties and Designated Defense Counsel shall meet and confer and shall submit a proposed stipulated order directly to Dept. 30 for court approval, including any time before the scheduled date of the Initial Case Management Conference.

6. DISCOVERY

Discovery Conference: Motions related to discovery (i.e. motions to compel, protective orders etc.) may not be filed without leave of the court after an informal discovery conference. **The discovery conference is not a pro forma step before a motion**. Requests for a discovery conference may be made, after meaningful meet and confer **(which requires in person or telephonic discussion or good faith attempt to do so)**, by sending an email to the department clerk, copied to all counsel that briefly describes the issue to be presented**, and the extent of parties' meet and confer. The court will provide proposed dates. Parties are to meet and confer as to availability for the proposed dates. If one or more parties are not available on the proposed date(s), additional dates may be requested. Upon request, the court will consider telephonic appearances as well as calls from depositions in progress.**

Plaintiff's Deposition: Plaintiff's deposition may be noticed by either designated defense counsel or plaintiff pursuant to Code Civ. Pro. §2025.210. Prior to noticing plaintiff deposition, counsel for plaintiff and designated defense counsel shall meet and confer as to date and location of the deposition. In non-preference cases, the plaintiff's deposition normally should not be set prior to plaintiff's verified response to initial standard interrogatories. There is no set time limit for

plaintiff's deposition but the court expects defense counsel to meet and confer prior to commencing the deposition to facilitate efficient examination, and, after plaintiff's direct examination (if any), or ten (10) hours of testimony if no direct examination, the parties shall meet and confer as to how much additional time is necessary to complete the deposition. If plaintiff has sought or has notified defense counsel that he or she will seek preferential trial setting, there is a presumptive twenty (20) hours for defense examination, subject to adjustment up or down based on the number of defendants, job sites, and alleged exposures.

7. EMAILS TO COURT

Emails to the court are not part of the court record in this case and may be deleted without notice. Email is not a substitute for required filings. Any emails should be copied to all counsel. The Department 30 email may only be used for the following purposes: to seek a reservation to schedule a proceeding on the court's calendar, to give notice that a hearing has been dropped or a settlement reached, to request a discovery conference, emergency scheduling issues (i.e. running late to a hearing), to give notice that a litigant intends to appear to contest a tentative ruling, to reply to an inquiry from the clerk or research attorney of Department 30, to communicate with the courtroom clerk regarding department 30 procedures, or other matters that the court has expressly authorized in this case.

8. NOTICE

Upon appearing in this matter, Defendants shall immediately notify Designated Defense Counsel of said appearance.

Parties are advised that CASE MANAGEMENT ORDERS, including trial setting orders, and FINAL RULINGS ON LAW AND MOTION that are issued by Dept. 30 will be published in the Court's website in the Register of Action for this case. The clerk of the court WILL NOT serve each party a copy of future orders. Instead, unless otherwise ordered, counsel shall obtain copies of all future orders from the Register of Action in this case.

Plaintiff(s)'counsel shall serve a copy of this INITIAL CASE MANAGEMENT ORDER upon all parties SERVED with the Complaint and file a proof of service with the

Court. The clerk is directed to serve a copy of this CASE MANAGEMENT ORDER upon counsel for Plaintiff(s).

DATED: September 8, 2017

_____

BRAD SELIGMAN, JUDGE

Contra Costa County Superior Court

Hon. Barry P. Goode

A Handy Guide to Department 17

Please be sure to review the material regarding the Complex Litigation Department on-line at Complex Litigation web page.

In addition, here are some reminders regarding matters that arise frequently

1. Proposed orders *in e-filed cases*

   a. Follow Rule 3.1312 of the California Rules of Court.
   b. The proposed order should be in Word format.
   c. All blank spaces(*e.g.* for the date of hearing) must be filled in – except for the date on which it is signed.
   d. The order should *not* include "[Proposed]" in the caption or the footer.
   e. If the order has exhibits or attachments, they should be included in the Word and pdf document. The Court should not have to assemble an order from several pieces.
   f. After the hearing, the order should be sent to cxlit@contracosta.courts.ca.gov with a copy of the e-mail sent to all other parties.
   g. If the order has been approved as to form, a pdf should *also* be sent so the judge can see the signature.
   h. If there is a dispute about the form of the order, note that in the e-mail.
   i. Neither e-filing a proposed order on File and Serve Express nor sending a paper courtesy copy to chambers is sufficient. The order must be sent to the e-mail address shown above.

2. Proposed orders *in cases that are not e-filed*

   a. Follow Rule 3.1312 of the California Rules of Court.
   b. If you want a copy of the order, send the original plus a copy with a self-addressed stamped envelope. The Court does not make copies or provide either envelopes or postage.

3. Case management conference statements

   a. Parties are not to use the Judicial Council Form CM-110 for case management conference statements. Instead, they are to meet and confer and file a joint case management conference statement, five calendar days before the case management conference. It should address those of the items listed in Rule 3.727 of the Rules of Court that are most salient at the time and that will help the parties and the Court manage the case to an expeditious conclusion.
   b. Courtesy copies need not be filed. The Court reads the e-filed version.
   c. In construction defect cases: cross-defendants need not file a case management conference statement. However, if any cross-defendant, having seen the case management statement filed by the homeowners and developer, wishes to add or raise anything for the Court's consideration, it may file a case management conference statement three calendar days before the case management conference.

4. Good faith settlements

a. CCP 877.6(a) provides that "a determination...that the settlement was made in good faith shall bar any...further claims...." The order should use that language.
b. Do not submit a form of order that *e.g.* "dismisses all complaints and cross-complaints" unless the good faith motion complied with Rule of Court 3.1382.

5. Continuances

a. Counsel should prepare a stipulation and order.
b. The document (in Word and pdf) should be sent to the complex litigation e-mail box. See paragraph #1 above.
c. The subject line of the e-mail should include the words "Continuance Requested".
d. Counsel should indicate at least three dates on which they are available for the continued hearing. See the Court's website for the days on which different kinds of hearings are set.
e. Plan ahead. Do not submit a request for a continuance at the last minute.
f. Do not request a continuance of a case management conference in a case management conference statement. It is unlikely to be seen in time to be granted.

6. Settlements/Dismissals

a. If a stipulation or order settles a case, counsel still must file a dismissal of the action to take all hearings off calendar. See Judicial Council Form Civ-110.
b. Unless box 1.b.(5) is checked on Form Civ-110, the case will remain on the Court's active docket.
c. If a case is settled shortly before a significant hearing, issue conference or trial, please notify the clerk promptly so the Court does not spend time unnecessarily on your case.

7. Briefs

a. The Court has access to Lexis Advance; not Westlaw. Do not use Westlaw citations unless you also provide a parallel citation.
b. It is not necessary to attach out-of-state authority. A citation is sufficient.
c. In cases with a voluminous record, the Court may request hyperlinked briefs.

8. Demurrers and Motions to Strike

a. In cases that have recently been ordered to e-filing, if a party wishes to challenge a pleading that was paper-filed before the case was ordered to e-filing, it is very helpful to the Court if the challenged pleading is attached to the demurrer or motion to strike, so that the Court can review the challenged pleading without referring to the paper file.
b. Similarly, if the pleading and the demurrer were paper-filed before an e-filing order was entered, it is very helpful if the opposition attaches the pleading and the opening papers for the Court's review.

9. Hearings

a. Each time you appear, please fill out an attorney appearance slip. If you do not, there is a chance the clerk will not include your appearance correctly in the minutes.
b. The Court permits parties to appear by CourtCall as specified in Rule 3.670. However, do not submit your request at the last minute. (See Rule 3.670(h).) The Court may not see it on the same day you submit it.
c. If you wish to have a matter reported, there is a risk that the court reporter will be unable to transcribe accurately what is said over the telephone. Consider that before requesting a CourtCall appearance.
d. The Court considers carefully requests to appear by CourtCall for law and motion matters. Particularly in cases involving difficult issues or complicated arguments, the Court finds that a personal appearance materially assists in the determination of the matter. However, if a law and motion matter is going to require only brief discussion, an appearance by CourtCall may be permitted.
e. If appearing by CourtCall:
    (1) Check-in at least 15 minutes before the time set for the hearing.
    (2) State your name each time you speak.
    (3) Speak slowly and clearly; there is a short lag between the time you speak and the time you are heard in the courtroom.
f. The Court has the ability to have attorneys appear by video via CourtCall.

10. Ex Parte Applications

a. Ex parte application are heard every morning at 10:00 a.m.
b. The Court insists on full compliance with Rule of Court 3.1200 et seq.

11. Discovery Issues

a. Counsel shall not use the Court's Discovery Facilitator program for complex cases.
b. The Court hosts informal conferences where there are intractable discovery disputes. These conferences are without prejudice to any party's right to bring a formal motion.
c. Before seeking an informal conference, counsel must meet and confer either over the phone or (better yet) in person to attempt to resolve the dispute or at least narrow their differences. (see California Attorney Guidelines of Civility and Professionalism, § 10, example b. ["In complying with any meet and confer requirement in the California Code of Civil Procedure, an attorney should speak personally with opposing counsel and engage in a good faith effort to resolve or informally limit an issue."].)
d. If a dispute remains, jointly fax the clerk and request a discovery conference. In your fax, provide several dates and times that you are available for a conference or conference call.
e. Two days before the conference, you must submit a brief letter, not exceeding three pages, outlining the dispute.

12. Class Action Settlements and Dismissals

a. When seeking preliminary or final approval, please refer to the Los Angeles Superior Court

checklists: http://www.lacourt.org/division/civil/pdf/PreliminaryApprovalofClassActionSettlement.pdf; (preliminary); http://www.lacourt.org/division/civil/pdf/FinalApprovalofClassActionSettlement.pdf (final)

b. Notices to class members must be written in plain English. See the materials available on the Federal Judicial Center's website; e.g. https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf and https://www.fjc.gov/sites/default/files/2016/ClaAct13.pdf
c. With regard to any cy pres provision in a class action settlement, please be familiar with CCP 384, as amended by Stats 2017 ch. 17 §4 (AB 103).
d. The Court gives very careful scrutiny to any request to dismiss a class claim in a settlement that resolves only the named class representative's claims. See Rule of Court 3.770.

13. PAGA Settlements (Labor Code section 2698 *et seq*)

a. Counsel will be expected to have reviewed and be familiar with Labor Code section 2698 *et seq*.
b. The Court will not grant approval to any PAGA settlement that does not comply with Labor Code section 2699(l)(2).

14. "Educating" the Court

a. Some complex cases involve unusual physical settings, technological issues, or unfamiliar matters. If you think it would be helpful to take an hour or two at a specially set hearing to "educate" the Court about the matters involved in your case, discuss that with the other counsel and consider raising it at a case management conference.
b. In CEQA cases, the Court is likely to suggest this at the initial case management conference. Please be prepared to respond to that suggestion.

15. Questions

a. You may either
    (1) call the Clerk of the Department at 925/608-1117 or
    (2) fax your question to 925/608-2686.
b. Please note the clerk cannot always answer the phone; especially when the court is on the record.

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA 94553

MSC

NOTICE OF ASSIGNMENT TO DEPARTMENT SIX FOR CASE MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

1. This matter has been assigned to Department 6, Judge D. Flinn presiding, for all purposes, Department 6 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.

2. All counsel are required to appear in Dept. 6 on
at 8:30am.
   (a) If the case has been designated as complex, and no counter-designation has been filed, the Court will hold its first case management conference at that time.
   (b) If the case has been assigned to Department 6 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.

3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.

4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possiblity of early mediation, the identities of possible other parties, and their respective plans for discovery.

5. Until the time of the conference the following INTERIM ORDERS shall be in effect:

A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficent time to have entered an appearance within the time allowed by law and to attend the first conference.
B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.
C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.

D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule.

E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

BY ORDER OF THE COURT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

sample, Plaintiffs	)	No. MSCXX-XXXXX
vs.	)	ORDER RE: TRIAL AND ISSUE CONFERENCE
sample, et. al. Defendants.	)	

TO ALL PARTIES AND THEIR ATTORNEYS:

Trial of this matter will be held on March 26, 2018 at 9:00 a.m. in the Complex Litigation Department. An Issue Conference will be held on March 1, 2018 at 1:30 p.m. The following Orders are made regarding matters required to be filed prior to, and conduct of, the issue conference.

1. **COMPLIANCE WITH LOCAL RULE**. Each party taking part in the trial shall file an issue conference statement in accordance with local rule 3.11, with only the exceptions set forth below.

2. **TIME FOR FILING**. Issue conference statements shall be filed by all parties no later

than 10 calendar days before the scheduled conference. They may exceed ten pages in length.

3. **VOIR DIRE.** Each side shall include in its issue conference statement proposed voir dire examination questions and a proposed statement of the case for prospective jurors. The Court will, at the issue conference, seek to resolve issues relating to jury selection.

4. **JURY INSTRUCTIONS.** Only plaintiff need include proposed jury instructions. As to standard, unmodified CACI instructions only the index described in Calif. Rule of Court 2.1055(b)(3), as opposed to copies of the instructions, should be provided at this time. Proposed "special" instructions should be on a separate sheet per instruction. At the issue conference the Court will provide dates for the exchange of objections to such instructions as well as for proposed additional instructions from other parties and will set a deadline for the parties to meet and confer regarding differences on the subject.

5. **MOTIONS IN LIMINE.** No later than 30 calendar days before the issue conference, any party wishing to file a motion in limine must meet and confer with the other parties to see if they can reach agreement without the necessity of a motion. If the meet and confer does not resolve the matter, then any party wishing to file any motions in limine is to file and serve those motions in limine no later than 15 calendar days before the issue conference. If more than two motions in limine are filed by a party, a binder containing the motions (separated by tabs) and an index of the motions shall be provided. Other parties are to review those motions and 'joinder' in the motions will be unnecessary; any party may, at its later oral request, be deemed, for the record, to have joined in any motion. Opposition to any motions shall be filed and served 5 court days before the conference. Both the motions and opposition should consist only of a brief synopsis of

the parties' positions. Opposed motions shall, if requested at the conference, be set by the Court for separate hearing with a schedule for full briefing established. Attached hereto as Exhibit A is a list of sua sponte rulings by the Court for which it is not necessary to file a motion in limine; counsel are requested not to file duplicate motions but may file opposition to the sua sponte rulings. Counsel are expected to be familiar with *Kelly v. New West Federal Savings* (1996) 49 Cal. App. 4th 659 and *Amtower v. Photon Dynamics, Inc.*, (2008)158 Cal. App. 4th 1582, 1593-95.

6. **WITNESS LISTS.**

Witness lists should be created on an Excel spreadsheet and exchanged in the form and on the schedule described in this Section. Witness lists should not be exaggerated. Only witnesses that a party expects to actually call should be listed, with a brief synopsis of the proposed testimony.

Witnesses must be listed last name first. Titles (e.g. Dr., Officer) should be placed after the comma following the last name. This is so the lists can be sorted correctly.

The amount of time estimated for each witness' testimony should be stated in minutes (*not* days or hours). This is so the estimates can be added on the spreadsheet.

Ten days before the issue conference, each side shall send a copy of its proposed witness list (in Excel spreadsheet format) to all other counsel.

Seven days before the issue conference, each side shall return the spreadsheet to the party that originated it, having filled in the amount of time required for cross-examination of the witnesses listed on that spreadsheet.

Three days before the issue conference, the side that originated the spreadsheet shall fill in the amount of time required for redirect examination of its witnesses and e-mail a copy of that completed spreadsheet (with a copy to all other

parties) to cxlit@contracosta.courts.ca.gov.

Failure to list a witness that a party in good faith later determines to call will not bar calling that witness. At the conference the Court will make separate arrangements for preparation of a joint list, for jury selection purposes, of possible witnesses and persons or entities who might otherwise be mentioned at trial.

7. **EXHIBIT LISTS.**

Prior to the issue conference, the parties are to meet and confer to determine how the exhibits will be numbered. Parties may either retain the numbers assigned in deposition (if non-duplicative) or may assign new blocks of numbers to each side. All sides should use numbers; none should use letters.

At trial the court expects that when an exhibit is used it will already have been marked and identified on the exhibit list (see below) and that all counsel will have a pre-marked copy. Exhibit stickers may be obtained from the courtroom clerk.

Exhibit lists should be in a form identifying only admissible evidence in a singular fashion. Entries such as "files of ABC Company", "all manufacturing formulas" or "photos of injuries" are not acceptable.

The parties shall meet and confer and seek to agree, to the maximum extent possible, with respect to those documents as to which there will be no objection at trial.

Unless otherwise ordered at the issue conference, the parties shall jointly provide the clerk on the first morning of trial, an exhibit list (including all parties' exhibits) in the following format:

#	Description	Date of Document	Objection to Admission? (Y/N)	Date Identified	Date Offered	Date Admitted

(The end of the exhibit list should include some pages with the table not filled out -- to accommodate any documents used at trial that were not previously identified.) All counsel shall cooperate and assist in preparation of that list, exchanging data in electronic form where appropriate. A copy of the exhibit list shall also be e-mailed to the court (in Excel format with a copy to all counsel) at cxlit@contracosta.courts.ca.gov on or before the morning of trial.

Counsel will be required to provide two sets of exhibit binders to the Court. One is for use by the witnesses; one is for use by the Court. The spine of each binder shall identify the range of exhibit numbers contained in that binder. Binders should not be filled to capacity; there should be room for additional exhibits if any need to be added later.

8. **VERDICT FORM**. Each side shall attach to its issue conference statement a proposed verdict form.

9. **COURTESY COPIES.** In electronic filing cases, all parties shall deliver courtesy copies of their issue conference statements, as well as related issue conference papers such as motions in limine or oppositions thereto, to the chambers of Department 17 no later than one court day after the day of electronic filing.

10. **SETTLEMENT.** The parties need not file settlement conference statements as provided in Local Rule 3.11(d). It will not be necessary for clients or other persons with settlement authority to attend the issue conference. The conference will be devoted solely to trial preparation.

11. **EXPERT WITNESS DEPOSITIONS.** Unless leave of Court is granted, expert witness depositions must be completed thirty days before the date of the issue conference.

12. **DEPOSITION TRANSCRIPTS.** Any party who intends to read from a deposition transcript during trial shall lodge the original transcript with the Court on the first day of trial. The issue conference statement shall identify, by page and line, all excerpts that a party proposes to be read in its case in chief. At the issue conference, the Court will set a schedule for the filing of objections and counter-designations.

Counsel having questions about the issue conference statements or the issue conference should contact the Courtroom Clerk in Department 17, at (925) 608-1117.

Exhibit A

Sua Sponte rulings of the Court for Trial

1. No witness may be called, except with Court permission in exceptional circumstances, unless notice has been given to all parties of the date when the witness will testify. Such notice shall be given no later than at the end of the court day proceeding the court day before the witness is to testify. (e.g. notice for a Tuesday witness to be given at or before adjournment of the Friday session)

2. All witnesses will be excluded from the courtroom, unless otherwise ordered, excepting those for whom an exception exists at law. (e.g. parties and corporate representatives)

3. Evidence of, or reference to, settlement negotiations, mediation, and materials related thereto which are privileged under the evidence code or by

agreement of the parties shall not be allowed.

4. Evidence of, or reference to, insurance, or the fact that an attorney is employed by, or has been compensated by, an insurance company, shall not be allowed.

5. Evidence of, or reference to, other claims or actions against any party to the litigation shall not be allowed without permission from the Court.

6. Evidence of, or reference to, the financial position or wealth, or lack thereof, of any party to the litigation, shall not be allowed without permission from the Court.

7. Generalized motions in limine regarding evidence not produced in discovery will not be granted. Where parties expect a dispute regarding the admission of evidence they should advise the Court at the earliest opportunity. If an issue arises at trial each party must be prepared to share with the Court the actual discovery record.

8. Generalized motions in limine to "exclude speculative expert testimony," or "exclude hearsay testimony," or "exclude expert testimony that exceeds the scope of the expert designation," or "exclude expert opinions not testified to in deposition," or "exclude expert opinion testimony by percipient witnesses" will not be granted. If there is a particular witness or piece of testimony that is the object of the motion, it must be identified with specificity.

EXHIBIT B

Format for Witness Lists

Plaintiffs' List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.	Total	Subject
Smith, John	P	20		5	250	Formation of contract
Brown, Nancy	P	15		5	20	Breach of contract
White, Ron	P	70		15	85	Damages
Black, Peter	P	60		15	75	Formation of contract
Garcia, Dr. Ruth	P	120		30	150	Damages
Rogers, Officer Ted	P	60		10	70	Arrest of Susan Petersen

Defendant's List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.	Total	Subject
Doe, Edward	D	20		5	25	Formation of contract
Chang, Dr. Sam	D	75		15	90	Damages
Martin, Eric	D	120		30	150	Damages

Issue Conference Checklist

Note to Counsel: These are the principal items that the Court will discuss at the Issue Conference. It is not an exclusive list, and the Court is open to hearing any additional concerns or questions you may have.

Parties

What parties are left?

Are any likely to settle between now and trial?

Have any issues been settled? Are any likely to settle before trial?

Have Does been dismissed?

Claims:

Which claims are asserted against which parties?

Does plaintiff/cross-complainant wish to dismiss any?

Is there a request for bifurcation? Severance? Consolidation?

Will all issues tried to jury?

If there are equitable issues, in what order will they be tried?

Court Reporter

Do you want one? *If so, the Court will want a live feed.*

Daily stipulations to use of court reporter?

Do you want voir dire reported?

Time estimate

Go over spreadsheet and time estimates. (*See issue conference order.*)

Jury Selection:

Fees

Have jury fees been paid?

Discuss with clerk how and when additional fees will be paid. CCP 631(e)

Hardships

Discuss procedures for hardship and selection. Set schedule for jurors to return after filling out questionnaire/hardship screen.

Statement of the case for the jury panel

If we will be screening several panels for hardship, the statement should be a short, non-argumentative description of the case. Alternatively, do you want to give a mini-opening of a minute or two each?

Questionnaire:

Do you want one?

Have you agreed on one? If not, review competing versions or objections to individual questions.

Make sure the instructions comply with *Bellas v. Superior Court,* (2000) 85 Cal. App. 4th 636

- *[T]he constitutionally permitted procedure mandates that the judge advise members of the venire at the time the questionnaires are distributed that, upon completion, they will become public records accessible to anyone, and as an alternative to writing in sensitive personal data, jurors can answer those questions on the record in chambers with counsel present. Even in that event, trial judges should take care that the individual prospective juror is not given either explicit or implicit assurances that the transcript of in camera questioning will be protected from public disclosure in all instances.* Id. *85 Cal. App. 4th at 639*

- *"[n]o explicit or implicit promise of confidentiality should be attached to the information contained in the questionnaires; rather the venirepersons shall be expressly informed the questionnaires are public records."* Id. *85 Cal. App. 4th at 645*

- *[W]e again entreat trial judges to insist that venire panels be advised in unambiguous language at the time questionnaires are distributed that they will become public records accessible to anyone and, as an alternative to writing in sensitive personal data, jurors can respond to questions asked on the questionnaire on the record in chambers with counsel present.* Id. *85 Cal. App. 4th at 652-653*

Discuss procedure for making copies of the blank and completed questionnaires.

Alternates: How many?

Voir Dire:

Discuss how voir dire will be conducted.

How many sides?

How many peremptories and how allocated?

E.g. If two sides, 6 peremptories as to the jury; one per alternate (say 4 alternates); CCP §§231, 324

[Therefore, need 12+4+12+8+x = 36 jurors in panel + x (for cause)]

Do you want to make a "brief opening statement?" See CCP 222.5.

How much time do you want for voir dire of the first 18? Then next 7?

If there are multiple parties on a side, how will you *(*collectively*)* exercise your peremptories?

Pre-instructions:

Which CACI preliminary instructions are to be given? Default list is:

100 *Preliminary admonitions*

101 *Overview of trial*

102 *Note taking*

103 *Multiple parties*

104 *Non-person party*

105 *Insurance*

106 *Evidence*

107 *Witnesses*

108 Duty to abide by translation provided in court (?)

109 Removal of claims or parties (?)

111 *Alternate jurors*

112 *Questions from jurors*

113 Bias

114 Sidebars

116 Why electronic communications and research are prohibited

200 Obligation to Prove – More Likely True than Not True

201 More Likely True – Clear and Convincing Proof (?)

202 Direct and Indirect Evidence

Stipulated Facts

Requests for Judicial Notice

Exhibit lists and stipulations re exhibits

Proper form for clerk. (*See issue conference order.)*

Stipulations on admissibility, or at least authenticity, foundation, relevance

Numbering, handling documents

Copies in lieu of originals

Witness binder and court binder

Depositions

Lodge originals with clerk.

Any video deposition testimony to be used?

As to any depositions to be used, deadline to exchange page/line; objections, counter objections; schedule hearing on objections.

Opening

Time estimates

In what order will defendants go?

Will you use exhibits, videos, animations, demonstratives in opening?

When will you exchange the material to be used? Schedule time to hear objections.

Order of Evidence

In what order will D's present their case?

In what order will D's cross-examine?

Do multiple parties on a side want to keep the same order or vary it with each witness?

Witness issues

Any interpreters?

Any disabilities requiring accommodation?

Exclude lay witnesses? Exclude experts?

When will you tell the other side which witnesses are coming up? How many hours/days in advance?

Scheduling problems? Taking witnesses out of order.

Anticipated Evidentiary Problems (other than those raised by MILs)

Demonstrative exhibits/Animations/recreations

No speaking objections

Expert witness qualifications

Notebook for Jurors?

Jury Instructions

Verdict form

Audio Visual Equipment

Set up time to walk through with bailiff

Have a separate person to work the technical equipment

Protocols

Water, coffee

Trial schedule: Will there be dark days?

What time to come in on law and motion day?

Daily meetings before trial, during breaks, after trial. Limited sidebars.

Settlement

Do you want an MSC?

Motions in Limine

Begin hearing them; determine which need further briefing/information

Requests for 402 hearings; determine if a 402 is needed, and set a schedule.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

In Re Complex Litigation Matters	**CASE NO.: MSC00-00000**
,	ELECTRONIC CASE FILING
Plaintiff(s),	STANDING ORDER
v.	*as amended effective April 11, 2011*
,	
Defendant(s).	

Pursuant to California Rules of Court 2.253, 2.254(b) and 3.751, the Court enters the following Standing Order, applicable to all matters designated by the court for electronic filing:

I. Applicability of Other Rules and Orders. Except to the extent modified by this Order, approved stipulation or other order of the court, all California Rules of Civil Procedure, Local Rules, and orders of the court shall continue to apply to cases which are subject to electronic filing. Electronic filing is subject to the provisions of California Rules of Court 2.250 to 2.261, as those Rules may be amended from time to time.

II. Selection of Cases. Most matters classified by the court as Complex Litigation will be designated for mandatory e-filing. However papers should not be e-filed until the Court enters a specific order, designating an Electronic Filing Service Provider. That will usually be done at the first case management conference. If any party believes e-filing should begin sooner than

the first case management conference, they should meet and confer with all other parties who have appeared and present a stipulation to the court which includes the designation of an Electronic Filing Service Provider.

III. Electronic Filing Service Providers. Pursuant to Rule of Court 2.255 the court has contracted with two (2) Electronic Filing Service Providers (EFSPs) to establish an electronic filing system for the court. The currently designated EFSPs for the Complex Litigation Filing Project are:

LexisNexis File & Serve [www.lexisnexis.com/fileandserve/]

One Legal, Inc. [www.onelegal.com/]

Due to limitations on electronic service, only one EFSP may be used in each matter. The first appearing party may select the EFSP, subject to modification by the court. If no selection is made prior to the initial case management conference, the Court will select the EFSP to be used by the parties.

IV. Registration and Access.

Obligation to Register. At least one attorney of record for each party in a matter designated for electronic filing must promptly register with the EFSP assigned or selected for that matter. Upon receipt by the EFSP of a properly executed click-through user agreement, the EFSP will assign to the user a confidential login and password to the system. Additional authorized users may be added at any time. No attorney or other user shall knowingly authorize or permit his or her username or password to be utilized by anyone, even another attorney of record. Attorneys of record who fail to timely register, or to keep registration information current shall be subject to such sanctions as may be imposed by the court.

Obligation to Keep Information Current. A party whose electronic notification address changes while the action or proceeding is pending must promptly file a notice of change of address with the court electronically and must serve this notice on all other parties or their

attorneys of record. An electronic notification address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed and served notice that the address is no longer valid.

V. Electronic Filing Requirements.

Generally. In any case subject to electronic filing, all documents to be filed with the Clerk of Court shall be filed electronically through the designated EFSP. Except as otherwise provided in this Order, or otherwise authorized by the court, the court will not accept or file any pleadings or instrument in paper form.

Format. All electronically filed and served pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings. The electronic document title of each pleading or other document, shall include:

(a) Party or parties filing/serving the document,

(b) Nature of the document,

(c) Party or parties against whom relief, if any, is sought, and

(d) Nature of the relief sought

(e.g., Defendant ABC Corporation's Motion for Summary Judgment")

Where the filer possesses only a paper copy of a document, it should be scanned to PDF format.

Completion of Filing. Electronic transmission of a document consistent with the procedures adopted by the court shall, upon the complete receipt of the same by the Clerk and together with the receipt of acceptance by the court, transmitted from the EFSP, constitute filing of the document for all purposes of the Code of Civil Procedure and the Rules of Court, and shall constitute entry of that document onto the docket maintained by the Clerk.

Deadlines. Filing documents electronically does not alter any filing deadlines. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to 5:00 Pacific Time in order to be considered timely filed that day. Where a

specific time deadline is set by court order or stipulation, the electronic filing shall be completed by that time.

Technical Failures. The Clerk shall deem the electronic filing system to be subject to a technical failure on a given day if the court is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings shall be accompanied by a declaration or affidavit attesting to the filing person's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay due to such technical failure.

Docket. The record of filings and entries generated by the courts case management system for each case shall constitute the docket.

VI. Electronic Summons On electronic filing of a complaint, a petition, or another document that must be served with a summons, the court will transmit a summons electronically to the filer. The summons will contain an image of the court's seal and the assigned case number. Personal service of the printed form of a summons transmitted electronically to the electronic filer has the same legal effect as personal service of a copy of an original summons. (Rule of Court 2.259(f)(3).)

VII. Permissible Manual Filing (Rule 2.253(c))

Generally. Parties otherwise subject to mandatory electronic filing may be excused from filing a particular document electronically if it is not available in electronic format and it is not feasible for the filer to convert it to electronic format by scanning it to PDF. Such a document may be manually filed with the Clerk of Court and served upon the parties in accordance with the applicable provisions of the Code of Civil Procedure and the Rules of Court for filing and service of non-electronic documents. Parties manually filing a document shall file electronically a Notice of Manual Filing setting forth the reason(s) why the component cannot be filed

electronically.

Exhibits. Exhibits whose electronic original is not available to the filer, and which must therefore be scanned to PDF, should not be filed electronically if the file size of the individual scanned document would exceed the limit specified by the EFSP and the Court [5 Mb]. Exhibits filed on paper because they are too large to scan must be identified in the electronic filing by a Notice of Manual Filing attached in place of the actual document.

Original documents. In any proceeding that requires the filing of an original document, an electronic filer may file a scanned copy of a document if the original document is then filed with the court within ten (10) calendar days. [See Rule of Court 2.252(b)]

Documents Lodged Conditionally. Documents lodged with the court conditionally under seal, as provided in Rule of Court 2.551, may be submitted in paper form, pending hearing on a motion to seal.

Copies of Non-California authorities not required. The Complex Litigation Department has access to all non-California authorities and has, by its guidelines, waived the requirement to comply with Rule of Court 3.1113 (i). It is requested that parties **not** file such materials, manually or otherwise, or burden the Court with courtesy copies.

VIII. Courtesy Copies of Pleadings. A courtesy copy of any of the following papers shall be delivered to the chambers of the Judge that will be hearing the matter:

(1) all papers supporting or opposing any motion for summary judgment or summary adjudication;

(2) All issue conference statements as well as issue conference statement papers such as motions in limine or oppositions thereto.

(3) All motions and oppositions thereto set for hearing in the Discovery Department (60).

(4) all papers supporting or opposing any other motion wherein the total number of pages of the document or group of documents being filed,

including exhibits, exceeds fifteen (15) pages [not including pages of proofs of service];

(5) all papers supporting or opposing any ex parte motion;

(6) all case management conference statements; and

(7) any papers other than those described above that the Court specifically orders to be supplemented with courtesy copies.

Courtesy copies are to be delivered no later than the following court day from the date of electronic filing. For ex parte motions they should be provided as early as reasonably feasible.

Courtesy copies of electronically filed documents other than those described above should not be delivered to the complex litigation department.

IX. Public Access and Privacy

Personal Identifiers Except as provided in Rules of Court 2.250 through 2.260 and 2.500 through 2.506, an electronically filed document is a public document at the time it is filed unless it is sealed under rule 2.551 or made confidential by law. (See Rule of Court 2.254(d).) To promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties must refrain from including, or must redact where inclusion is necessary, the following personal data identifiers from all pleadings and other papers filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court:

(a) Social Security numbers. If an individual's social security number must be included in a pleading or other paper, only the last four digits of that number should be used.

(b) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(c) Dates of birth. If an individual's date of birth must be included in a pleading or

other paper, only the year should be used.

(d) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

Privileged or confidential information. No party shall intentionally include within pleadings, nor attach as exhibits, any other matter that the party knows to be properly subject to a claim of privilege or confidentiality.

Filing of Sensitive Documents. A party wishing to file a document containing the personal data identifiers listed above, or material known to be subject to a claim of privilege, may file an unredacted document under seal as provided herein. The party must file a redacted copy for the public file.

Responsibility for Redaction. The responsibility for redacting personal identifiers and privileged or confidential information rests solely with counsel and the parties. The Clerk will not review each pleading or other paper for compliance. The court may impose sanctions for violation of these requirements.

X. Signatures (Rule of Court 2.257)

Documents under penalty of perjury. When a document to be filed electronically provides for a signature under penalty of perjury, the document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document. By electronically filing the document, the electronic filer certifies that he or she has complied with this requirement and that the original, signed document is available for inspection and copying at the request of the court or any other party. At any time after the document is filed, any other party may serve a demand for production of the original signed document. The terms of Rule of Court 2.257 shall apply to any such demand.

Documents not under penalty of perjury If a document does not require a signature under penalty of perjury, the document is deemed signed by the party submitting it if the

document is filed electronically.

Documents requiring signatures of opposing parties When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the following procedure applies: (1) The party filing the document must obtain the signatures of all parties on a printed form of the document; (2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying as provided in Rule of Court 2.257(c)(2); (3) By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

XI. Proposed Orders for Court Signature.

Generally. Proposed orders accompanying motions or oppositions should be e-filed with the moving or opposing papers. Such proposed orders must be clearly marked as "proposed".

Signature Copies. For the purpose of signing of orders, after the hearing the prevailing party must e-mail to the court at cxlit@contracosta.courts.ca.gov a signature copy, in word-processing format so that it can be modified, if needed, and dated, prior to signing. Other than the space for the Court to date and sign the order, all other blanks should be filled in. The e-mail transmitting the proposed order to the Court must be cc'd to all other parties in the case.

Format. The e-mailed copy may be in any of the following formats: WordPerfect (.wpd); Microsoft Word (.doc); Plain Text / ACSII (.txt).

Timing of Signature Copies. Excepting for orders pursuant to C.C.P. § 877.6 (a)(2), and stipulated orders, proposed orders should not be e-mailed until the Court has indicated that the requested relief will be granted. Orders e-mailed prior to the ruling of the court will not be retained and replacement orders will be necessary.

Orders to be held for the statutory time period provided my C.C.P. § 877.6 (a)(2) of 20 or 25 days may be sent when the notice of settlement is filed. Orders by stipulation may be sent when the stipulation is e-filed. If the order is indicated upon the same document as the

stipulation, the document should be e-mailed as one word processing document.

E-mailing Requirements.

(a) "Subject" or "Heading": This must indicate the case name (at least in shortened form) and the date of hearing. For orders by stipulation "By Stipulation" must replace the hearing date. For C.C.P. § 877.6 (a)(2) orders the code section and last day for objection must be indicated.

(b) Accompanying message: This should include the case number, any information as to the opportunity of opposing parties to object or seek modification of the submitted order, and any other information that would be helpful to the Court.

Service of the Court's Orders. Orders filed by the court in cases designated for electronic filing will be served: (a) through the EFSP; or (b) by e-mail from the court to the address(es) provided to the EFSP. No paper service will be made by the court.

XII. Service of Electronically Filed Documents.

Generally. The designated EFSP will provide electronic service for all documents requiring service, including those which are not filed with the court, as provided in Rule of Court 2.260. Delivery of e-service documents through the EFSP to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the EFSP. The parties are also strongly encouraged to check the docket in their case on the court's Open Access web site at regular intervals.

Proof of Service Proof of service shall be made in the manner provided in Rule of Court 2.260(c).

XIII. Service of this Order. A copy of this Standing Order must be served with the initiating pleading by any plaintiff, petitioner, or cross-complainant.

Dated: _____

_____

Barry P. Goode

Judge of the Superior Court