

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

<p>_____ , Plaintiff(s)</p> <p>v.</p> <p>_____ , Defendant(s)</p>	<p>Case No. _____</p> <p>STANDING ORDER FOR COMPLEX CASES ASSIGNED TO JUDGE MELZER</p> <p>Dept. CX102</p>
---	--

This Standing Order applies to all cases assigned to Judge Layne H. Melzer.

The party initiating any action assigned to Judge Melzer, (or expanding the action to include additional parties) i.e., plaintiff, petitioner, cross-complainant etc., (collectively "Plaintiff") shall serve a copy of this Standing Order on all parties so joined, (e.g., defendants, respondents, cross-defendants etc., (collectively "Defendant").

I. GENERAL POLICIES AND PROCEDURES

The Court requires all parties be familiar with and adhere to its posted Departmental Policies and Procedures. (see [Complex Civil Calendar | Superior Court of California | County of Orange](#)) *These Departmental rules have detailed procedures for, among other things, trial and pre-trial practice.* These Policies and Procedures will be strictly enforced.

In addition, the following requirements will apply to Case Management Conferences, Discovery Disputes and Class Actions and/or PAGA Representative Actions.

//

II. CASE MANAGEMENT OR STATUS CONFERENCES

Prior to the Initial Case Management Conference, all parties are ordered to meet and confer to discuss the applicable subjects set forth in CRC 3.727 and 3.750(b).

Additionally, counsel shall be prepared to discuss these issues with this Court at the Initial Case Management Conference with particular attention on the following:

1. Parties and the addition of parties;
2. Claims and defenses;
3. Issues of law that, if considered by the Court, may simplify or foster resolution of the case;
4. Appropriate alternative dispute resolution (ADR) mechanisms (e.g., mediation, mandatory settlement conference, arbitration, mini-trial, etc.);
5. A plan for preservation of evidence;
6. A plan for disclosure and discovery;
7. Whether it is possible to plan "staged discovery" so that information needed to conduct meaningful ADR is obtained early in the case, allowing the option to complete discovery if the ADR effort is unsuccessful;
8. Whether a structure of representation such as liaison/lead counsel is appropriate for the case in light of multiple plaintiffs and/or multiple defendants;
9. Procedures for the drafting of a Case Management Order, if appropriate;
10. Any issues involving the protection of evidence and confidentiality.

Counsel for plaintiff is to take the lead in preparing a Joint Initial Case Management Conference report to be filed *at least 10 calendar days* before the scheduled status conference.

The Joint Initial Case Management Conference Report is to include the following information:

1. A list of all parties and counsel;
2. The status of service, whether additional parties are likely to be added and a proposed date by which all parties must be served;
3. An outline of the claims and cross-claims and the parties against whom each claim is asserted;

4. Whether any issues of jurisdiction or venue exist that might affect this Court's ability to proceed with this case;
5. Applicability and enforceability of arbitration clauses (or other contractual limitations) affecting the litigation;
6. A list of all related litigation pending in other courts, a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated;
7. Whether severance, consolidation, or coordination with other cases is appropriate;
8. A description of core factual and legal issues;
9. A description of legal issues that, if decided by the Court, may simplify or further resolution of the case and whether bifurcation or phasing is appropriate;
10. The status of discovery and whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations on discovery;
11. Whether Initial Disclosures under CCP §2016.090 will/have be made and what information is anticipated to be exchanged amongst the parties prior to more formal discovery demands;
12. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
13. The usefulness of a written Case Management Order;
14. A target date and a time estimate for trial and whether a court or jury trial is appropriate;
15. Whether there is (actually or potentially) insurance coverage (defense and/or indemnity) regarding any of the claims or cross-claims and the limitations re same;
16. Any other matters not otherwise covered and of which the Court should be made aware in order to effectively and efficiently manage this case; and
- 17. *The schedule for further conferences.***

To the extent the parties are unable to agree on the matters/content to be addressed in the Joint Initial Case Management Conference Report, the positions of each party or of various parties shall be set forth separately. The parties are NOT to use the case

management conference form for non-complex cases (Judicial Council Form CM-110). Instead, the Joint Initial Case Management Conference Report shall be made on pleading paper.

Follow-up Case Management Conferences (sometimes referred to as "Status Conferences") will also require updated Case Management Conference or Status Conference Reports. Such reports shall follow the same format and protocols outlined above **but should focus on new information since the last conference** pertinent to ongoing case management. Subsequent reports shall also be due no later than **10 calendar days** before the scheduled status conference.

ATTORNEYS APPEARING AT THE CASE MANAGEMENT CONFERENCE MUST BE FULLY FAMILIAR WITH THE PLEADINGS AND THE AVAILABLE FACTUAL INFORMATION AND MUST ALSO HAVE THE AUTHORITY TO ENTER INTO STIPULATIONS.

III. DISCOVERY DISPUTES AND INFORMAL DISCOVERY CONFERENCES

Counsel can usually resolve discovery disputes without the necessity of motion practice (and the risk of sanctions) so long as they meet and confer in good faith. *If rigorous meet and confer efforts fail to resolve discovery issues in their entirety, remaining issues can almost always be resolved through an Informal Discovery Conference (IDC) with the Court.*

Toward this end, should the parties be unable to resolve their discovery issues through the meet and confer process, the Court ***strongly recommends*** an IDC before the filing of any discovery motion. Indeed, if upon the filing of a discovery motion the Court concludes the motion should have been preceded by an IDC, the Court may simply continue the hearing on the motion pending an IDC. The Court may likewise summarily deny any filed motion to compel if it concludes the moving party failed to meaningfully meet and confer.

A meaningful meet and confer, from the Court's perspective, requires a real-time exchange of information and reasoned points of view—either in-person or by video conference. A mere exchange of letters or emails is insufficient. Parties must be willing to compromise, phase discovery if it will advance interim disclosures, enter stipulated protective orders to address legitimate privacy concerns, and extend deadlines on motions to compel in order to allow the informal discovery process to work.

In the event the parties reach an impasse regarding discovery, despite a fulsome meet and confer, an IDC should be scheduled by contacting the department clerk. ***IDCs are ordinarily set on Fridays over Zoom, but the Court is amenable to***

*alternatives, calendar permitting.*¹ The party seeking the discovery at issue (propounding party) shall be responsible for scheduling the IDC after securing at least three mutually available dates from the opposing party.

In advance of any scheduled IDC the Court will require the filing of a joint IDC statement outlining the issue(s) in dispute and the parties respective positions. It shall be the obligation of the propounding party to coordinate preparation of the joint IDC statement and submit it for filing. While the Court will not impose strict page limits, it believes such joint statements should be no more than 10-pages total, with each side sharing an equal number of pages (i.e., 5 pages each). ***The statement shall be filed no later than three calendar days prior to the IDC with a courtesy copy simultaneously delivered to the department.***

The initial inquiry at any IDC will be whether or not the parties have meaningfully met and conferred on each issue presented. If they have not, the IDC may be promptly vacated or continued. The primary focus of the IDC will be (as to the propounding party) "what do you really need?" and (of the resisting party) "what's the problem with the discovery propounded (and as limited through the meet and confer)?"

Pending any contemplated IDC the parties are strongly encouraged to agree to reasonable stipulations on deadlines to file motions to compel to permit the IDC process to operate.

The Court's goal at the IDC will be to mediate a resolution of the discovery dispute. The Court will not issue rulings on disputed matters. However, should the parties reach agreement, the Court may issue an order based on that agreement.

IV. CLASS ACTIONS AND PAGA REPRESENTATIVE ACTIONS

A. DISCOVERY

In addition to its general expectation that all parties in all cases shall meet and confer in good faith to avoid discovery disputes and motion practice, the Court is of the view that discovery pertaining to class certification should be freely exchanged. ***See Above re Discovery Disputes and IDCs.*** In this regard, the parties should voluntarily implement (if necessary) the *Bel Aire West* procedures for disclosing class contact information (with the cost shared equally).

B. TRIAL MANAGEMENT PLANS

Before granting motions for class certification (other than settlement classes) the Court (among other legal prerequisites) requires the moving party to submit a class action

¹ The Court will not entertain a "hybrid" IDC. Both parties must appear via Zoom or, if the Court requires or permits, in-person. But the Court will not allow one side to be in-person while the other is on Zoom and vice versa.

trial management plan (see *Duran v. U.S. Bank National Association* (2014) 59 Cal. 4th 1, 28-38 and its progeny). The trial management plan should identify witnesses and make specific offers of proof on each element of each cause of action and the damages to be tried. It should identify matters of common proof which will establish liability and damages and address the expected presentation of evidence for relevant affirmative defenses, and whether or not the defenses turn on individual issues. ***The trial management plan should be attached as an exhibit to any motion for class certification (other than settlement class certifications).***

The Court requires plaintiffs in PAGA cases (to the extent not otherwise detailed as part of a class certification motion) to provide a trial management plan with similar details addressing how the Court can adjudicate violations and appropriate penalties for the "PAGA group" (i.e., unnamed alleged aggrieved employees) fairly and efficiently. *Parties should be mindful that pursuant to Labor Code §2699(p) the Court is permitted to limit evidence or the scope of PAGA claims at trial to "ensure that the claim can be effectively tried."* The PAGA trial plan should also address whether the trial should be bifurcated to first address plaintiff's standing as an aggrieved employee and/or to defer any causes of action for which the plaintiff or defendant might be entitled to a jury.

The PAGA trial plan (unless provided earlier as part of a class certification motion) shall be filed and served no later than 120 days before trial. The Defendant may file a response to the trial plan no later than 90 days before trial. Courtesy copies shall be provided to the department at the time of filing. Failure to timely submit the trial plan may result in the trial date being vacated or sanctions.

C. SETTLEMENTS AND DISMISSALS

Parties seeking approval for class action and/or PAGA settlements should carefully adhere to the Court's posted guidelines. **See Guidelines for Approval of Class Action Settlements and PAGA Settlements** ([Complex Civil Calendar | Superior Court of California | County of Orange](#)).

Court approval is required for "any proposed settlement of any civil action filed pursuant to PAGA." (Labor Code § 2699(s)(2).) To secure Court approval, the parties must demonstrate that the terms of the settlement are "fair to those affected." (*Williams v. Sup. Ct.* (2017) 3 Cal. 5th 531, 549.) A motion or application for approval must therefore establish the settlement is fair to the aggrieved employees, the LWDA, the employer, the plaintiff and plaintiff's counsel. A PAGA plaintiff can only release claims for civil penalties that the LWDA could have recovered for the violation alleged in the plaintiff's original notice to the LWDA.

Parties seeking to dismiss class claims must carefully follow Rule 3.770 which, among other things, requires a filed declaration describing the consideration “in detail.” PAGA dismissals are treated similarly. Class or representative PAGA claims may only be dismissed “without prejudice.”

V. FILING AND LODGING DOCUMENTS UNDER SEAL

All parties must comply with CRC 2.550 and 2.551 before attempting to file any document under seal.

The Court cannot seal documents merely because the parties agree they should be sealed. The Court’s obligation to conduct proceedings transparently requires specific findings be made as to every sentence in every document that a party seeks to file under seal. Such orders must be preceded by an application or motion providing legal justification for the sealing (typically redactions) sought. And any such order must be narrowly tailored to seal only specific information which is protected by law from public disclosure.

Confidential documents submitted in connection with discovery motions are not, however, governed by CRC 2.550 and 2.551.

To file confidential material in connection with a discovery motion the parties should (a) narrowly identify and redact the confidential information from the publicly filed document; and (b) lodge an unredacted version with the department in a sealed envelope with a caption page stapled to the outer surface which clearly indicates the submittal is part of a discovery motion.