UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

# STANDING ORDER FOR CIVIL CASES BEFORE JUDGE VINCE CHHABRIA

## TABLE OF KEY DEADLINES

| DEADLINE | DATE |
|---|---|
| Joint discovery letters | As soon as practicable, but no later than 7 days after applicable discovery deadline |
| Cross-motions for summary judgment | Because the Court requires the parties to file 4 sequential briefs, typically the parties must file the first brief no later than 7 weeks before the scheduled hearing date. The final brief should be filed no later than 14 days before the scheduled hearing date. |
| Request for extension of any case management deadlines | 72 hours prior to the deadline party wishes to extend |
| Request to reschedule a case management conference | At least 72 hours prior to the case management conference |

## CONFORMITY WITH RULES

1. The parties shall follow the Federal Rules of Civil Procedure, the Civil Local Rules, and the General Orders of the Northern District of California, except as superseded by this Court's standing orders.

## EMERGENCY APPLICATIONS

2. Counsel should call and email Judge Chhabria's Courtroom Deputy, Bhavna Sharma, to notify her if they submit an application for a temporary restraining order, a stipulation that requires a response from the Court within 24 hours, or any other emergency request.

3. When a party files an application for a temporary restraining order or other emergency relief, the opposing party should not file a response unless instructed to do so by the Court. The Court will almost never grant such an application without requesting a response from the opposing party.

4. If the party seeking emergency relief does not show that it made every reasonable effort to notify the opposing party and the opposing party's counsel, at the earliest possible time, of its intent to seek emergency relief, the relief will not be granted.

5. Emergency applications do not have to comply with Judge Chhabria's default 15-page limit for briefs.

## SCHEDULING

6. For the latest information on when and where hearings and case management conferences are held, check Judge Chhabria's webpage.

7. Counsel need not reserve hearing dates but should check Judge Chhabria's calendar on the Court's website to make sure the desired date is not blocked. The parties may not specially set any matter without leave of the Court.

8. Counsel for the moving party should confer with opposing counsel about a mutually convenient hearing date before noticing any motion.

9. No changes to the Court's schedule can be made except by order of the Court. Any motion to continue a hearing or case management conference must be made no later than 72 hours prior to the scheduled appearance.

10. Any request for an extension of a deadline (other than an extension that the rules allow the parties to arrange between themselves without a court order) must be filed no later than 72 hours prior to the deadline.

11. When the parties request an extension of time, the parties must submit a proposed order listing all future deadlines and the proposed extensions. The parties must also state how many times the parties have requested extensions, whether the Court has granted those extensions, and whether the Court has stated that no further extensions will be granted.

12. Once a trial date has been set, the parties should treat it as firm. Absent extraordinary circumstances, the Court will not continue a trial date.

## CASE MANAGEMENT CONFERENCES

13. The attorney appearing at a case management conference need not be lead counsel but must have full authority to make decisions about any issue that may come up during the conference.

14. If a defendant files a motion to dismiss that is dispositive of the entire case, the parties can stipulate to move the initial case management conference to 15 days after the hearing on that motion. If the motion to dismiss is not dispositive, the initial case management conference will not be moved. In their case management statement for the initial case management conference, the parties must propose a full litigation schedule, including a proposed last day to amend pleadings, regardless of whether they have received a ruling on any motion to dismiss.

15. Parties should typically be prepared to adopt the following schedule at the initial case management conference:

- The trial date will almost always be 12-16 months after the date the original complaint was filed.
- The pretrial conference will be 1 or 2 weeks before the trial. The last day for a hearing on dispositive motions will be roughly 2 to 3 months before the pretrial conference.
- The discovery cutoff will be roughly 8 weeks before the dispositive motions hearing. (The parties should consider whether to schedule expert discovery before or after the deadline for hearing motions for summary judgment.)

- The last day to amend pleadings will typically be 60 days after the initial case management conference.
- A further case management conference will take place roughly 4 weeks before the close of fact discovery.
- The parties should be prepared to present their preferred ADR process at the initial case management conference, and ADR ordinarily should occur within 90 days of the initial case management conference.

16. If the parties wish to continue a case management conference, they must file a stipulation or motion – separate from their joint case management statement – at least 72 hours prior to the conference.

17. Parties who would like an expedited initial case management conference can request one by emailing Judge Chhabria's Courtroom Deputy, Bhavna Sharma.

## DISCOVERY

18. Discovery in almost all cases will be referred to a magistrate judge. In those cases, the parties must follow the magistrate judge's procedures. In the rare cases where Judge Chhabria is overseeing discovery, the following procedures apply. Discovery disputes should be brought to the Court's attention as early as possible. If the parties cannot resolve their discovery dispute after a good faith effort, they shall prepare and file a joint letter of no longer than 5 pages stating the nature and status of their dispute. Both sides must submit proposed orders as well. No exhibits may be submitted with the letter other than any discovery request or response that is the subject of the letter. The letter must be filed as soon as possible, but under no circumstances may it be filed more than 7 days after the applicable discovery cutoff. *See* Civil Local Rule 37-3. The side seeking relief from the Court should prepare its portion of the letter first, and then provide

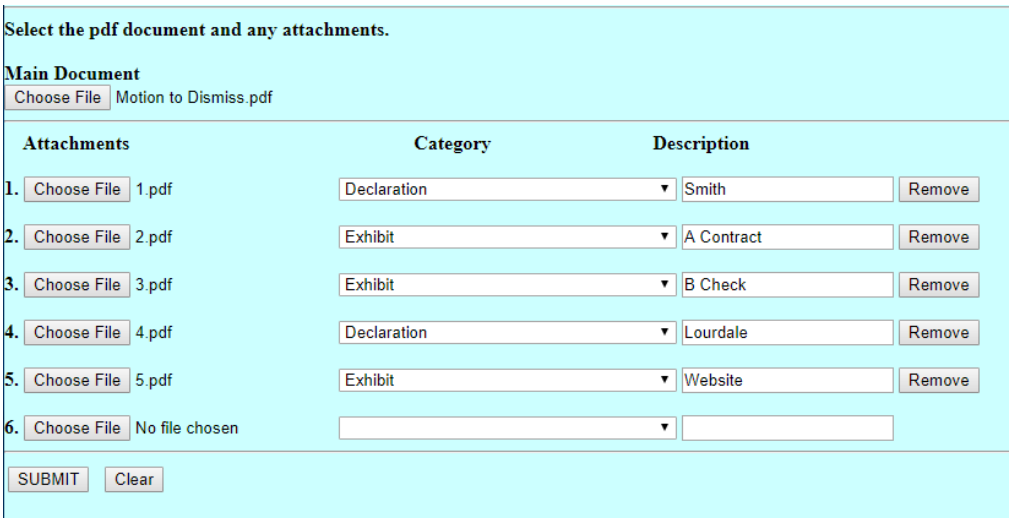
that to the opposing side so that the opposing side may prepare its response. The party seeking relief from the Court should file the letter. The Court may resolve the dispute on the papers or schedule a hearing. The joint discovery letter process does not apply to discovery disputes with third parties.

19. Parties requesting a protective order are encouraged to base any proposed order on the model protective orders on the Northern District's website (http://www.cand.uscourts.gov/model-protective-orders). When filing a proposed protective order, at the very beginning of their stipulation or motion, parties must indicate whether they have based their proposed order on one of the Northern District's model protective orders. If they have, they must identify any deviations from the model order by submitting as an exhibit a redline comparison of their proposed order and the model order.

## FILING AND COURTESY COPIES

20. When filing motions on ECF, each motion, supporting declaration, and attachment to a declaration (such as an exhibit) should be filed as a separate PDF. That is, a declaration must be filed separately from the motion, and each exhibit to a declaration must be filed separately from the declaration and from the other exhibits. However, when an exhibit to a declaration contains an attachment, that attachment need not be filed separately. A motion, along with any supporting declarations or exhibits, should generally be filed as one docket entry, with the motion submitted as the "Main Document" in ECF, and each declaration and exhibit filed separately as "Attachments."

21. For an example, see the image below:




22. When filing motions, exhibits, and declarations, the ECF "Description" of each document should include the name of the document and a brief description of the document. For instance, a news release filed as the first exhibit to a declaration would be, "Decl Doe Ex 1 - News Release."

23. When a document filed on ECF is accompanied by more than 10 attachments, the filing party must deliver a flash drive with all the attachments to Judge Chhabria's chambers within 7 business days of filing. The flash drive should be labeled with the name and number of the case. The flash drive should contain the ECF version of each attachment, with its ECF header. The name of each PDF file on the flash drive should include the type of document, a brief description of the document, and the docket number. For example, a news release filed as the first exhibit to a declaration, at docket number 60-2, would be, "Decl Doe Ex 1 - News Release [60-2]."

24. Each PDF document must be text-searchable. This requirement is waived for people proceeding pro se.

25. Briefs, declarations, and other filings need not be on pleading paper with line numbers. The Court prefers blank paper (although pleading paper will be accepted).

26. Paper courtesy copies shall not be submitted unless the Court requests them. The Court may at times order the parties to provide digital courtesy copies of motion briefs, including supporting documents, on portable media (for example, a CD or flash drive).

## PROPOSED ORDERS

27. Proposed orders are not necessary for most substantive motions, such as motions for summary judgment, motions to dismiss, or preliminary injunction motions. The parties should submit proposed orders only in connection with administrative motions, ex parte applications, discovery disputes, and rulings that call upon the court to make factual findings (such as a motion to approve a class settlement or a motion for attorneys' fees). All proposed orders should be sent in Microsoft Word format to vcpo@cand.uscourts.gov.

## MOTIONS TO SEAL

28. The Court requires strict compliance with Civil Local Rule 79-5 (with the exception of 79-5(d)(2), as explained below).

29. The Court almost always denies motions to seal because they are almost always without merit. Parties that submit frivolous motions to seal or frivolously overbroad motions will be sanctioned. *See Nevro Corp. v. Boston Scientific Corp.*, 2018 WL 2111164 (N.D. Cal. May 8, 2018). Federal courts are paid for by the public, and the public has the right to inspect court records, subject only to narrow exceptions.

30. When submitting a motion to seal, the filing party must state whether the compelling reasons or good cause standard applies and explain why. *See Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1099 (9th Cir. 2016).

31. The filing party must make a specific showing explaining why each document that it seeks to seal may justifiably be sealed and why the proposed redactions are as narrowly

tailored as possible, rather than making a blanket statement about the grounds for sealing. Generic and vague references to "competitive harm" are almost always insufficient justification for sealing. If a party files a request to seal that is significantly overbroad and/or does not provide adequate reasons for concealing information from the public, the party bears the risk that the Court will simply deny the request in its entirety and place all documents sought to be sealed on the public docket.

32. Each document filed under seal must be highlighted to show the proposed redactions. In the rare situation where a party believes it is appropriate to seal an entire document, the document filed under seal should be labeled to indicate that sealing is sought in full.

33. If you have a complicated sealing motion, or set of motions, consider filling out and filing the Motion to Seal Summary Table linked on the Standing Orders page of Judge Chhabria's website.

34. Courtesy copies under Civil Local Rule 79-5(d)(2) are not required, provided that the document at issue is appropriately filed electronically under seal in an unredacted form.

## BRIEFS

35. Unless expressly permitted by the Court, briefs in support of and in opposition to all substantive motions (except for summary judgment motions, class certification motions, motions for approval of class settlements, and motions in patent cases, as discussed below) may not exceed 15 pages, and reply briefs may not exceed 10 pages. These page limits include summaries of argument and exclude the title page, table of contents, table of authorities, and exhibits. All briefs must use Times New Roman font (size 12) and must be double spaced.

36. The final brief for any motion should be filed at least 14 days prior to the hearing on the motion.

37. When citing exhibits (including deposition testimony), briefs should identify the declaration to which the exhibit is attached, the letter or number of the exhibit, and the relevant page number (for example: "Smith Decl., Ex. 1, at 22").

38. Motions to increase page limits will almost never be granted, but any such motion must be filed no later than 72 hours before the brief is due.

39. Simultaneous briefing is not permitted for any type of motion.

## SUMMARY JUDGMENT

40. Unless expressly permitted by the Court, briefs in support of and in opposition to summary judgment motions cannot exceed 25 pages, and reply briefs cannot exceed 15 pages. Motions to increase page limits will almost never be granted, but any such motion must be filed no later than 72 hours before the brief is due.

41. In the event of cross-motions for summary judgment, the parties must file a total of four briefs sequentially, rather than three pairs of simultaneous briefs. Unless the parties agree to reverse the order (which they are free to do on their own), the opening brief is filed by the plaintiff side, the opening/opposition brief is filed by the defense side, the opposition/reply is filed by the plaintiff side, and the reply is filed by the defense side. The first two briefs are limited to 25 pages, the third brief is limited to 20 pages, and the fourth brief is limited to 15 pages. The parties may submit a stipulation and proposed order setting a briefing schedule for the cross-motions in advance of the first brief, which will likely be signed so long as the fourth brief is due no later than 14 days before the hearing date.

42. The parties need not file joint or separate statements of undisputed facts in connection with summary judgment motions.

43. At the summary judgment hearing and/or in the briefs, the parties should not hesitate to alert the Court of the need for a prompt ruling in light of their trial preparation schedule.

## DEFAULT JUDGMENT

44. Judge Chhabria's rule is to have hearings on motions for default judgment except in highly unusual circumstances. Therefore, after a party seeking default judgment has obtained entry of default from the Clerk's Office, the party should notice a hearing when filing their motion for default judgment.

45. Any such motion should explain why the *Eitel* factors support the entry of a default judgment and address the basis for personal jurisdiction over the defendant(s). *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986); *Axiom Foods Inc. v. Acerchem International, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017); *see also In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

## HEARINGS AND TENTATIVE RULINGS

46. If the Court determines a hearing is not necessary, it will usually be vacated no later than three days before the hearing.

47. The Court ordinarily will not issue tentative rulings, but it typically announces its tentative thinking at the outset of the hearing.

48. If a motion will be argued by an attorney who has 7 years or less of experience, counsel may notify the Courtroom Deputy of that fact within 7 days of the hearing. The Court will take this into account in deciding whether to vacate the hearing and submit the motion on

the papers, putting a thumb on the scale in favor of a hearing if arguing counsel has 7 years or less of experience. Co-counsel with more than 7 years of experience may still offer argument for a few minutes at the end of the hearing.

49. When using exhibits during evidentiary hearings, the parties must prepare and present exhibits in accordance with the Court's Standing Order for Civil Trials.

## CLASS ACTIONS

50. At the initial case management conference, the parties should be prepared to discuss whether they prefer to litigate cross-motions for summary judgment on liability with respect to the named plaintiffs before litigating the issue of class certification. The Court is of the view that this approach will often save a great deal of time and money and is therefore often in the defendant's interest, but it requires the defendant's consent, since a grant of summary judgment in the named plaintiff's favor could end up giving unnamed class members a chance to opt in to a lawsuit where a legal issue has already been decided against the defendant.

51. Briefs in support of or opposition to class certification motions cannot exceed 25 pages, and reply briefs cannot exceed 15 pages. These limits also apply to motions for preliminary or final approval of class settlements (although, if the parties believe they need more space to adequately explain the basis for a class action settlement, this is the one type of brief for which a request for additional pages is likely to be granted).

52. Plaintiffs' counsel are warned that they may only have one chance to seek class certification. If a plaintiff grossly overreaches on a motion for class certification, thereby forcing

a defendant to waste significant time and money respond to a motion that had virtually no chance of being granted in the first place, the Court will be far less likely to allow a renewed motion.

53. In the event of a pre-certification settlement or dismissal of a proposed class action, the named plaintiffs may not simply dismiss the lawsuit without court approval. Rather, the parties must submit a request for dismissal explaining how a dismissal would not prejudice the unnamed class members whose claims are not being resolved by the settlement. In particular, the parties must consider whether the unnamed class members need to be notified of the dismissal. *See, e.g.*, *Dunn v. Teachers Ins. & Annuity Ass'n of Am.*, 2016 WL 153266, at *3 (N.D. Cal. Jan. 13, 2016); *Trombline v. Wells Fargo Bank, N.A.*, 2014 WL 5140048 (N.D. Cal. Oct. 10, 2014); *Lyons v. Bank of Am., N.A.*, 2012 WL 5940846 (N.D. Cal. Nov. 27, 2012); *see also Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989).

54. In connection with motions for approval of class settlements, the parties should keep the following things in mind:

- The parties should consult the Northern District's Procedural Guidance for Class Action Settlements. *See* www.cand.uscourts.gov/ClassActionSettlementGuidance.

*Preliminary Approval*

- The Court's scrutiny of the proposed settlement will be as rigorous at the preliminary approval stage as at the final approval stage. Any motion for preliminary approval should explain why the settlement survives this level of scrutiny, and any proposed order should recite this standard. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036-37 (N.D. Cal. 2016); *see also Hunt v. VEP Healthcare, Inc.*, 2017 WL 3608297 (N.D. Cal. Aug. 22, 2017); *Eddings v. DS Services of America, Inc.*, 2016 WL 3390477 (N.D. Cal. May 20, 2016).

- Release language should make clear that the class members are releasing claims based only on the identical factual predicate. Each proposed notice should make that clear as well. *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010).
- Absent extraordinary circumstances, the Court will not enjoin current or future litigation in other courts based on conduct covered by the release. Whether to stay or dismiss any such cases will be for the assigned judge to decide. Any language regarding an injunction must be removed from the notice, proposed order, and settlement agreement.
- If a proposed notice to class members (or prospective class members) requires a written objection as a prerequisite to appearing in court to object to the settlement, the notice must specify that this requirement may be excused upon a showing of good cause. The Court will require only substantial compliance with the requirements for submitting an objection, and this should be made clear in any notice to class members.
- If the parties believe they need more space to adequately explain the basis for a settlement, they should make a request to extend the page limit for the motion. The Court will likely grant such a request for this kind of motion (despite rarely granting such requests for other motions).

*Notice and Claims Procedure*

- The proposed notices, claims forms, and other documents associated with preliminary approval should be sent in Microsoft Word format to vcpo@cand.uscourts.gov.
- For large settlements, the parties are encouraged to include an opt-out form and an objection form.
- If the proposed notices are not carefully written and in plain English, the Court will reject the motion for preliminary approval. Unnecessary acronyms should be avoided.

- The parties should consider using the Federal Judicial Center's model notices, which are available at www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction.
- The parties should consider whether notice by email and/or social media is appropriate. Moreover, the parties should consider whether claims and opt-out forms can be filed online, and whether it is appropriate to have a website for the settlement. If these procedures are not followed, the parties should be prepared to explain why.
- In a proposed settlement involving the distribution of money to a class, the parties should consider whether unclaimed funds should be redistributed to class members who claimed their share. If a provision of this type is absent, the parties should be prepared to explain why.
- The parties should consider whether theirs is the type of settlement that requires class members to file claims, as opposed to simply receiving checks. The motion for preliminary approval should address this issue.
- Although the parties should generally adhere to the Northern District's Procedural Guidance for Class Action Settlements, they need not discuss "the lead class counsel's firms' history of engagements with the settlement administrator over the last two years." Nor does lead counsel need to discuss "at least one of their past comparable class settlements."

*Final Approval*

- In proposing a schedule for final approval of a class settlement, the parties must ensure that the motion for attorneys' fees is filed at least 14 days before the deadline for objecting to the settlement. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988

(9th Cir. 2010). The Court will make parties re-send notices if the motion for attorneys' fees is filed late, which can be quite expensive. The proposed order granting final approval should list all dates relating to the administration of the settlement, including the dates for when the checks distributing the settlement fund payments will be mailed to class members.

- The parties should file a proposed judgment separately from their proposed order granting final approval.
- Within 21 days after the settlement funds have been fully distributed to class members (but before distribution to cy pres recipients), class counsel will be required to file a Post-Distribution Accounting, as described in the Northern District's Procedural Guidance for Class Action Settlements. The purpose of this notice is to inform the Court about the administration of the settlement.
- The Court will typically withhold between 10% and 20% of the attorneys' fees granted at final approval until after the Post-Distribution Accounting has been filed. The proposed order granting final approval should specify what percentage class counsel believes it is appropriate to withhold.
- The proposed order granting final approval should also include language describing the Post-Distribution Accounting that class counsel will file, including, as relevant, when payments were made to class members, the number of members who were sent payments, the total amount of money paid out to members, the average and median recovery per class member, the largest and smallest amount paid to class members, the number and value of cashed and uncashed checks, the number of members who could not be contacted, the number of objections and opt-outs, the amount to be distributed to each cy

pres recipient, any significant or recurring concerns communicated by members to the settlement administrator and counsel since final approval, any other issues in settlement administration since final approval, and how any concerns or issues were resolved. *See Cotter v. Lyft*, No. 13-cv-04065-VC, Dkt. No. 348 (N.D. Cal. Apr. 6, 2018); *Hunt v. VEP Healthcare, Inc.*, No. 16-cv-04790-VC, Dkt. No. 68 (N.D. Cal. Apr. 3, 2018).

- Where class members are entitled to non-monetary relief, such as discount coupons, debit cards, or similar instruments, the Post-Distribution Accounting should also describe the number of class members availing themselves of such relief and the aggregate value redeemed by the class members and/or by an assignees or transferees of the class members' interests. Where class members are entitled to injunctive and/or other non-monetary relief, the Post-Distribution Accounting should discuss the progress made on fulfilling the terms of that relief.
- With the Post-Distribution Accounting, class counsel should submit a proposed order releasing the remainder of the fees.

## PATENT CASES

55. Parties must follow the Patent Local Rules of the Northern District of California, except when those rules conflict with this standing order.

56. Absent a compelling reason, the Court will conduct claim construction only in conjunction with a dispositive motion. Parties should still follow Rules 4-1 through 4-4 of the Patent Local Rules. Rules 4-5 and 4-6, on the other hand, will give way to the details provided in the paragraphs below.

57. The opening summary judgment (and claim construction) brief, as well as the opposition brief, cannot exceed 40 pages. The reply brief cannot exceed 20 pages.

58. In the event of cross-motions for summary judgment, the parties must file a total of four briefs sequentially, rather than three pairs of simultaneous briefs. Unless the parties agree to reverse the order, the opening brief is filed by the party asserting infringement, the opening/opposition brief is filed by the party defending against the infringement claim, the opposition/reply is filed by the party asserting infringement, and the reply is filed by the party defending against the infringement claim. The first brief is limited to 40 pages, the second brief is limited to 50 pages, the third brief is limited to 30 pages, and the fourth brief is limited to 20 pages.

59. If the parties believe it would be helpful for the Court, they should schedule a claim construction tutorial to occur 7 days prior to the claim construction/summary judgment hearing. The parties should contact Judge Chhabria's Courtroom Deputy, Bhavna Sharma, to schedule the tutorial.

## SOCIAL SECURITY CASES

60. Judge Chhabria's default rule is to have hearings in Social Security cases. The Court will schedule a hearing for its civil law and motion calendar for approximately 60 days after an opposition brief is filed. Counsel are free to meet and confer on a mutually acceptable hearing date, and contact Bhavna Sharma, Judge Chhabria's Courtroom Deputy, to schedule a hearing on that date. If, after reviewing the papers and the record, the Court decides a hearing is not necessary, it will typically notify the parties within 2-3 days of the hearing.

## HABEAS CASES

61. Judge Chhabria's default rule is to have hearings in habeas cases where the petitioner is represented by counsel. The Court will schedule a hearing for its civil law and motion calendar for approximately 60 days after an answer is filed. Counsel are free to meet and

confer on a mutually acceptable hearing date, and contact Bhavna Sharma, Judge Chhabria's Courtroom Deputy, to schedule a hearing on that date. If, after reviewing the papers and the record, the Court decides a hearing is not necessary, it will typically notify the parties within 2-3 days of the hearing.

## ERISA CASES

62. On the issue of discovery in cases that are subject to de novo review, please see *Ball v. Sun Life Assurance Company of Canada*, 2016 WL 3211227 (N.D. Cal. Apr. 13, 2016).

## WAGE AND HOUR CASES

63. In FLSA cases, the presumptive deadline for filing a motion for conditional certification of a collective is 28 days from the date of the initial case management conference, unless the parties reach a tolling agreement. Motions for conditional certification are almost always granted. The parties therefore are encouraged to stipulate to conditional certification with the understanding that the defendant may later seek to decertify the collective. If the parties stipulate to conditional certification, the parties must still submit the proposed notice to the Court for approval.

64. Absent extraordinary circumstances, the contact information for potential collective members in FLSA cases must be produced by the defendant at the Rule 26(f) conference. The court will almost never grant requests to continue the initial case management conference in FLSA cases – even if there is a pending motion to dismiss – unless the parties have reached a tolling agreement.

65. Likewise, in a Rule 23 wage and hour class action brought under California law, absent extraordinary circumstances, the contact information for potential class members must be produced early in the case. At the initial case management conference, the parties should expect

to set an early deadline for the production of this information. Typically, the only circumstance in which this production may be delayed is when the schedule calls for cross-motions for summary judgment regarding liability as to the named plaintiffs to be adjudicated prior to class certification, as discussed in the "Class Actions" section of this standing order.

66. Should the parties reach a settlement in a FLSA collective action, the parties may not simply file a notice of voluntary dismissal. The parties must file a motion for settlement approval explaining why the proposed settlement is a fair and reasonable resolution of a bona fide dispute. *See Alder v. County of Yolo*, No. 16-1682-VC, Dkt. No. 25 (E.D. Cal. Nov. 20, 2017).

## SECTION 1983 CASES

67. In cases involving *Monell* claims, the Court will often stay discovery on municipal liability until the individual constitutional claim has been adjudicated through trial. Therefore, in cases where the defendant believes that the plaintiff has stated an individual constitutional claim but has failed to state a *Monell* claim, the defendant should consider whether to seek a stay of the *Monell* claim in lieu of filing a motion to dismiss. A stay of a *Monell* claim will often preserve resources for the defendant, as compared to litigating multiple motions to dismiss. If the defendant chooses to seek a stay of a *Monell* claim, the deadline to file a motion to dismiss is tolled by the filing of the stay motion (and by the stay itself, if any). If a defendant chooses instead to file a motion to dismiss a *Monell* claim, the defendant should be prepared to explain why the claim should not be stayed instead.

## ARBITRATION

68. After granting a motion to compel arbitration, the Court is generally inclined to dismiss a case without prejudice rather than stay it. However, in cases where the case is sent to

arbitration to resolve the threshold question of arbitrability, the Court will dismiss rather than stay the case only if the defendant waives any statute of limitations defense based on the time it takes for the arbitrator to determine whether the dispute is subject to arbitration. *See Stewart v. Acer*, No. 22-cv-4684-VC, Dkt. No. 46 (N.D. Cal. February 1, 2023).

**IT IS SO ORDERED.**

Dated: April 25, 2023

Vince Chhabria
United States District Judge