

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANDING ORDER FOR DISCOVERY IN CIVIL CASES BEFORE JUDGE DONATO

INTRODUCTION

The purpose of this Standing Order is to address recurring practical questions that arise during discovery and provide parties with the views of this Court so that they can plan discovery accordingly. This order is designed to supplement this Court’s Standing Order for Civil Cases, and applies only to cases in which discovery is supervised by this Court rather than a magistrate judge or a special master.

For good cause, the parties may propose modifications to the provisions of this Standing Order in their joint case management conference statement. Unless and until modified, however, the following provisions shall supplement the requirements of the Federal Rules of Civil Procedure and the Civil Local Rules in all civil cases before this Court.

DISCOVERY CUT-OFFS

1. Stipulations for extensions of discovery cut-offs set by the Court are not permitted. Cut-offs can be extended only by order of the Court.

RESPONDING TO REQUESTS FOR DOCUMENTS AND MATERIALS

2. In responding to requests for documents and materials under FRCP 34, all parties shall affirmatively state in a written response the full extent to which they will produce materials, and shall, promptly after the production, confirm in writing that they have produced all such materials so described that are locatable after a diligent search of all locations at which such materials might plausibly exist. It is not sufficient to state that “responsive” materials will be or

1 have been produced. Such a response leaves open the distinct possibility that other responsive
2 materials have not been produced.

3 3. In searching for responsive materials in connection with FRCP 34 requests or for
4 materials required to be disclosed under FRCP 26(a)(1), parties must search computer or
5 electronic files, e-mails, voice mails, work files, desk files, calendars and diaries, and any other
6 locations and sources where materials of the type to be produced might plausibly be expected to be
7 found.

8 4. At the time of production, the producing party shall also provide the following
9 information as if it were a response to a standing interrogatory: the specific custodian, source and
10 location for each produced item, using unique identifying numbers to specify documents or
11 ranges. Produced materials should bear unique identifying Bates numbers on each page.

12 5. To the maximum extent feasible, all parties' files and records should be retained
13 and produced in their original form and sequence, including file folders, and the originals should
14 remain available for inspection by any counsel on reasonable notice.

15 6. Except for good cause, no item shall be received as case-in-chief evidence if the
16 proponent failed to produce it in response to a reasonable and proper discovery request covering
17 the item, regardless of whether the other party moved to compel production. A burden,
18 overbreadth or similar objection shall not be a valid reason for withholding requested, responsive
19 materials actually known to counsel or the party.

20 7. Privilege logs shall promptly be provided and must be sufficiently detailed and
21 informative to justify the privilege. *See* FRCP 26(b)(5). No generalized claims of privilege or
22 work product protection are permitted. With respect to each communication for which a claim of
23 privilege or work product is made, the asserting party must at the time of assertion identify:

- 24 a. all persons, by name, title and/or job position, making or receiving the
25 privileged or protected communication;
- 26 b. the date of the communication; and
- 27 c. the subject matter of the communication.

28

1 Failure to furnish this information at the time of the assertion may be deemed a waiver of the
2 privilege or protection.

3 **DEPOSITIONS**

4 8. In scheduling depositions, counsel are expected to cooperate with and be courteous
5 to each other and the witness. Absent extraordinary circumstances, counsel shall consult in
6 advance with opposing counsel and unrepresented proposed deponents to schedule depositions at
7 mutually convenient times and places. Unavailability of counsel shall not be grounds for deferring
8 or postponing a deposition if another attorney from the same firm or who represents a party with
9 similar interests to that witness is able to attend. Ordinarily, if one side desires a prompt
10 deposition, the other side is expected to agree to dates falling within 30 days of the request.
11 Parties should typically provide at least 7 calendar days between the request and the deposition.

12 9. Witnesses subpoenaed to also produce documents should ordinarily be served at
13 least 30 days before the scheduled deposition, and arrangements should be made to permit
14 inspection of the documents before the deposition commences. Extra copies of documents used
15 during the deposition should ordinarily be provided to opposing counsel and the deponent.
16 Deponents should be shown a document before being examined about it except when counsel seek
17 to impeach or test the deponent's recollection.

18 10. Reasonable breaks shall be excluded from calculation of deposition time under
19 FRCP 30(d)(1). Unless the parties agree otherwise, a day-long deposition should have a 15-
20 minute morning break, a lunch break of reasonable duration (for example, 45 minutes), and a 15-
21 minute afternoon break.

22 11. A deponent's time spent reviewing a document tendered for the examination will
23 count against the FRCP 30(d)(1) limits. However, a deponent may not eat up the clock by
24 insisting on reviewing the entirety of a lengthy document when only a small portion of it is subject
25 to questioning. For example, if asked about a page or two in a 50-page document, the deponent is
26 free to review as much as he or she believes is necessary -- off the clock. Only a reasonable
27 amount of review time shall be counted toward the FRCP 30(d)(1) examination day.
28

1 12. If any objection to a request for materials is overruled, and if the disputed request
2 was due and pending at the time of a deposition, the withholding party or counsel must, at the
3 request of any other party, re-produce all deponents under its control or represented by them for
4 further deposition examination as to any new materials produced in response that are germane to
5 that deponent. The withholding party or counsel must also bear the expense of the other parties in
6 attending the corrective depositions. A party objecting to producing requested materials may not
7 use the existence of its own objections as a basis for postponing any deposition unless such party
8 promptly meets and confers with the other side and then, if failing to reach an agreement, brings a
9 prompt motion for a protective order or advises the Court of the dispute pursuant to Paragraph 17
10 below.

11 13. Counsel and parties shall comply with FRCP 30(c)(2). Deposition objections must
12 be as to privilege or form only. Speaking objections are prohibited. Under no circumstances
13 should any counsel interject, “if you know,” “if you understand,” or otherwise coach a deponent or
14 comment on a question. When a privilege is claimed, the witness should nevertheless answer
15 questions relevant to the existence, extent or waiver of the privilege, such as the date of a
16 communication, who made the statement, to whom and in whose presence the statement was
17 made, other persons to whom the contents of the statement have been disclosed, and the general
18 subject matter of the statement. Private conferences between deponents and attorneys about the
19 substance of the testimony while the witness is under oath are improper and prohibited, including
20 on breaks during the deposition, except for the sole purpose of determining whether a privilege
21 should be asserted. Breaks shall not be taken while a question is pending unless required to
22 determine whether a privilege should be asserted. Counsel will be subject to sanctions if they
23 consistently impede or otherwise unreasonably delay the fair examination of the deponent.
24 Deponents and their counsel must make a good faith effort to prepare for depositions and to
25 refresh witnesses’ memories on important matters in the suit about which the witness reasonably
26 should be expected to have knowledge. Deponents who claim to lack recollection during their
27 deposition but who later claim at trial to have had their memories refreshed in the interim, may be,
28 among other things, impeached with their previous failures of recollection during their depositions

1 or be subject to preclusion. In preparing deponents, defending counsel shall segregate and retain
2 all materials used to refresh the deponents' memories and provide them to examining counsel at
3 the outset of the deposition.

4 14. To the maximum extent feasible, deposition exhibits shall be numbered in a simple
5 manner that will allow the same numbering at trial. In discovery, counsel shall agree on blocks of
6 exhibit numbers to be used by the respective parties. Identical exhibits should not be re-marked,
7 but various versions of the same document, such as copies with handwritten notes added, should
8 be separately marked if used. *See* Civil Local Rule 30-2(b).

9 **30(b)(6) DEPOSITIONS**

10 15. With respect to depositions under FRCP 30(b)(6), the fundamental purpose is to
11 allow a party to notice a deposition by subject matter, thereby requiring the respondent to
12 designate and to produce one or more organization witnesses knowledgeable on the designated
13 topic, a useful procedure when the roles of percipient witnesses controlled by an adverse party are
14 unknown. In some cases, however, counsel routinely appear to notice Rule 30(b)(6) depositions
15 on numerous and wide-ranging topics, including even the basis for "contentions" made by adverse
16 parties. To obviate disputes and to give guidance, these rules will be enforced:

17 a. Without a prior order increasing the limit, a party may seek Rule 30(b)(6)
18 depositions from another party on up to a total of 10 subject matters (for the entire case) described
19 with reasonable particularity. In framing the subjects, it is normally improper to ask for Rule
20 30(b)(6) deponents to testify concerning the entire basis of a claim or defense. On the other hand,
21 proper subjects, which would require the respondent to find and to produce knowledgeable
22 deponents, would include topics such as "the time line of research and development leading to the
23 invention in question" or "the efforts undertaken by defendant to locate documents responsive to
24 plaintiff's document request." If a 30(b)(6) notice includes an overbroad topic, the overbroad
25 topic shall be unenforceable and may not later be replaced with a proper topic. In other words, an
26 overbroad topic burns one of the 10 subject matters and cannot be replaced with a substitute unless
27 the Court so orders.
28

1 party counsel represents. The letter should be electronically filed, as should a timely letter
2 cancelling any conference or hearing scheduled by the Court if settlement is reached. (Please note
3 that as with all communications with the Court by e-filing, a hard copy must be lodged with the
4 Clerk's Office in the time frame required by Civil Local Rule 5-1(e)(7).) The Court will then
5 advise the parties whether a response, written motion, a telephone conference or court hearing will
6 be required. The Court may also order lead counsel to appear for a meet-and-confer in person at
7 the court. After the telephone conference or hearing, counsel should submit their proposed order
8 (agreed as to form) by e-filing it. This paragraph applies only to cases wherein discovery is being
9 supervised by the Court rather than by a magistrate judge or special master.

10 18. If a dispute arises during a deposition and involves either a persistent obstruction of
11 the deposition or a refusal to answer a material question on a ground other than privilege or the
12 work product doctrine, counsel may attempt to arrange a telephone conference with the Court
13 through the Courtroom Deputy at (415) 522-4173. Any such conference should be attended by the
14 same court reporter recording the deposition.

15 **IT IS SO ORDERED.**

16 Dated: April 7, 2014

17 
18 _____
19 JAMES DONATO
20 United States District Judge
21
22
23
24
25
26
27
28