PROCUREMENT AND ENFORCEMENT
OF INTELLECTUAL PROPERTY

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PATENT, TRADEMARK
COPYRIGHT & RELATED MATTERS

2829 Townsgate Road
Suite 330
Westlake Village, CA 91361-3006
(805) 496-1164

Re: Local Counsel Services for Intellectual Property Litigation in the Central District of California

Thank you for giving us the opportunity to introduce you to Cislo & Thomas LLP. Let us show how we can assist you as local counsel in your Intellectual Property cases filed in Southern California. From any of our offices in Los Angeles, Westlake Village, or Santa Barbara, California, we are but a short distance from the Courthouses of the District Court for the Central District of California which are located in Los Angeles, Santa Ana, and Riverside, California.

Cislo & Thomas LLP has been in the business of providing Intellectual Property services for over thirty (30) years. Our firm focuses on patent, copyright, trademark, and trade secret litigation as well as the acquisition of Intellectual Property. We have the litigation experience required to provide whatever assistance your firm may need.

We can provide assistance ranging from simply advising of filing deadlines and ensuring that documents are properly filed via the District Court's electronic filing system to preparing Markman briefs addressing complex issues of claim construction. You can be confident that with us, you will receive the highest level of legal expertise. Our firm has the highest rating possible (AV) by Martindale-Hubble and is listed in the top 5% of law firms nationwide by the Bar Register of Preeminent Lawyers.

We have experience in handling "high-stakes" litigation and the needs of demanding clients. We have handled matters for the City of Chicago, UC Regents, Amini Innovation Corp., Amazon, In-n-Out Burger, Homeland Housewares, Kirby Morgan, Walgreens, Snap.com, and Guthy-Renker, just to name a few.

Enclosed with this letter are:

- Filing deadlines
- Stipulation to Extend Time to Respond to an Initial Complaint
- Pro Hac Vice Form
- USDC Central District of California Fee Schedule

(List of enclosed documents cont.)

- USDC Central District of California Summary of Case Management Deadlines
- USDC Central District of California Judges
- USDC Central District of California Local Rules
- Our Reported Cases
- Article from the Santa Clara University Law Journal

Please do not hesitate to call us if you have any questions or comments regarding conducting litigation in Southern California.

~Daniel M. Cislo

Index

Filing Deadlines

LOCAL COUNSEL FILING PACKET

FILING INFORMATION FOR THE CENTRAL DISTRICT OF CALIFORNIA

Filing Deadlines

Answers

- Responses to a complaint are due within 21 days of the date of service.

- The 21 day deadline applies even when the defendant is served pursuant to state law which allows a longer time to answer.

Extensions of Time to Answer or Otherwise Respond

- The deadline to answer or otherwise respond may be extended for a cumulative total of 30 days upon filing a joint-stipulation of counsel. (Local Rule 8-3). The stipulation must be filed but need not be approved by the Court. (*Id.*) A sample stipulation for a 30-day extension of time is enclosed with this package.

- The deadline may be extended by 60 days if the defendant waives service upon receiving a request for waiver in accordance with Federal Rules of Civil Procedure 4(d).

Motion Deadlines

A "Meet & Confer" is Required

- For most motions, counsel must meet and confer at least 10 days prior to the filing of a motion. (Local Rule 7-3.)

- A five (5) day meet and confer requirement applies to pre-answer motions such as Rule of Civil Procedure 12(b) motions, as well as to motions for a new trial pursuant to Rule of Civil Procedure 59(a).

- Moving papers must be filed 28 days before the hearing date. (Local Rule 6.)

- Opposition papers must be filed 21 days before the hearing date. (Local Rule 7-9.)

- Replies must be filed 14 days before the hearing date. (Local Rule 7-10.)

Notes:

1. The abovementioned deadlines determined by counting calendar days—not Court days.

2. Service by mail requires that an additional three days be added to the deadlines.
3. Electronic filing of documents in the Central District constitutes personal service.

Discovery Motions

- The procedures for resolving discovery disputes in the Central District of California differ from those applicable in most district courts.

- First, the Local Rules require that the moving party serve a detailed meet and confer letter which "shall identify each issue and/or discovery request in dispute, shall state briefly with respect to each issue/request the moving party's position and provide any legal authority which the moving party believes is dispositive of the dispute as to that issue/request." (Local Rule 37-1.)

- Second, within 10 days after service of a meet and confer letter which comports with the rule, the parties are to telephonically meet and confer in person at the office of the moving parties' counsel if both parties' counsel reside in the same county, otherwise the parties' counsel may meet and confer telephonically. (Local Rule 37-1.)

- If the parties are unable to resolve the dispute, they are required to prepare a joint-stipulation setting forth in detail each unresolved issue and each party's respective position. For example, for each disputed request for production (or interrogatory or request for admission, etc.), the joint-stipulation should include the full text of the request, the full text of the response and each parties' respective position regarding the request and response. (Local Rule 37-2.1.)

- A draft stipulation is to be prepared by the moving party. The stipulation is to be personally served on the opposing party. Within seven (7) court days the opposing party must personally deliver the opposing party's portion of the stipulation to the moving party. The moving party's counsel is responsible for integrating the stipulation. After the document has been integrated, the moving party's counsel shall provide it to the opposing party's counsel for signature. The opposing party's counsel must sign and return the document by the close of the next business day. (Local Rule 37-2.2.)

- No page limitations apply to the joint-stipulation. (Local Rule 37-2.1.)

- After the joint stipulation is filed, each party may file a supplemental memorandum of law with the Court not later than 14 days before the hearing date. (Local Rule 37-2.3.)

- Counsel must cooperate and comply with the requirements of Local Rule 37 or face the imposition of sanctions. (Local Rule 37-4.)

***Pro Hac Vice* Admissions**

- Regular admission to the Central District of California is limited to active members in good standing of the State Bar of California. (Local Rule 83.-2.2.)

- Attorneys outside of California may be admitted to appear *pro hac vice* for the purpose of appearing in a particular case by filing a written application and only upon appointing as lead counsel a member of the bar of the Central District of California who maintains an office in the district. (Local Rules 83.-2.3 through 83.2.3.4.)

Stipulation to Extend Time to Respond to Initial Complaint

Daniel M. Cislo, Esq., No. 125,378
dan@cislo.com
CISLO & THOMAS LLP
12100 Wilshire Blvd., Suite 1700
Los Angeles, California 90025
Telephone: (310) 451-0647
Facsimile: (310) 394-4477

Attorney for Defendant XYZ Company

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ABC Company., a California corporation,

Plaintiff,

vs.

XYZ Company, a California Corporation, and Does 1 through 9, inclusive.

Defendants.

CASE NO. CV 00-00000

STIPULATION TO EXTEND TIME TO RESPOND TO INITIAL COMPLAINT BY NOT MORE THAN 30 DAYS (L.R. 8-3)

Complaint served: January 1, 2016

Current response date: January 22, 2016

New Response Date: February 22, 2016

Pursuant to Local Rule 8-3, the parties to this matter, through their respective counsel of record, do hereby agree and stipulate that Defendant XYZ Company shall have to and including February 23, 2016 to file an answer or otherwise respond to Plaintiff ABC Company's complaint.

IT IS SO STIPULATED.

Dated: January 10, 2016

CISLO & THOMAS LLP

_____

Daniel M. Cislo
Attorney for Defendant XYZ Company

Dated: January 10, 2016

LAW OFFICES OF JOHN DOE, ESQ.

_____

John Doe
Attorney for Plaintiff ABC Company

CISLO & THOMAS LLP
Attorneys at Law
SUITE 500
1333 WILSHIRE BOULEVARD
SANTA MONICA, CALIFORNIA 90401-1211
TELEPHONE: (310) 451-0647
FACSIMILE: (310) 394-4477

Pro Hac Vice

Name and address:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff(s),

v.

Defendant(s),

CASE NUMBER

APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE *PRO HAC VICE*

INSTRUCTIONS FOR APPLICANTS

(1) *The attorney seeking to appear pro hac vice must complete Section I of this Application, personally sign, in ink, the certification in Section II, and have the designated Local Counsel sign in Section III.* ***ELECTRONIC SIGNATURES ARE NOT ACCEPTED.*** *Space to supplement responses is provided in Section IV. The applicant must also attach a Certificate of Good Standing (issued within the last 30 days) from every state bar to which he or she is admitted; failure to do so will be grounds for denying the Application. Scan the completed Application with its original ink signature, together with any attachment(s), to a single Portable Document Format (PDF) file.*

(2) *Have the designated Local Counsel file the Application electronically (using the Court's CM/ECF System), attach a Proposed Order (using Form G-64 ORDER, available from the Court's website), and pay the required $325 fee online at the time of filing (using a credit card). The fee is required for each case in which the applicant files an Application. Failure to pay the fee at the time of filing will be grounds for denying the Application.* ***Out-of-state federal government attorneys are not required to pay the $325 fee.*** *(Certain attorneys for the United States are also exempt from the requirement of applying for pro hac vice status. See L.R. 83-2.1.4.) A copy of the G-64 ORDER in Word or WordPerfect format must be emailed to the generic chambers email address. L.R. 5-4.4.2.*

SECTION I - INFORMATION

_____
Applicant's Name (Last Name, First Name & Middle Initial) *check here if federal government attorney* ☐

_____
Firm/Agency Name

_____ _____ _____
Telephone Number *Fax Number*

_____
Street Address

_____ _____
City, State, Zip Code *E-mail Address*

I have been retained to represent the following parties:

_____ ☐ *Plaintiff(s)* ☐ *Defendant(s)* ☐ *Other:* _____

_____ ☐ *Plaintiff(s)* ☐ *Defendant(s)* ☐ *Other:* _____

Name(s) of Party(ies) Represented

List all state and federal courts (including appellate courts) to which the applicant has been admitted, and provide the current status of his or her membership. Use Section IV if more room is needed, or to provide additional information.

Name of Court	*Date of Admission*	*Active Member in Good Standing? (if not, please explain)*

List all cases in which the applicant has applied to this Court for *pro hac vice* status in the previous three years (continue in Section IV if needed):

Case Number	*Title of Action*	*Date of Application*	*Granted / Denied?*

If any *pro hac vice* applications submitted within the past three (3) years have been denied by the Court, please explain:

Has the applicant previously registered as a CM/ECF user in the Central District of California? ☐ Yes ☐ No

If yes, was the applicant's CM/ECF User account associated with the e-mail address provided above? ☐ Yes ☐ No

_____

Previous E-mail Used (if applicable)

Attorneys must be registered for the Court's Case Management/Electronic Case Filing ("CM/ECF") System to be admitted to practice pro hac vice in this Court. Submission of this Application will constitute your registration (or re-registration) as a CM/ECF User. If the Court signs an Order granting your Application, you will either be issued a new CM/ECF login and password, or the existing account you identified above will be associated with your case. Pursuant to Local Rule 5-3.2.3, registering as a CM/ECF User is deemed consent, for purposes of Fed. R. Civ. P. 5(b)(2)(E), to electronic service of documents through the CM/ECF System. You have the right to withhold or revoke your consent to electronic service at any time; simply complete and return a Central District Electronic Service Exemption Form (Form G-05, available from the Court's website). If the Court receives an Electronic Service Exemption Form from you, you will no longer receive notice by e-mail when Court orders or other documents are filed in cases in which you are counsel of record; instead, copies of such documents will be sent to you through the mail.

SECTION II - CERTIFICATION

I declare under penalty of perjury that:

(1) All of the above information is true and correct.

(2) I am not a resident of the State of California. I am not regularly employed in, or engaged in substantial business, professional, or other activities in the State of California.

(3) I am not currently suspended from and have never been disbarred from practice in any court.

(4) I am familiar with the Court's Local Civil and Criminal Rules, the Federal Rules of Civil and Criminal Procedure, and the Federal Rules of Evidence.

(5) I designate the attorney listed in Section III below, who is a member in good standing of the Bar of this Court and maintains an office in the Central District of California for the practice of law, as local counsel pursuant to Local Rule 83-2.1.3.4.

Dated _____

_____

Applicant's Name (please type or print)

_____

Applicant's Signature

SECTION III - DESIGNATION OF LOCAL COUNSEL

Designee's Name (Last Name, First Name & Middle Initial)

Firm/Agency Name

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-mail Address

Designee's California State Bar Number

I hereby consent to the foregoing designation as local counsel, and declare under penalty of perjury that I maintain an office in the Central District of California for the practice of law.

Dated _____

Designee's Name (please type or print)

Designee's Signature

SECTION IV - SUPPLEMENT ANSWERS HERE (ATTACH ADDITIONAL PAGES IF NECESSARY)

USDC Central District of California Fee Schedule

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCHEDULE OF FEES

The Clerk's Office will accept business or corporate checks, checks drawn on business or clients trust accounts, and credit cards (Mastercard/Visa, Discover, American Express) for filing and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued. **No personal checks or checks drawn on non-business accounts** will be accepted from either attorneys or the public. The Clerk's Office will also accept all federal, state, and local government issued checks, bank certified checks, and U.S. Postal Service money orders. Make checks payable to: Clerk, U.S. District Court.

1. Admission of Attorneys to Practice, resident [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (10) and Local Civil Rule 83-2.1.2 and General Order 11-13]
   - ☐ Lawyers Admitted to the California Bar - Less than 3 Years $226.00
   - ☐ Lawyers Admitted to the California Bar - 3 or More Years $276.00

2. Admission of Attorneys to Practice, non-resident, per case [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (10) and Local Civil Rule 83-2.1.3 and General Order 11-13] $325.00

3. Attorney duplicate Certificate of Admission or additional Certificate of Good Standing [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Fee Schedule, section (10)] $18.00
   Note: A $30.00 search fee will be charged in addition to the $18.00 certificate fee if a search is necessary.

4. Search of the records of the district court per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access. [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (2)] $30.00

5. Reproduction, Certification and Exemplification Fees:

   a. Reproducing any record or paper, exclusive of Certification or Exemplification, per page; fee applies to paper copies made from either (1) original documents or (2) microfiche or microfilm reproductions of the original records. This fee applies to services rendered on behalf of the United States if the record or paper requested is available through electronic access.
   [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (4)] . . . . . $.50

   b. Certification of any document or paper, whether the certification is made directly on the document or by separate instrument
   [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (3)] $11.00

c. Exemplification of any document or paper, whether the exemplification is made directly on the document or by separate instrument [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (3)] $21.00

d. Filing a requisition for and certifying the result of a search of the records of the court for judgments, decrees, other instruments, suits pending and bankruptcy proceedings, per name search [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, sections (2) and (3)] $35.00

e. For reproduction of audio recordings of proceedings regardless of the medium. This fee applies to services rendered on behalf of the United States if the recording is available electronically. [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (5)] $30.00

f. For each microfiche sheet of film or microfilm jacket copy of any court record, where available [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (6)] $6.00

6. Filing Fees:

a. Any civil action or proceeding *including civil cases filed under the Prison Litigation Reform Act (PLRA)* [28 U.S.C. §1914(a)] $350.00
Administrative Fee for Filing a Civil Action, Suit or Proceeding in a District Court $50.00

b. Writ of Habeas Corpus [28 U.S.C. §1914(a)] $5.00

c. Filing or indexing any document not in a case or proceeding for which a filing fee has been paid [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (1)] $46.00

d. Notice of Appeal and Cross Appeal [28 U.S.C. §1917]
For docketing a case on appeal or review, or docketing any other proceeding on appeal, except that no docketing fee shall be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. 1292(b), unless the appeal is allowed.
This fee includes the statutory fee of $5.00 that is collected under 28 U.S.C. §1917 [28 U.S.C. §1913, Judicial Conference Schedule of Fees, Court of Appeals Miscellaneous Fee Schedule, section (1)] $505.00

e. Notice of appeal to a district judge from a judgment of conviction by a magistrate judge in a misdemeanor case [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous

Fee Schedule, section (9)] $37.00

f. For filing an action under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat §785 (1996); (This fee is in addition to the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.) [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (13)] $6,355.00

7. Other Fees:

a. For any payment returned or denied for insufficient funds [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (8)] $53.00

b. Power of Attorney [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (1)] $46.00

c. Letter of Naturalization or copy of Certificate [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (2)] $30.00

d. Bankruptcy - Motion to Withdraw the Reference of a Case [28 U.S.C. §1930, Judicial Conference Schedule of Fees, Bankruptcy Court Miscellaneous Fee Schedule, section (19)] $150.00

e. For retrieval of one box of records from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court $64.00
For retrievals involving multiple boxes, each additional box $39.00
For electronic retrievals $19.90
An additional charge of $0.65 per page will be added to all electronic retrieval fees.
[28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule, section (7)]

f. Processing fee for a petty offense charged on a federal violation notice [28 U.S.C. §1914, Judicial Conference Schedule of Fees, District Court, Miscellaneous Fee Schedule, section (15)] $25.00

Note: Complete texts of federal court fee schedules are available at: http://www.uscourts.gov/FormsAndFees/Fees.aspx

Summary of Case Management Deadlines – USDC Central District of California

CASE NAME: [CASE NAME]

Printed: September 29, 2016

The following is a list of procedural deadlines for actions in the **Central District of California** based on the Federal Rules; the Court's Local Rules as of December 1, 2003; and District Court Judges' orders:

DATE	FILING AND SERVICE OF INITIAL PLEADINGS	AUTHORITY

On **[Entry]** Complaint filed with Court

By **[Entry]** Plaintiff must serve complaint on defendants ..... FRCP 4(m)
(Cpt Filed + 90)

By **[Entry]** Defendant must send letter re meet and confer re Rule 12(b) motion, if any ..... LR 7-3
(Cpt served + 16)

By **[Entry]** Defendant must file answer or Rule 12(b) motion..... FRCP 12(a)(1)
(Cpt served + 21)

By **[Entry]** Plaintiff must conduct early meeting of counsel..... Scheduling Conf. Order
(Sched. Conf. - 21[1])

By **[Entry]** Plaintiff must file joint report of early meeting ..... Scheduling Conf. Order
(Early Mtg + 14)

On **[Entry]** Parties must attend scheduling conference..... Scheduling Conf. Order
(Sched. Conf.)

By **[Entry]** Parties must file a Notice of Settlement Procedure Selection ..... LR 16-14.2
(Sched. O + 14)

DISCOVERY DEADLINES

By **[Entry]** Last day to serve initial disclosures ..... FRCP 26(a)
(Early Mtg + 14)

On **[Entry]** Last day to serve fact discovery by mail ..... FRCP 34(b)
(M to Compel - 33)

On **[Entry]** Last day to send compel letter (fact) ..... L.R. 37-2, -3, and Magistrate's hearing date
(Disc. C/O - 75) (i.e., 10 days for the letter + 13 days for the stip + 24 days for the motion + 28 days to respond to compel order)

On **[Entry]** Fact discovery cutoff ..... Scheduling Order and Magistrate's hearing date
(Disc. C/O)

By **[Entry]** Last day to serve expert reports (if not otherwise ordered)..... FRCP 26(a)(2)
(Trial - 90)

By **[Entry]** Last day to rebuttal expert reports..... FRCP 26(a)(2)
(Exp. Rpt + 30)

On **[Entry]** Last day to send compel letter (expert) ..... L.R. 37-2, -3, and Magistrate's hearing date
(Exp. Disc. C/O - 75) (i.e., 10 days for letter + 13 days for the stip + 24 days for the motion + 28 days to respond to compel order)

On **[Entry]** Expert discovery cutoff..... Scheduling Order and trial judge hearing date
(Exp. Disc. C/O)

[1] "Sched. Conf. - 21" means 21 calendar days before the scheduling conference set by the Court.

DATE	DISPOSITIVE MOTION DEADLINES	AUTHORITY

By **[Entry]** Last day to conduct meet and confer re dispositive motions, if any ..... LR 7-3
(Mot. C/O - 31)

On **[Entry]** Last day to serve dispositive motions by mail..... LR 6-1
(Mot. C/O - 28)

On **[Entry]** Last day to hear dispositive motions .....Scheduling Order and trial judge hearing date
(Mot. C/O)

COUNTDOWN TO FINAL PRETRIAL CONFERENCE

By **[Entry]** Parties must complete settlement procedures..... LR 16-14.2
(FPC - 45)

On **[Entry]** Parties must conduct pretrial meeting of counsel ..... LR 16-2
(FPC - 40) Confirm subject matter jurisdiction ..... LR 16-2.1
Stipulation of facts..... LR 16-2.2
Exchange Exhibits (marked according to LR 26-4)..... LR 16-2.3
Exchange List of Witnesses ..... LR 16-2.4
Discuss Experts Witnesses ..... LR 16-2.5
Resolve Evidentiary Matters..... LR 16-2.6
Identify any deposition testimony to be lodged as evidence ..... LR 16-2.7
Prepared contentions of law and fact ..... LR 16-2.8
Exhaust settlement possibilities ..... LR 16-2.9

By **[Entry]** Last day to file memorandum of contentions of fact and law ..... LR 16-3
(FPC - 21) Factual Contentions ..... LR 16-3.1
Legal Brief..... LR 16-3.2
Bifurcation of Issues..... LR 16-3.3
Identify issues triable to a jury ..... LR 16-3.4
Discuss any claim to attorneys' fees ..... LR 16-3.5
Identify any issues abandoned..... LR 16-3.6

By **[Entry]** Parties must lodge joint proposed final pretrial conference order ..... LR 16-6.1
(FPC - 7 court days)

On **[Entry]** at **[Day]** am/pm Parties must attend final pretrial conference ..... Scheduling Order
(FPC) Dismiss all unserved parties..... LR 16-7.1
Motions & Other Proceedings (if not already cut off) ..... LR 16-7.2
Set date for trial (if not already set) ..... LR 16-7.3

COUNTDOWN TO JURY TRIAL

By **[Entry]** Parties must file pretrial disclosure (witnesses, depositions & exhibits) ..... FRCP 26(a)(3)
(Trial - 30)

By **[Entry]** Parties must file objections to pretrial disclosures (depositions & exhibits) ..... FRCP 26(a)(3)
(Trial - 16)

On **[Entry]** Parties must disclose all other graphic or illustrative material to be used at trial ..... LR 16-6.3
(Trial - 11)

On **[Entry]** Parties must file trial brief ..... LR 16-9
(Trial - 7 court days)

By **[Entry]** Last day to file any continuance ..... LR 40-1
(Trial - 5 court days)

By **[Entry]** Parties must file request for special verdict or general verdict with Interrogatories .... LR 49-1
(Trial - 5 court days)

By **[Entry]** Parties must prepare requests for (jury) instructions ..... LR 51-1
(Trial - 5 court days)

By **[Entry]** Parties must file with the Court any objections to the jury instructions ..... LR 51-5
(Trial - 0)

On **[Entry]** at **[Day]** am/pm JURY TRIAL TO COMMENCE ..... Scheduling Order
(Trial date)

COUNTDOWN TO BENCH TRIAL

By **[Entry]** Parties must file findings of fact & conclusions of law in bench trial ..... LR 52-1
(Trial - 5 court days)

On **[Entry]** at **[Day]** am/pm BENCH TRIAL TO COMMENCE ..... Scheduling Order
(Trial date)

By **[Entry]** Parties must serve and lodge Order with the Court ..... LR 52-4
(Trial + 3 court days)

By **[Entry]** Separate objection, if any, must be filed ..... LR 52-7
(Trial + 8 court days)

POST TRIAL

By **[Entry]** Parties must serve findings of fact and conclusions of law after jury verdict ..... LR 52-2
(V + 5 court days)

By **[Entry]** Last day to file separate objection, if any, must be filed ..... LR 52-7
(V + 10 court days)

By **[Entry]** Parties must file any motion for a new trial ..... FRCP 59(b)
(J + 10[1])

By **[Entry]** Parties must file and serve motion for attorneys' fees ..... LR 54-12
(J + 14)

By **[Entry]** Parties must file Bill of Costs ..... LR 54-3
(J + 15)

By **[Entry]** Objections to Bill of Costs, if any, must be filed ..... LR 54-7
(J + 22)

By **[Entry]** Parties must file reply to objections to Bill of Costs ..... LR 54-7
(J + 26)

By **[Entry]** Parties must file any notice of appeal ..... FRAP 4(a)(1)(A) and 4(a)(4)
(J + 30 or Order on last remaining post-trial motion + 30)

By **[Entry]** Other party must file any notice of appeal ..... FRAP 4(a)(3)
(Notice of Appeal + 14)

By **[Entry]** Review of Clerk's decision ..... LR 54-9
(CD + 5 court days)

By **[Entry]** Parties must file any motion for relief from judgment ..... FRCP 60(b)
(J + reasonable time not to exceed 1 year)

Document4

USDC Central District of California Judges

United States District Court Central District of California

Chief District Judge

Name	Initials	Location
Honorable Virginia A Phillips	VAP	Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 780, 7th Floor

Chief Magistrate Judge

Name	Initials	Location
Honorable Patrick J. Walsh	PJW	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 23, 3rd Floor

District Judge

Name	Initials	Location
Honorable Percy Anderson	PA	Los Angeles Spring Street, 312 N. Spring Street, Courtroom 15, Los Angeles, California 90012
Honorable Jesus G Bernal	JGB	Riverside, Courtroom 1
Honorable André Birotte Jr.	AB	United States Courthouse, 312 N. Spring St., Los Angeles, CA 90012, Courtroom 4, 2nd Floor

District Judge

Name	Initials	Location
Honorable Cormac J. Carney	CJC	Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA, 92701, Courtroom 9B, 9th Floor
Honorable David O. Carter	DOC	Santa Ana - Courtroom 9D
Honorable Valerie B. Fairbank	VBK	United States Courthouse, 312 North Spring Street, Los Angeles, CA. 90012 - Courtroom 9, Spring Street level
Honorable Dale S. Fischer	DSF	Roybal Federal Building, 255 East Temple Street, Los Angeles; CA 90012; Courtroom 840; 8th Floor
Honorable Michael W. Fitzgerald	MWF	United States Courthouse, 312 North Spring Street, Courtroom 1600 (16th Floor), Los Angeles, CA 90012
Honorable Dolly M. Gee	DMG	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 7, 2nd Floor
Honorable Andrew J. Guilford	AG	Santa Ana Division, Court 10D
Honorable Philip S. Gutierrez	PSG	Roybal Federal Building and United States Courthouse, 255 E. Temple Street, Los Angeles, CA 90012, Courtroom 880, 8th Floor
Honorable Terry J. Hatter Jr.	TJH	Los Angeles-Spring Street Courthouse 312 N. Spring St., Los Angeles, CA 90012 Courtroom #17 , Spring St Level
Honorable William D. Keller	WDK	United States Courthouse, 312 North Spring Street, Los Angeles, CA. 90012. Courtroom: TBA
Honorable George H. King	GHK	Roybal Federal Building and United States Courthouse, 255 E. Temple Street, Los Angeles, CA, 90012, Courtroom 650, 6th Floor
Honorable R. Gary Klausner	RGK	Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, Los Angeles, CA 90012, Courtroom 850, 8th Floor

District Judge

Name	Initials	Location
Honorable John A. Kronstadt	JAK	Roybal Federal Building, 255 E. Temple Street, Los Angeles, Courtroom 750
Honorable Ronald S.W. Lew	RSWL	United States Courthouse, 312 N. Spring Street, Los Angeles, CA 90012, Courtroom 21, 5th Floor
Honorable Consuelo B. Marshall	CBM	Los Angeles - Spring Street Courthouse 312 N. Spring St., Los Angeles, CA 90012 Courtroom # 2, 2nd Floor
Honorable Beverly Reid O'Connell	BRO	United States Courthouse, 312. N. Spring Street, Los Angeles, CA. 90012 - Courtroom 14 - Spring Street Level
Honorable Fernando M. Olguin	FMO	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 22, 5th Floor.
Honorable S. James Otero	SJO	United States Courthouse, 312 North Spring Street, Los Angeles, CA. 90012 - Courtroom 1, 2nd Floor
Honorable Dean D. Pregerson	DDP	United States Courthouse, 312 N. Spring Street, Los Angeles 90012 - Courtroom 3, Second Floor
Honorable Manuel L. Real	R	United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Courtroom 8, 2nd Floor,
Honorable James V. Selna	JVS	Santa Ana, Courtroom 10C
Honorable Christina A. Snyder	CAS	Spring Street Courthouse, 312 N. Spring St., Courtroom 5, 2nd Floor, Los Angeles, CA 90012
Honorable Josephine L. Staton	JLS	Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA, 92701, Courtroom 10A, 10th Floor
Honorable John F. Walter	JFW	United States Courthouse, 312 N. Spring Street, Los Angeles, CA 90012, Courtroom 16, Spring Street Level

District Judge

Name	Initials	Location
Honorable Stephen V. Wilson	SVW	United States Courthouse, 312 N. Spring St, Los Angeles, CA. 90012. Courtroom 6, 2nd floor
Honorable Otis D. Wright II	ODW	United States Courthouse, 312 N. Spring Street, Los Angeles, CA. 90012 - Courtroom 11, Spring Street Level
Honorable George H. Wu	GW	United States Courthouse, 312 N. Spring St., Los Angeles, CA 90012, Courtroom 10, Spring St. Floor

Magistrate Judge

Name	Initials	Location
Honorable Paul L. Abrams	PLA	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom G, 9th Floor
Honorable David Bristow	DTB	Riverside - Courtroom 3, 3rd Floor
Honorable Jacqueline Chooljian	JC	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 20, 3rd Floor
Honorable Charles F. Eick	E	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 20, 3rd Floor
Honorable Jay C. Gandhi	JCG	Santa Ana (Courtroom 6A) and Los Angeles
Honorable Kenly Kiya Kato	KK	Riverside, Courtroom 3 or 4, 3rd Floor
Honorable Steve Kim	SK	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 24, 5th Floor
Honorable Louise A.	LAL	Roybal Federal Building and United States Courthouse, 255 E.

Magistrate Judge

Name	Initials	Location
LaMothe		Temple St., Los Angeles, CA, 90012
Honorable Alexander F. MacKinnon	AFM	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom H, 9th Floor
Honorable Douglas F. McCormick	DFM	Santa Ana Ronald Reagan Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA 92701, Courtroom 6B, 6th Floor
Honorable John E. McDermott	JEM	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom C, 8th Floor
Honorable Frederick F. Mumm	FFM	Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 580, 5th Floor
Honorable Rozella A. Oliver	RAO	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom F, 9th Floor
Honorable Sheri Pym	SP	Riverside - Courtroom 3 or 4, 3nd Floor
Honorable Alicia G Rosenberg	AGR	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom B, 8th Floor.
Honorable Jean P. Rosenbluth	JPR	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom A, 8th Floor
Honorable Alka Sagar	AS	Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 540, 5th Floor
Honorable Karen E. Scott	KES	Santa Ana , Courtroom 6D
Honorable Suzanne H. Segal	SS	Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles CA, 90012, Courtroom 590, 5th floor
Honorable Gail J. Standish	GJS	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom 23, 3rd Floor

Magistrate Judge

Name	Initials	Location
Honorable Karen L. Stevenson	KS	United States Courthouse, 312 N. Spring St., Los Angeles, CA, 90012, Courtroom E, 9th Floor
Honorable Michael R Wilner	MRW	Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 550, 5th Floor
Honorable Andrew J. Wistrich	AJW	Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 690, 6th Floor

USDC Central District of California Local Rules

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHAPTER I
LOCAL CIVIL RULES

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CHAPTER I
LOCAL CIVIL RULES, INTEGRATED WITH TITLES OF FEDERAL RULES OF CIVIL PROCEDURE[1]

I. SCOPE OF RULES; FORM OF ACTION

F.R.Civ.P. 1. SCOPE AND PURPOSE

L.R. 1-1 Applicability. These Local Rules apply to all civil actions and proceedings in the United States District Court for the Central District of California.

L.R. 1-2 General Orders. The Clerk shall maintain a file of General Orders of the Court which shall be available for inspection by the public during regular office hours.

L.R. 1-3 Applicability of Rules to Persons Appearing Without Attorneys. Persons appearing pro se are bound by these rules, and any reference in these rules to "attorney" or "counsel" applies to parties pro se unless the context requires otherwise.

L.R. 1-4 Definitions. Unless the context requires otherwise, as used in these Local Rules:

(a) "Court" includes the judge or magistrate judge to whom a civil or criminal action, proceeding, case or matter has been assigned;

(b) "Declaration" includes any declaration under penalty of perjury executed in conformance with 28 U.S.C. § 1746, and any properly executed affidavit;

(c) "Defendant" means any party against whom a claim for relief is made or against whom an indictment or information is pending in a criminal case;

(d) "F.R.App.P." means the Federal Rules of Appellate Procedure;

[1] Federal Rules of Civil Procedure for which no corresponding Local Rule has been adopted are listed in *ITALICS.*

(e) "F.R.Civ.P." means the Federal Rules of Civil Procedure;

(f) "F.R.Crim.P." means the Federal Rules of Criminal Procedure;

(g) "F.R.Evid." means the Federal Rules of Evidence;

(h) "Judge" refers to a United States District Judge or other judicial officer acting in any matter assigned to a United States District Judge;

(i) "Person" includes natural person, corporation, partnership or other association of individuals;

(j) "Plaintiff" means any party claiming affirmative relief by complaint, counterclaim or cross-claim;

Wherever applicable, each gender includes the other gender and the singular includes the plural.

F.R.Civ.P. 2. ONE FORM OF ACTION

II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

F.R.Civ.P. 3. COMMENCING AN ACTION

L.R. 3-1 Civil Cover Sheet and Other Forms Required at the Time of Filing a New Action. All civil actions presented to the Clerk for filing must be accompanied by a Civil Cover Sheet (Form CV-071) completed and signed by the attorney or party presenting the matter. In all cases where jurisdiction is invoked in whole or in part under 28 U.S.C. § 1338 (regarding patents, plant variety protection, copyrights and trademarks), the attorney or party presenting the matter must also provide at the time of filing the required notice to the Patent and Trademark Office in patent, plant variety protection and trademark matters (Form AO-120) and the required notice to the Copyright Office in copyright matters (Form AO-121). Copies of the Civil Cover Sheet and other forms are available from the Court's website, www.cacd.uscourts.gov.

L.R. 3-2 Filing of Initiating Documents. Unless exempted from electronic filing pursuant to L.R. 5-4.2, case-initiating documents, such as complaints

and notices of removal, and all concurrently filed documents must be prepared in the English language and must be filed electronically using the Court's CM/ECF System, in accordance with the applicable Federal Rules of Civil Procedure and the Local Rules of this Court.

F.R.Civ.P. 4. SUMMONS

L.R. 4-1 Summons - Presentation for Issuance. The summons must be prepared using an approved form of summons, available from the Court's website, www.cacd.uscourts.gov. Unless exempted from electronic filing pursuant to L.R. 5-4.2, the summons must be presented electronically for issuance by the Clerk, using the Court's CM/ECF System.

L.R. 4-2 Summons - Service of Process - United States Marshal - Civil Cases. Except as otherwise provided by order of the Court, or when required by the treaties or statutes of the United States, process shall not be presented to the United States Marshal for service.

L.R. 4-3 Summons - Service of Process - United States Government. Civil process on behalf of the United States government or an officer or agency thereof shall be made by the United States Marshal upon request by the government.

L.R. 4-4 Summons - Service of Process - Habeas Corpus Proceedings. In all cases where a petitioner has filed a habeas corpus petition under 28 U.S.C. § 2241 or § 2254, which challenges the judgment of a state court or the decision of a state agency, the procedures for service of the petitions and related orders will be pursuant to the agreement between the Attorney General of California and the Court set forth in Appendix B to these Local Rules. In all cases where a petitioner has filed a habeas corpus petition under 28 U.S.C. § 2241 or a motion under 28 U.S.C. § 2255, which challenges the judgment of a federal court or a decision of a federal agency, the procedures for service of the petitions, motions, and related orders will be pursuant to the agreement between the United States Attorneys' Office and the Court set forth in Appendix C to these Local Rules.

F.R.Civ.P. 4.1. SERVING OTHER PROCESS

F.R.Civ.P. 5. SERVING AND FILING PLEADINGS AND OTHER PAPERS

L.R. 5-1 Lodging Documents. "Lodge" means to deliver to the Clerk a document which is tendered to the Court but is not approved for filing, such as depositions, exhibits, or a proposed form of order. Unless excluded from electronic filing pursuant to L.R. 5-4.2, all lodged documents shall be submitted electronically, in the same manner as documents that are electronically filed. Parties electronically lodging proposed orders or other proposed documents that require a judge's signature must comply with L.R. 5-4.4.

L.R. 5-2 Filing In Forma Pauperis. An action to be filed *in forma pauperis* shall be accompanied by a motion, with supporting declaration. The declaration shall set forth information sufficient to establish that the movant will be unable to pay the fees and costs or give security therefor. The Clerk shall supply forms which may be used for an application to proceed *in forma pauperis.*

L.R. 5-3 Serving Documents. Unless service is governed by F.R.Civ.P. 4, documents must be served as follows:

L.R. 5-3.1 Service of Documents Not Filed Electronically.

L.R. 5-3.1.1 Service. Documents presented to the Clerk for filing or lodging in paper format pursuant to L.R. 5-4.2 must be served in accordance with F.R.Civ.P. 5. All documents served under this L.R. 5-3.1.1 must be accompanied by a proof of service in the form required by L.R. 5-3.1.2.

L.R. 5-3.1.2 Proof of Service. Proof of service for documents served pursuant to L.R. 5-3.1.1 must be made by declaration of the person accomplishing the service. If the proof of service declaration is attached to the original document, it must be attached as the last page(s) of the document. The proof of service declaration must include the following information:

(a) The day and manner of service;
(b) Each person and/or entity served;
(c) The title of each document served; and
(d) The method of service employed (e.g., personal, mail, substituted, etc.).

L.R. 5-3.2 Service of Documents Filed Electronically.

L.R. 5-3.2.1 Service.[2] Upon the electronic filing of a document, a "Notice of Electronic Filing" ("NEF") will be automatically generated by the CM/ECF System and sent by e-mail to: (1) all attorneys who have appeared in the case in this Court and who have consented to receive service through the CM/ECF System, and (2) all *pro se* parties who have been granted leave to file documents electronically in the case pursuant to L.R. 5-4.1.1 or who have appeared in the case and are registered to receive service through the CM/ECF System pursuant to L.R. 5-3.2.2. Unless service is governed by F.R.Civ.P. 4 or L.R. 79-5.3, service with this electronic NEF will constitute service pursuant to the Federal Rules of Civil and Criminal Procedure, and the NEF itself will constitute proof of service for individuals so served.

Individuals who have not appeared in the case in this Court, who are not registered for the CM/ECF System, or who have not consented to receive service through the CM/ECF System, must be served in accordance with F.R.Civ.P. 5, and proof of service on such individuals must be made by declaration in the form required by L.R. 5-3.1.2.

L.R. 5-3.2.2 Electronic Service for Pro Se Litigants.[3] A non-incarcerated pro se litigant who has not been granted leave to file documents electronically in a particular case pursuant to L.R. 5-4.1.1 may nevertheless register to receive electronic service of documents through the Court's CM/ECF System.

L.R. 5-3.2.3 Consent to Electronic Service.[4] An attorney who registers to file documents electronically through the CM/ECF System will be deemed to consent, for purposes of F.R.Civ.P. 5(b)(2)(E), to receive electronic service of documents through the CM/ECF System, unless the attorney submits a completed

[2] L.R. 5-3.2.1 amended, effective 12/1/15.
[3] L.R. 5-3.2.2 new, effective 12/1/15. Prior L.R. 5-3.2.2 renumbered to L.R. 5-3.2.3.
[4] Former L.R. 5-3.2.2 amended and renumbered to L.R. 5-3.2.3, effective 12/1/15.

Central District Electronic Service Exemption Form, which may be obtained from the Court's website.

A *pro se* litigant who registers to file documents electronically through the CM/ECF System pursuant to L.R. 5-4.1.1 or who registers to receive service of documents through the CM/ECF System pursuant to L.R. 5-3.2.2 will be deemed to consent, for purposes of F.R.Civ.P. 5(b)(2)(E), to receive electronic service of documents through the CM/ECF System.

L.R. 5-4 Filing Documents.

L.R. 5-4.1 Electronic Filing in Civil Cases.[5] Except as provided in L.R. 5-4.2, all documents filed in civil cases must be filed electronically using the Court's CM/ECF System. Sending a document by e-mail does not constitute an electronic filing. To file documents using the CM/ECF System, an attorney must register to do so through the Court's website. Upon registering, the attorney will receive a CM/ECF login and password that will allow him or her to file documents through the CM/ECF System.

L.R. 5-4.1.1 Pro Se Litigants.[6] After entering an appearance in a civil case, any non-incarcerated pro se litigant may seek leave of Court to use the CM/ECF System to file documents electronically in that particular case. Leave to file electronically must be sought by motion, which must demonstrate that the pro se litigant has access to the equipment and software necessary to prepare documents for filing in PDF format and to connect to the Court's CM/ECF System.

If granted leave to file electronically, the pro se litigant must register to use the Court's CM/ECF System within five days of being served with the order granting leave. Registration may be completed online through the Court's website. Upon registering, the litigant will receive a CM/ECF login and password that will allow him or her to file documents electronically only in the case in which leave to do so was

[5] L.R. 5-4.1 amended, effective 12/1/15.

[6] L.R. 5-4.1.1 new, effective 12/1/15. Former L.R. 5-4.1.1 renumbered to L.R. 5-4.1.2.

granted. Leave to file electronically must be separately sought and granted in each case in which the pro se litigant wishes to file electronically.

Any pro se litigant granted leave to file electronically who does not already have a PACER account must establish one within the same five-day period.

L.R. 5-4.1.2 Authorization of Electronic Filing.[7] The Clerk will accept documents filed, signed, or verified by electronic means in compliance with these Local Rules. Any such document constitutes a written document for the purposes of applying these Local Rules and the Federal Rules of Civil Procedure.

L.R. 5-4.1.3 Applicability of Other Rules.[8] Except as otherwise ordered in accordance with applicable statutes and rules, all Federal Rules of Civil Procedure and Local Rules shall continue to apply to cases that are subject to electronic filing.

L.R. 5-4.1.4 Definitions.[9]

(1) "CM/ECF System" refers to the automated Case Management/Electronic Case Filing system implemented by the Court. The CM/ECF System is available at https://ecf.cacd.uscourts.gov or at such other web address as may be specified by the Clerk on the Court's website.

(2) "CM/ECF Website" refers to the CM/ECF Website operated by this Court to provide information regarding the CM/ECF System, including procedures and instructions for using the system. The CM/ECF Website is available at www.cacd.uscourts.gov/cmecf or at such other web address as may be specified by the Clerk on the Court's website.

[7] Former L.R. 5-4.1.1 amended and renumbered to L.R. 5-4.1.2, effective 12/1/15.
[8] Former L.R. 5-4.1.2 renumbered to L.R. 5-4.1.3, effective 12/1/15.
[9] Former L.R. 5-4.1.3 amended and renumbered to L.R. 5-4.1.4, effective 12/1/15.

(3) "Notice of CM/ECF Unavailability" refers to a Public Notice from the Clerk regarding scheduled maintenance that will make the CM/ECF System unavailable. Such Notices are placed on the CM/ECF Website. In the event of an unscheduled system outage not preceded by a Notice of CM/ECF Unavailability, refer to L.R. 5-4.6.2.

(4) The "Notice of Electronic Filing" ("NEF") generated pursuant to L.R. 5-3.2 for each electronically filed document will include the time of filing, the name of the parties and attorney(s) filing the document, the type of document, the text of the docket entry, the name of parties and/or attorney(s) receiving the NEF, a hyperlink to the filed document that allows recipients to retrieve the document automatically, and the names of any attorneys or parties who have appeared in the case but who are not registered to receive service through the CM/ECF System.

(5) "PDF" refers to Portable Document Format, a specific computer file format that is the only format in which a document may be electronically filed.

L.R. 5-4.2 Exceptions to Electronic Filing in Civil Cases.[10]
Documents exempted from electronic filing pursuant to one of the subsections listed below shall be presented to the Clerk for filing or lodging in paper format, and shall comply with the requirements of L.R. 11 and all other applicable Local and Federal Rules.

(a) *Exemptions for Particular Filers.* The following filers are exempt from the requirement to file documents electronically:

(1) *Pro Se Litigants.* Unless otherwise ordered by the Court (*see* L.R. 5-4.1.1), pro se litigants shall continue to present all documents to the Clerk for filing in paper format. Documents received by the Clerk from pro se litigants under this rule will be scanned by the Clerk into

[10] L.R. 5-4.2 amended, effective 12/1/15.

the CM/ECF System. Once scanned, the original documents will be destroyed.

(2) *Other Exceptional Cases Involving Unregistered Filers.* For good cause shown, the Court may grant an exemption from the obligation to file electronically to an attorney who is not registered to file documents through the CM/ECF System. Any such exemption will not exceed one calendar year, but may be renewed upon good cause shown. If an attorney granted such an exemption thereafter registers to file documents through the CM/ECF System, that registration will abrogate any exemption granted under this rule. Documents received by the Clerk from an attorney granted an exemption pursuant this rule will be scanned by the Clerk into the CM/ECF System. Once scanned, the original documents will be destroyed.

(b) *Documents Excluded from Electronic Filing.* The following documents are excluded from the electronic filing requirement of L.R. 5-4.1:

(1) *Non-paper or Other Unusual Exhibits.* Non-paper physical exhibits and any exhibit on a sheet of paper that is too large or irregularly shaped to be scanned into PDF format shall be filed or lodged with the Clerk in paper or physical format in accordance with L.R. 11-5.

(2) [*Abrogated*]

(3) *Under-Seal and Other Documents Excluded from the Public Case File.* Documents filed under seal or otherwise excluded from the public case file (such as documents filed pursuant to L.R. 5.2-2.2) shall be filed electronically if required by L.R. 79-5. Otherwise, such documents shall be filed in paper form, in accordance with the Federal Rules of Civil and Criminal Procedure and the Local Rules of this Court.

(4) *Other Exceptions.* For good cause shown, the Court may permit a particular document or exhibit to be filed or lodged in paper format, rather than electronically. If permission to file or lodge a document or exhibit in paper format is obtained, the document or exhibit shall be filed or lodged in compliance with L.R. 11-4. Unless the filer is exempted from electronic filing pursuant to L.R. 5-4.2(a), the filer shall first file electronically a Notice of Manual Filing or Lodging describing the document or exhibit being filed or lodged in paper format, and present a copy of the Notice of Manual Filing or Lodging, together with its NEF (see L.R. 5-3.2.1), with the document to be filed or lodged.

L.R. 5-4.3 Format of Electronically Filed Documents. In addition to the specific requirements for electronically filed documents set forth below, all documents subject to electronic filing shall comply with the general format requirements of L.Rs. 11-3, 11-5, 11-6, 11-7, and 11-8.

L.R. 5-4.3.1 Technical Requirements (File Format and Size Limitations). Documents filed electronically must be submitted in PDF. Except as provided elsewhere in this L.R. 5-4, the document filed with the Court must be created using word-processing software, then published to PDF from the original word-processing file (to permit the electronic version of the document to be searched). PDF IMAGES CREATED BY SCANNING PAPER DOCUMENTS ARE PROHIBITED, except that exhibits submitted as attachments to a document and records in bankruptcy appeals, habeas corpus proceedings, and administrative review cases such as Social Security appeals, ERISA, and IDEA cases may be scanned and attached, in text-searchable PDF form, if the filer does not possess a word-processing-file version of the attachment. Individual PDF files shall not exceed 10 MB in size, and shall contain no more than one document or portion of one document per file. PDF files that exceed 10 MB must be divided into sub-volumes.

Where scanned signature pages are authorized under L.R. 5-4.3.4(a), only the signature pages may be scanned; the

remainder of the document must be generated by publishing to PDF from the original word-processing file.

L.R. 5-4.3.2 Redaction. It is the responsibility of the filer to ensure full compliance with the redaction requirements of Federal Rule of Civil Procedure 5.2 and L.R. 5.2-1.

L.R. 5-4.3.3 Hyperlinks. Electronically filed documents may contain the following types of hyperlinks:

(1) Hyperlinks to other portions of the same document;

(2) Hyperlinks to other documents filed within the CM/ECF system; and

(3) Hyperlinks to a location on the Internet that contains a source document for a citation.

Hyperlinks may not be used to link to sealed or restricted documents. Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record, but are simply mechanisms for accessing material cited in a filed document.

The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink. Court staff cannot assist counsel or parties in preparing hyperlinked documents, and should not be contacted for any such purpose.

L.R. 5-4.3.4 Signatures.[11]

[11] L.R. 5-4.3.4 amended, effective 12/1/15.

(a) *Signatures on Electronically Filed Documents.* An electronically filed document shall be signed in accordance with one of the following methods:

(1) *Documents Requiring the Signature of a Single Registered CM/ECF Filer.* In the case of a document in which there is only one signatory, who is a registered CM/ECF filer, the document shall be filed using that signatory's CM/ECF login and password, which shall function as the signatory's signature. Electronically filed documents must also include a signature block as provided in L.R. 11-1, and the signature shall be represented on the signature line with either an "/s/" or a digitized personalized signature.

(2) *Documents Requiring the Signatures of Multiple Registered CM/ECF Filers.* In the case of a single document (such as a stipulation) in which there are multiple signatories, all of whom are registered CM/ECF filers, the document shall be filed using the CM/ECF login and password of one of those signatories, and shall include signature blocks for each required signatory, with the signatures indicated on each signature line pursuant to one of the following methods:

(i) the signatures of all signatories may be indicated on the document with an "/s/," and the filer shall attest on the signature page of the document that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing; or

(ii) the signatures of all signatories may be indicated using digitized personalized signatures.

(3) *Documents Requiring Signatures Other Than Those of CM/ECF Filers.* In the case of documents requiring signatures other than those of registered CM/ECF filers (such as declarations), the filer shall scan the hand-signed signature page(s) of the document in PDF format and electronically file the document in accordance with L.R. 5-4.3.1.

(b) *Maintenance of Original Hand-signed Documents.* With respect to any electronically filed document containing a scanned copy of a hand-signed page, the filer shall maintain the original, signed document, for subsequent production to the assigned judge if so ordered for inspection upon request by a party or the judge's own motion, until one year after final resolution of the action (including the appeal, if any).

(c) *Effect of Signatures on Electronically Filed Documents.* Any filing in accordance with this L.R. 5-4.3.4 shall bind the signatories as if the document were physically signed and filed, whether for purposes of Rule 11 of the Federal Rules of Civil Procedure, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(d) *Responsibility for Use of Login and Password.* A person registered to file documents through the CM/ECF System may authorize another to file a document using his or her login and password if the document is filed on behalf of a party represented by the person registered to file. The person registered shall be responsible for any document so filed. If, at any time, a registered CM/ECF filer believes that the security of his or her password has been compromised, he or she must immediately notify the Court's CM/ECF Help Desk by e-mail or telephone as posted on the CM/ECF Website. It is the responsibility of the registered filer to change his or her login and/or password, as instructed on the Court's CM/ECF Website.

(e) *Prohibition Against Filing on Behalf of Party Not Represented by the Registered CM/ECF Filer.* Unless otherwise ordered by the Court, a registered CM/ECF filer's login and password may not be used to file a document on behalf of a party not represented by that registered CM/ECF filer.

L.R. 5-4.4 Submission of Proposed Orders, Judgments, or Other Proposed Documents That Require a Judge's Signature.

L.R. 5-4.4.1 Electronic Lodging of Proposed Orders. Parties submitting proposed orders or other proposed documents that require a judge's signature must comply with both this L.R. 5-4.4.1 and L.R. 5-4.4.2, unless exempted from electronic filing pursuant to L.R. 5-4.2. When a proposed order or other proposed document accompanies an electronic filing, the proposed order or other proposed document shall be in PDF format and included, as an attachment, with the main electronically filed document (e.g., stipulations, applications, motions). Proposed orders or other proposed documents (such as a proposed judgment or proposed findings of fact) that are not lodged with a main document shall be electronically lodged as an attachment to a Notice of Lodging; if the proposed document is being submitted in response to a court order, the filer shall link the Notice of Lodging to that court order.

L.R. 5-4.4.2 Submission of Word-Processing Versions of Proposed Orders. After a document requiring a judge's signature has been lodged in accordance with L.R. 5-4.4.1, a WordPerfect or Microsoft Word copy of the proposed document, along with a PDF copy of the electronically filed main document, shall be e-mailed to the assigned judge's generic chambers e-mail address using the CM/ECF System. The subject line of the e-mail shall be in the following format: Court's divisional office, year, case type, case number, document control number assigned to the main document at the time of filing, judge's initials and filer (party) type and name (e.g., for Los Angeles: LA08CV00123-6-ABC-Defendant and Counter Plaintiff Corp. A; for Santa Ana: SA08CV00124-8-DEF-Defendant and Counter Plaintiff Corp. B; for Riverside:

ED08CV00125-10-GHI-Defendant and Counter Plaintiff Corp. C).

L.R. 5-4.5 Mandatory Chambers Copies. A "mandatory chambers copy" is an exact duplicate of an electronically filed document submitted in paper format directly to the assigned judge. Unless otherwise ordered by the assigned judge, one mandatory chambers copy of every electronically filed document must be delivered to the chambers of the assigned judge, or other designated location, no later than 12:00 noon on the following business day. Mandatory chambers copies must comply with L.R. 11-3, *et seq.* (i.e., blue-backing, font size, page-numbering, tabbing of exhibits, etc.), unless otherwise directed by the assigned judge. Mandatory chambers copies must be prominently labeled MANDATORY CHAMBERS COPY on the face page. Mandatory chambers copies must be printed from CM/ECF, and must include: (1) the CM/ECF-generated header (consisting of the case number, document control number, date of filing, page number, etc.) at the top of each page; and (2) the NEF (see L.R. 5-3.2.1) as the last page of the document. The Court's CM/ECF Website contains additional instructions by judges for delivery of mandatory chambers copies, including each judge's designated delivery location, and any differences in the required number of copies or delivery deadline.

L.R. 5-4.6 Deadlines.

L.R. 5-4.6.1 Timeliness. Unless otherwise provided by order of the assigned judge, all electronic transmissions of documents must be completed prior to midnight Pacific Standard Time or Pacific Daylight Time, whichever is in effect at the time, in order to be considered timely filed on that day.

L.R. 5-4.6.2 Technical Failures.[12] If a registered CM/ECF filer needs to file a document electronically, but is unable to do so, the filer must immediately contact the CM/ECF Help Desk by e-mail or telephone as posted on the CM/ECF Website, unless a "Notice of CM/ECF Unavailability" covering that time period has been posted on the Court's CM/ECF Website. If no Notice of CM/ECF Unavailability has been posted, the filer

[12] L.R. 5-4.6.2 amended, effective 12/1/15.

shall attempt to file the document electronically at least two times, separated by at least one hour. If, after at least two attempts, the filer cannot electronically file the document, the document will be accepted for filing by the Clerk in paper format that same day, if time permits. If a filer has complied with this section, and the delay of being unable to file a document electronically causes the document to be untimely, the filing shall be accompanied by a declaration or affidavit setting forth the facts of the filer's failed attempts to file electronically, together with an appropriate application for leave to file the document. Nothing in this Local Rule authorizes the Court to extend a deadline that, by statute or rule, may not be extended.

A history of technical failures lasting longer than one hour will be posted on the CM/ECF Website.

L.R. 5-4.7 Effectiveness of Electronic Filings.

L.R. 5-4.7.1 Entry of Documents. Except as otherwise provided in this L.R. 5-4, the acceptance by the Clerk of a document electronically filed shall constitute entry of that pleading or other document on the docket maintained by the Clerk under Federal Rules of Civil Procedure 58, 77, and 79.

L.R. 5-4.7.2 Certification of Electronic Documents. Pursuant to Federal Rules of Civil Procedure 44(a)(1) and 44(c), the method of electronic certification described herein is deemed proof of an official court record maintained by the Clerk of Court. The NEF (see L.R. 5-3.2.1) contains the date of electronic distribution and identification of the United States District Court for the Central District of California as the sender. An encrypted verification code appears in the electronic document stamp section of the NEF. The electronic document stamp shall be used for the purpose of confirming the authenticity of the transmission and associated document(s) with the Clerk of Court, as necessary. When a document has been electronically filed in the CM/ECF System, the official record is the electronic recording of the document kept in the custody of the Clerk of Court. The NEF provides certification

that the associated document(s) is a true and correct copy of the original filed with the Court.

L.R. 5-4.7.3 Court Orders. Any order or other Court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order.

L.R. 5-4.8 Maintenance of Personal Contact Information.

L.R. 5-4.8.1 Obligation to Maintain Personal Contact Information.[13] Attorneys and pro se parties registered to file or receive service of documents through the CM/ECF System are required to maintain and update, in the Court's CM/ECF System, their personal contact account information, including name, law firm or other affiliation, business address, telephone number, facsimile number, and e-mail address, and are required to notify the Clerk and parties to any pending cases of any change in this information in accordance with L.R. 83-2.4.

L.R. 5-4.8.2 Obligation to Maintain Electronic Post Office Box.[14] Every attorney and pro se party registered to file or receive service of documents through the CM/ECF System will be responsible for maintaining an "electronic post office box," or storage area in the attorney's or party's computer system, that is adequate to handle all documents that will be sent electronically; for making certain that the e-mail service provider used does not limit the size of attachments; and for ensuring that the Court's NEF transmissions (see L.R. 5-3.2.1) are not blocked.

F.R.Civ.P. 5.1. CONSTITUTIONAL CHALLENGE TO A STATUTE – NOTICE, CERTIFICATION, AND INTERVENTION

F.R.Civ.P. 5.2. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

[13] L.R. 5-4.8.1 amended, effective 12/1/15.
[14] L.R. 5-4.8.2 amended, effective 12/1/15.

L.R. 5.2-1 Redaction. It is the responsibility of the filer to ensure full compliance with the redaction requirements of Federal Rule of Civil Procedure 5.2. In addition, the filer shall redact passport numbers and driver license numbers in their entirety, and shall ensure that any document that contains a home address shall include only the city and state. This restriction on including passport numbers, driver license numbers, and full home addresses shall not apply to a filing exempted by Federal Rule of Civil Procedure 5.2(b); to an under-seal filing as set forth in Federal Rule of Civil Procedure 5.2(d), (f), or (g); or where the redaction requirement with respect to that information has been waived as provided in Federal Rule of Civil Procedure 5.2(h).

Parties shall carefully examine the documents, exhibits, or attachments to be filed with the Court in order to protect any sensitive and private information. The responsibility for redacting or placing under seal protected personal data identifiers rests solely with counsel and the parties. The Clerk will not review any pleadings or documents for compliance.

Counsel and the parties are cautioned that failure to redact or place under seal protected personal data identifiers may subject them to the disciplinary power of the Court. If a redacted version of the document is filed, counsel shall maintain possession of the unredacted document pending further order of the Court or resolution of the action (including the appeal, if any) and shall, at the request of opposing counsel or parties, provide a copy of the complete document.

L.R. 5.2-2 Exceptions.

L.R. 5.2-2.1 Remote Access Limitations. Cases subject to the limitations on remote access to electronic files set forth in F.R.Civ.P. 5.2(c) are exempted from the redaction requirements of F.R.Civ.P. 5.2(a) and of L.R. 5.2-1.

L.R. 5.2-2.2 Documents to Be Excluded from the Public Case File. The documents listed below are not to be included in the public case file, and are therefore excluded from the redaction requirements of F.R.Civ.P. 5.2 and L.R. 5.2-1:

(1) Unexecuted summonses or warrants, supporting applications, and affidavits;

(2) Pretrial bail reports;
(3) Presentence investigation reports;
(4) Statements of reasons in the judgment of conviction;
(5) Juvenile records;
(6) Documents containing identifying information about jurors or potential jurors;
(7) Financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
(8) Ex parte requests for authorization of investigative, expert, or other services pursuant to the Criminal Justice Act; and
(9) Sealed documents.

F.R.Civ.P. 6. COMPUTING AND EXTENDING TIME; TIME FOR MOTION PAPERS

L.R. 6-1 Notice and Service of Motion. Unless otherwise provided by rule or order of the Court, no oral motions will be recognized and every motion shall be presented by written notice of motion. The notice of motion shall be filed with the Clerk not later than twenty-eight (28) days before the date set for hearing, and shall be served on each of the parties electronically or, if excepted from electronic filing, either by deposit in the mail or by personal service. If mailed, the notice of motion shall be served not later than thirty-one (31) days before the Motion Day designated in the notice. If served personally, or electronically, the notice of motion shall be served not later than twenty-eight (28) days before the Motion Day designated in the notice. The Court may order a shorter time. Unless otherwise ordered by the Court, the Clerk shall place each motion on the Motion Day calendar for the date designated in the written notice of motion.

III. PLEADINGS AND MOTIONS

F.R.Civ.P. 7. PLEADINGS ALLOWED; FORMS OF MOTIONS AND OTHER PAPERS

L.R. 7-1 Stipulations. Stipulations will be recognized as binding only when made in open court, on the record at a deposition, or when filed in the proceeding. Written stipulations affecting the progress of the case shall be filed with the Court, be accompanied by a separate order as provided in L.R. 52-4.1, and will not be effective until approved by the judge, except as authorized by statute or the F.R.Civ.P.

L.R. 7-2 Applicability. The provisions of this rule shall apply to motions, applications, petitions, orders to show cause, and all other proceedings except a trial on the merits (all such being included within the term "motion" as used herein) unless otherwise ordered by the Court or provided by statute, the F.R.Civ.P., or the Local Rules.

L.R. 7-3 Conference of Counsel Prior to Filing of Motions. In all cases not listed as exempt in L.R. 16-12, and except in connection with discovery motions (which are governed by L.R. 37-1 through 37-4) and applications for temporary restraining orders or preliminary injunctions, counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. The conference shall take place at least seven (7) days prior to the filing of the motion. If the parties are unable to reach a resolution which eliminates the necessity for a hearing, counsel for the moving party shall include in the notice of motion a statement to the following effect:

"This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on (date)."

L.R. 7-4 Motions. The Court may decline to consider a motion unless it meets the requirements of L.R. 7-4 through 7-8. On the first page of the notice of motion and every other document filed in connection with any motion, there shall be included, under the title of the document, the date and time of the motion hearing, and the name of the judicial officer before whom the motion has been noticed. The notice of motion shall contain a concise statement of the relief or Court action the movant seeks.

L.R. 7-5 Moving Papers. There shall be served and filed with the notice of motion:

(a) A brief but complete memorandum in support thereof and the points and authorities upon which the moving party will rely; and

(b) The evidence upon which the moving party will rely in support of the motion.

L.R. 7-6 Evidence on Motions. Factual contentions involved in any motion and opposition to motions shall be presented, heard, and determined upon declarations and other written evidence (including documents, photographs, deposition excerpts, etc.) alone, except that the Court may, in its discretion, require or allow oral examination of any declarant or any other witness.

L.R. 7-7 Form and Content of Declarations. Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4).

L.R. 7-8 Presence of Declarants - Civil Cases. On motions for and orders to show cause re preliminary injunctions, motions to be relieved from default and other motions where an issue of fact is to be determined (e.g., civil contempt, but excluding motions contesting venue and personal jurisdiction), not later than fourteen (14) days prior to the hearing, a party desiring to cross-examine any declarant who is not beyond the subpoena power of the Court and who is reasonably available to the party offering the declaration may serve by hand (or facsimile or by electronic filing) and file a notice of request to cross-examine such declarant. If the party offering the declaration disputes that the declarant is within the subpoena power of the Court and reasonably available to the offering party, such party shall serve and file an objection to the notice of request to cross-examine not later than eleven (11) days prior to the hearing. The offering party shall be under no obligation to produce the declarant unless the Court has granted the request to cross-examine by written order not later than three (3) days prior to the hearing. No declaration of a declarant with respect to whom such a request has been granted shall be considered unless such declarant is personally present and available at the hearing for such cross-examination as the Court may permit. The Court may, in the alternative, order that the cross-examination be done by deposition taken on two (2) days' notice with the transcript being lodged five (5) days prior to the hearing. The Court may impose sanctions pursuant to these Local Rules against any party or counsel who requests the presence of any declarant without a good-faith intention to cross-examine the declarant.

L.R. 7-9 Opposing Papers. Each opposing party shall, not later than ten (10) days after service of the motion in the instance of a new trial motion and not later than twenty-one (21) days before the date designated for the hearing of the motion in all other instances, serve upon all other parties and file with the Clerk either (a) the evidence upon which the opposing party

will rely in opposition to the motion and a brief but complete memorandum which shall contain a statement of all the reasons in opposition thereto and the points and authorities upon which the opposing party will rely, or (b) a written statement that that party will not oppose the motion. Evidence presented in all opposing papers shall comply with the requirements of L.R. 7-6, 7-7 and 7-8.

L.R. 7-10 Reply Papers. A moving party may, not later than fourteen (14) days before the date designated for the hearing of the motion, serve and file a reply memorandum, and declarations or other rebuttal evidence. Absent prior written order of the Court, the opposing party shall not file a response to the reply.

L.R. 7-11 Continuance of Hearing Date. Unless the order for continuance shall specify otherwise, the entry of an order continuing the hearing of a motion automatically extends the time for filing and serving opposing papers and reply papers to twenty-one (21) days and fourteen (14) days, respectively, preceding the new hearing date. A stipulation to continue shall provide the date the opposition and reply papers are due to be filed with the Court.

L.R. 7-12 Failure to File Required Documents. The Court may decline to consider any memorandum or other document not filed within the deadline set by order or local rule. The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion, with the exception that a motion pursuant to F.R.Civ.P. 56 may not be granted solely based on the failure to file an opposition.

L.R. 7-13 Sanctions for Late Filing. A party filing any document in support of, or in opposition to, any motion noticed for hearing as above provided after the time for filing the same shall have expired, also shall be subject to the sanctions of L.R. 83-7 and the F.R.Civ.P.

L.R. 7-14 Appearances at Hearing. Counsel for the moving party and the opposing party shall be present on the hearing date and shall have such familiarity with the case as to permit informed discussion and argument of the motion. Failure of any counsel to appear, unless excused by the Court in advance pursuant to L.R. 7-15 or otherwise, may be deemed consent to a ruling upon the motion adverse to that counsel's position.

L.R. 7-15 Oral Argument - Waiver. Counsel may, with the consent of the Court, waive oral argument. Counsel who have agreed to waive oral argument shall advise the court clerk of such agreement by no later than noon on the fifth day preceding the hearing date. The court clerk shall advise the parties by no later than noon on the court day preceding the hearing date as to whether the Court has consented to the waiver of oral argument. The Court may dispense with oral argument on any motion except where an oral hearing is required by statute, the F.R.Civ.P. or these Local Rules.

L.R. 7-16 Advance Notice of Withdrawal or Non-Opposition. Any moving party who intends to withdraw the motion before the hearing date shall file and serve a withdrawal of the motion, not later than seven (7) days preceding the hearing. Any opposing party who no longer intends to oppose the motion, shall file and serve a withdrawal of the opposition, not later than seven (7) days preceding the hearing.

L.R. 7-17 Resubmission of Motions Previously Acted Upon. If any motion, application or petition has been made to any judge of this Court and has been denied in whole or in part or has been granted conditionally or on terms, any subsequent motion for the same relief in whole or in part, whether upon the same or any allegedly different state of facts, shall be presented to the same judge whenever possible. If presented to a different judge, it shall be the duty of the moving party to file and serve a declaration setting forth the material facts and circumstances as to each prior motion, including the date and judge involved in the prior motion, the ruling, decision, or order made, and the new or different facts or circumstances claimed to warrant relief and why such facts or circumstances were not shown to the judge who ruled on the motion. Any failure to comply with the foregoing requirements shall be the basis for setting aside any order made on such subsequent motion, either sua sponte or on motion or application, and the offending party or attorney may be subject to the sanctions provided by L.R. 83-7.

L.R. 7-18 Motion for Reconsideration. A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after

the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L.R. 7-19 Ex Parte Application. An application for an ex parte order shall be accompanied by a memorandum containing, if known, the name, address, telephone number and e-mail address of counsel for the opposing party, the reasons for the seeking of an ex parte order, and points and authorities in support thereof. An applicant also shall lodge the proposed ex parte order.

L.R. 7-19.1 Notice of Application. It shall be the duty of the attorney so applying (a) to make reasonable, good faith efforts orally to advise counsel for all other parties, if known, of the date and substance of the proposed ex parte application and (b) to advise the Court in writing and under oath of efforts to contact other counsel and whether any other counsel, after such advice, opposes the application.

L.R. 7-19.2 Waiver of Notice. If the judge to whom the application is made finds that the interest of justice requires that the ex parte application be heard without notice (which in the instance of a TRO means that the requisite showing under F.R.Civ.P. 65(b) has been made), the judge may waive the notice requirement of L.R. 7-19.1.

L.R. 7-20 Orders on Motions and Applications. A separate proposed order shall be lodged with any motion or application requiring an order of the Court, pursuant to L.R. 52-4.1. Unless exempted from electronic filing pursuant to L.R. 5-4.2, each proposed order shall comply with L.R. 5-4.4.

F.R.Civ.P. 7.1. DISCLOSURE STATEMENT

L.R. 7.1-1 Notice of Interested Parties. To enable the Court to evaluate possible disqualification or recusal, counsel for all non-governmental parties shall file with their first appearance a Notice of Interested Parties, which shall list all persons, associations of persons, firms, partnerships, and corporations (including parent corporations, clearly identified as such) that may have a pecuniary interest in the outcome of the case, including any insurance carrier that may be liable in whole or in part (directly or indirectly) for a judgment in the action or for the cost of defense. If the Notice of Interested Parties is filed with the Clerk in paper format pursuant to L.R. 5-

4.2, an original and two copies shall be filed. If the Notice of Interested Parties is filed electronically, Mandatory Chambers Copies shall be delivered to both the assigned district judge and the assigned magistrate judge. Counsel shall be under a continuing obligation to file an amended Notice if any material change occurs in the status of interested parties, as through merger or acquisition or change in carrier that may be liable for any part of a judgment.

The Notice shall include the following certification:

"The undersigned, counsel of record for _____, certifies that the following listed party (or parties) may have a pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

(Here list the names of all such parties and identify their connection and interest.)

Signature, Attorney of Record for:"

F.R.Civ.P. 8. GENERAL RULES OF PLEADING

L.R. 8-1 Jurisdiction - Allegations. The statutory or other basis for the exercise of jurisdiction by this Court shall be plainly stated in the first paragraph of any document invoking this Court's jurisdiction.

L.R. 8-2 Three-Judge Court - Identification in Pleading. If a party contends that the matter filed requires hearing by a court composed of three judges, the words "Three-Judge Court" shall be typed immediately below the docket number.

L.R. 8-3 Response to Initial Complaint. A stipulation extending the time to respond to the initial complaint shall be filed with the Clerk. If the stipulation, together with any prior stipulations, does not extend the time for more than a cumulative total of thirty (30) days from the date the response initially would have been due, the stipulation need not be approved by the judge. Any such stipulation must have as its title "Stipulation to Extend Time to Respond to Initial Complaint By Not More than 30 days (L.R. 8-3)". Directly beneath the title, the parties shall state when the Complaint

was served, when a response currently is due, and when it will be due following the filing of the stipulation. For example:

John Smith	)	CV 08-20000-ABC (RZx)
	)	
	)	Stipulation to Extend Time to Respond to
v.	)	Initial Complaint By Not More Than 30
	)	Days (L.R. 8-3)
	)	
James Jones	)	Complaint served: September 15, 2008
	)	Current response date: October 6, 2008
_____	)	New response date: November 5, 2008

This rule shall not apply to answers, replies or other responses to cross-claims, counterclaims, third-party complaints or any amended or supplemental pleadings.

F.R.Civ.P. 9. PLEADING SPECIAL MATTERS
F.R.Civ.P. 10. FORM OF PLEADINGS

F.R.Civ.P. 11. SIGNING PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

L.R. 11-1 Signature of Counsel. All documents, except declarations, shall be signed by the attorney for the party or the party appearing pro se. The name of the person signing the document shall be clearly typed below the signature line.

L.R. 11-2 Facsimile Documents. Documents may not be transmitted by facsimile directly to the Clerk's office for filing. However, copies of facsimile documents shall be accepted for filing, provided that they are legible. The original of any faxed document, including the original signature of the attorney, party or declarant, shall be maintained by the filing party until the conclusion of the case, including any applicable appeal period, subject to being produced upon order of the Court.

L.R. 11-3 Documents Presented to the Court - Form and Format

L.R. 11-3.1 Legibility. All pleadings, motions, affidavits, declarations, briefs, points and authorities, and other documents, including all exhibits thereto (hereinafter collectively referred to as "documents"), presented for filing or lodging with the Clerk shall be typewritten or printed, or prepared by a photocopying or other duplicating process that will produce clear and permanent copies equally legible to printing, in black or dark blue ink.

> ***L.R. 11-3.1.1 Font.*** Either a proportionally spaced or a monospaced font may be used. A proportionally spaced font must be standard (e.g., non-condensed) 14-point or larger, or as the Court may otherwise order. A monospaced font may not contain more than 10-1/2 characters per inch.

L.R. 11-3.2 Paper. All documents shall be formatted for 8 ½ x 11 inch paper, and shall be numbered on the left margin with not more than 28 lines per page. The lines on each page shall be double-spaced and numbered consecutively with line 1 beginning at least one inch below the top edge of the paper. All documents presented to the Clerk for filing or lodging in paper format, and all mandatory chambers copies, shall be submitted on opaque, unglazed, white paper (including recycled paper) not less than 13-pound weight; only one side of the paper shall be used.

L.R. 11-3.3 Pagination. All documents shall be numbered consecutively at the bottom of each page.

L.R. 11-3.4 Original; Copies. The original of a document shall be labeled as the original and shall consist entirely of the original pages, except as otherwise allowed by these rules. All copies, including mandatory chambers copies if required by the assigned judge's orders or written procedures, are to be clearly identified as such.

L.R. 11-3.5 Pre-Punching of Documents. All documents presented for filing or lodging with the Clerk in paper format, and all mandatory chambers copies, if required by the assigned judge's orders or written procedures, shall be pre-punched with two (2) normal-size holes (approximately 1/4" diameter), centered 2-3/4 inches apart, 1/2 to 5/8

inches from the top edge of the document. All pages shall be firmly bound at the top.

L.R. 11-3.6 Spacing. The typing or printing on the document shall be double spaced, including citations and quotations.

L.R. 11-3.6.1 Footnotes - Exception. Footnotes may be single spaced.

L.R. 11-3.6.2 Real Property Description - Exception. The description of real property may be single spaced.

L.R. 11-3.6.3 Corporate Surety Bonds - Exception. Printed forms of corporate surety bonds and undertakings may be single spaced and have unnumbered lines if they comply generally with the space requirements of this rule.

L.R. 11-3.7 Quotations. Quotations from cited cases or other authorities more than one sentence in length shall be clearly indented not less than 5 spaces nor more than 20 spaces.

L.R. 11-3.8 Title Page. On the first page of all documents:

(a) The name, California bar number, office address (or residence address if no office is maintained), the telephone and facsimile numbers, and the e-mail address of the attorney or a party appearing pro se presenting the document shall be placed commencing with line 1 at the left margin. The e-mail address shall be placed immediately beneath the name of the attorney. Immediately beneath, the party on whose behalf the document is presented shall be identified. All this information shall be single spaced. When a document is presented, the information set forth in this paragraph shall be supplied for each attorney or party appearing pro se who joins in the presentation of that document.

(b) The space between lines 1 and 7 to the right of the center of the page shall be left blank for use by the Clerk.

(c) The title of the Court shall be centered on or below line 8.

(d) The names of the parties shall be placed below the title of the Court and to the left of center, and single spaced. If the parties are too numerous, the names may be continued on the second or successive pages in the same space. In all documents, after the initial pleadings, the names of the first-named party only on each side shall appear.

(e) The docket number of the case shall be placed to the right of the center of the page and immediately opposite the names of the parties on the first page. Immediately below the docket number shall appear a concise description of the nature of the document (e.g., notice of motion, memorandum in support or opposition). Immediately below the description shall appear the time and date of the hearing on the matter to which the document is addressed.

(f) The title of a complaint or petition shall state the nature of the action or proceeding.

L.R. 11-3.9 Citations

L.R. 11-3.9.1 Acts of Congress. All citations to Acts of Congress shall include a parallel citation to the United States Code by title and section.

L.R. 11-3.9.2 Regulations. All citations to regulations shall include a citation to the Code of Federal Regulations by title and section, and the date of promulgation of the regulation.

L.R. 11-3.9.3 Cases. Citation to a U.S. Supreme Court case must be to the United States Reports, Lawyers' Edition, or Supreme Court Reporter if available. Citation to a case from any other federal court must be to the Federal Reporter, Federal Supplement, or Federal Rules Decisions if available. Citation to a state court case must be to the official state reporter or any regional reporter published by West Publishing Company if available. If a case is not available in the foregoing sources, but is available on an electronic database (e.g., LEXIS or Westlaw), citation to the case must include the case name, the database

identifier, the court, the date of decision, any code or number used by the database to identify the case, and any screen or page numbers assigned.

L.R. 11-3.10 Translations Required. Claim-Initiating Documents, as defined in L.R. 3-2, must be presented for filing in the English language. All other documents must be presented in English unless: (a) an English translation is concurrently provided; or (b) the Court orders otherwise upon a showing of good cause.

L.R. 11-4 Copies

L.R. 11-4.1 In General.

L.R. 11-4.1.1 Electronically Filed Documents. Mandatory chambers copies of all electronically filed documents must be provided in accordance with L.R. 5-4.5. Unless otherwise ordered by the judge, all mandatory chambers copies must include the Notice of Electronic Filing (NEF) as the last page of the document, and must be blue-backed. The backing must extend no more than one inch below the bound pages, and the short title of the document must be typed on its lower right-hand corner.

L.R. 11-4.1.2 Non-Electronically Filed Documents. All paper documents filed manually with the Clerk, including all exhibits to documents, must be accompanied by one clear, conformed, and legible copy for the use of the judge. The original document must be labeled "Original," and should not be blue-backed. The copy must be labeled "Copy," and must be blue-backed, unless the judge has specified otherwise. The copy's backing must extend no more than one inch below the bound pages, and the short title of the document must be typed on its lower right-hand corner.

L.R. 11-4.2 Three-Judge Court. If the matter is one that is to be heard by a three-judge court, mandatory chambers copies of all electronically filed documents shall be provided to each assigned judge in accordance with L.R. 5-4.5. For documents exempted from electronic filing pursuant to 5-4.2 and filed with the Clerk in paper

format, three clear, conformed, and legible copies of the original shall be provided to the Clerk (one for the use of each of the assigned judges).

L.R. 11-4.3 Carbon Copies [DELETED].

L.R. 11-4.4 Conformed Copy. Copies shall be conformed to the original but need not be executed. Conformed copies shall be identical to the original in content, pagination, additions, deletions and interlineations.

L.R. 11-4.5 Request for Conformed Copy. If the party presenting a document for filing in paper format requests the Clerk to return a conformed copy by United States mail, an extra copy shall be submitted by the party for that purpose accompanied by a postage-paid, self-addressed envelope.

L.R. 11-5 Exhibits to Documents

L.R. 11-5.1 Non-Paper Physical Exhibits. Non-paper physical exhibits shall not be attached to any document. A non-paper physical exhibit shall be placed in a secure container identified by the case name and number and the name, address, and telephone number of the submitting party and lodged with a separately filed Notice of Lodging, which shall include a description of the exhibit and an explanation for why it is not possible to attach the exhibit to the document to which it relates. Unless the filer is exempted from electronic filing pursuant to L.R. 5-4.2(a), the Notice of Lodging shall be filed electronically prior to lodging the exhibit, and the Notice of Lodging, together with its NEF (see L.R. 5-3.2.1), shall be presented with the exhibit to be lodged.

L.R. 11-5.2 Paper Exhibits – Attachment and Numbering. Unless compliance is impracticable, a paper exhibit shall be filed as an attachment to the document to which it relates and shall be numbered at the bottom of each page consecutively to the principal document. Exhibits filed electronically shall comply with this rule unless precluded by L.R. 5-4.3.1.

L.R. 11-5.3 Exhibit Number. The exhibit number shall be placed immediately above or below the page number on each page of the exhibit. Exhibits shall be tabbed in sequential order.

L.R. 11-5.4 Size of Paper. Whenever possible, exhibits shall be formatted for 8 ½ x 11 inch paper, and should be filed in accordance with L.R. 11-5.2. Exhibits that are too large to scan shall be folded in such a manner as not to exceed an 8 ½ x 11 inch sheet, and filed with the Clerk in paper format. Unless otherwise exempted from electronic filing pursuant to L.R. 5-4.2(a), the party presenting the exhibits to the Clerk for filing in paper format shall first electronically file a Notice of Manual Filing setting forth the reason(s) why the exhibit cannot be filed electronically. The Notice of Manual Filing, together with its NEF (see L.R. 5-3.2.1), shall be presented with the exhibits to be filed.

L.R. 11-5.5 Small Exhibits. An exhibit smaller than 8 ½ x 11 inches shall be attached to an 8 ½ x 11 inch sheet.

L.R. 11-6 Points and Authorities - Trial Briefs - Length. No memorandum of points and authorities, pre-trial brief, trial brief, or post-trial brief shall exceed 25 pages in length, excluding indices and exhibits, unless permitted by order of the judge.

L.R. 11-7 Appendices. Appendices shall not include any matters which properly belong in the body of the memorandum of points and authorities or pre-trial or post-trial brief.

L.R. 11-8 Table of Contents and Table of Authorities. Any memorandum of points and authorities or any brief exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof, and by an indexed table of the cases, statutes, rules, and other authorities cited.

L.R. 11-9 Sanctions. The presentation to the Court of frivolous motions or opposition to motions (or the failure to comply fully with this rule) subjects the offender at the discretion of the Court to the sanctions of L.R. 83-7.

F.R.Civ.P. 12. DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED; MOTION FOR JUDGMENT ON THE PLEADINGS;

CONSOLIDATING MOTIONS; WAIVING DEFENSES; PRETRIAL HEARING
F.R.Civ.P. 13. COUNTERCLAIM AND CROSSCLAIM
F.R.Civ.P. 14. THIRD-PARTY PRACTICE

F.R.Civ.P. 15. AMENDED AND SUPPLEMENTAL PLEADINGS

L.R. 15-1 Separate Document. Any proposed amended pleading must be filed as an attachment to the related motion or stipulation. In addition, unless exempted from electronic filing by L.R. 5-4.2(a)(1), a party who obtains leave of Court to file an amended pleading must promptly thereafter file the pleading approved by the Court as a separate document in the Court's CM/ECF System.

L.R. 15-2 Complete Document. Every amended pleading filed as a matter of right or allowed by order of the Court shall be complete including exhibits. The amended pleading shall not refer to the prior, superseded pleading.

L.R. 15-3 Date of Service. An amended pleading allowed by order of the Court shall be deemed served upon the parties who have previously appeared on the date the motion to amend is granted or the stipulation therefor is approved. Service of amended pleadings on a party who has not previously appeared shall be made as provided in L.R. 4.

L.R. 15-4 [Deleted]

F.R.Civ.P. 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

L.R. 16-1 Applicability. All civil actions or proceedings (including Admiralty) shall be pre-tried pursuant to F.R.Civ.P. 16 unless exempted by this rule or expressly waived in whole or in part by order of the Court.

L.R. 16-2 Meeting of Counsel Before Final Pretrial Conference. At least forty (40) days before the date set for the Final Pretrial Conference, lead trial counsel for the parties shall meet in person and shall accomplish the following:

L.R. 16-2.1 Subject Matter Jurisdiction. The parties shall assure themselves that this Court has jurisdiction of the subject matter. If any party questions the existence of subject matter jurisdiction, that party shall raise the issue by motion to be heard prior to the Final Pretrial Conference.

L.R. 16-2.2 Stipulation to Facts. The parties shall make every effort to stipulate to facts upon which the parties know or have reason to know there can be no dispute. A stipulation to the existence of a fact does not, unless expressly stated, stipulate to its admissibility in evidence.

L.R. 16-2.3 Disclosure of Exhibits. The parties shall disclose all exhibits to be used at trial other than those contemplated to be used solely for impeachment, as set forth in F.R.Civ.P. 26(a)(3)(A)(iii). The disclosures of exhibits shall be filed with the Court as provided in L.R. 16-6. Exhibits shall be marked in accordance with the procedures set forth in L.R. 26-3.

L.R. 16-2.4 Disclosure of Witnesses. The parties shall disclose the information required by F.R.Civ.P. 26(a)(3)(A)(i) and (ii) as to witnesses (including expert witnesses) to be called at trial other than those contemplated to be used solely for impeachment. The information shall be filed with the Court as provided in L.R. 16-5.

L.R. 16-2.5 Expert Witnesses. The parties shall discuss the status of expert witness designations, expert witnesses, and any issues concerning experts to be raised at the Final Pretrial Conference.

L.R. 16-2.6 Evidentiary Matters. The parties shall attempt to resolve any objections to the admission of testimony, documents, or other evidence.

L.R. 16-2.7 Depositions. Each party intending to present any evidence by way of deposition testimony shall:

(a) Identify on the original transcript the testimony the party intends to offer by bracketing the questions and answers in the margins. The opposing party shall likewise countermark any testimony that it plans to offer. The parties shall agree between

themselves on a separate color to be used by each party which shall be consistently used by that party for all depositions offered in the case.

(b) Identify any objections to the proffered evidence in the margins of the deposition by briefly stating the ground for the objection.

(c) At the time of lodging under L.R. 32-1, also serve and file an index of the portions of the deposition offered, stating the pages and lines offered, objections, and the grounds for the objections.

L.R. 16-2.8 Contentions of Law and Fact. Each party shall disclose to every other party which of the party's pleaded claims and defenses the party plans to pursue, together with the party's contentions regarding the applicable facts and law.

L.R. 16-2.9 Settlement. The parties shall exhaust all possibilities of settlement.

L.R. 16-3 Disclosure of Graphic and Illustrative Material. If not already disclosed as a part of the exhibits in accordance with L.R. 16-2.3, the parties shall disclose copies of all graphic or illustrative material to be shown the trier of fact as illustrating the testimony of a witness at least eleven (11) days before trial. Graphic or illustrative material not so disclosed may not be used at trial except by order of the Court on a finding of good cause for the failure to disclose.

L.R. 16-4 Memorandum of Contentions of Fact and Law. Not later than twenty-one (21) days before the Final Pretrial Conference, each party shall serve and file a Memorandum of Contentions of Fact and Law. The Memorandum shall include the following parts:

L.R. 16-4.1 Claims and Defenses. The Memorandum shall contain:

(a) A summary statement of the claims Plaintiff has pleaded and plans to pursue. For example:

Claim 1: Defendant A breached his contract with Plaintiff;

Claim 2: Defendant A violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

(b) The elements required to establish Plaintiff's claims. The elements shall be listed separately for each claim, as found in standard jury instructions or case law. For example:

Elements Required to Establish Plaintiff's Claim for Violation of the Americans with Disabilities Act

1. Plaintiff has a disability within the meaning of the Americans with Disabilities Act;

2. Plaintiff was a qualified individual; and

3. Plaintiff's disability was a motivating factor in the decision not to hire Plaintiff.

See Ninth Circuit Manual of Model Civil Jury Instructions § 12.1C (2007).

(c) In Plaintiff's Memorandum, a brief description of the key evidence in support of each of the claims. In Defendant's Memorandum, a brief description of the key evidence in opposition to each of the claims. The evidence should be listed separately for each claim.

(d) A summary statement of the counterclaims and affirmative defenses Defendant has pleaded and plans to pursue. For example:

Counterclaim 1: Plaintiff conspired with Third Party Defendant C to violate the Sherman Antitrust Act, 15 U.S.C. § 1;

Counterclaim 2: Plaintiff breached his fiduciary duty to Defendant.

First Affirmative Defense: Plaintiff's claim for breach of contract is barred by the four-year statute of limitations found in Cal. Civ. Proc. Code § 337.

Second Affirmative Defense: Under the doctrine of *res judicata*, Plaintiff's Complaint is barred by the final judgment entered in Plaintiff v. Smith, Los Angeles Superior Court Case No. 123456 (Judgment entered February 10, 1998).

Third Affirmative Defense: Defendant's decision not to hire Plaintiff was justified by business necessity.

(e) The elements required to establish Defendant's counterclaims and affirmative defenses. The elements shall be listed separately for each claim, as found, for example, in standard jury instructions or case law. For example:

Elements Required to Establish Defendant's Affirmative Defense of Business Necessity

1. The criterion by which the hiring decision was made was uniformly applied;

2. The criterion by which the hiring decision was made is job-related;

3. The criterion by which the hiring decision was made is consistent with business necessity;

4. The criterion cannot be met by a person with Plaintiff's disability, even with a reasonable accommodation.

See Ninth Circuit Manual of Model Civil Jury Instructions § 12.11 (2007).

(f) In Defendant's Memorandum, a brief description of the key evidence relied on in support of each counterclaim and affirmative defense. In Plaintiff's Memorandum, a brief description of the key evidence relied on in opposition to each counterclaim and affirmative defense. The evidence should be listed separately for each element of each counterclaim and affirmative defense.

(g) Similar statements for all third parties.

(h) Identification of any anticipated evidentiary issues, together with the party's position on those issues; and

(i) Identification of any issues of law, such as the proper interpretation of a governing statute, which are germane to the case, together with the party's position on those issues.

L.R. 16-4.2 [Abrogated].

L.R. 16-4.3 Bifurcation of Issues. The Memorandum shall contain any request for bifurcation of issues and an explanation for the request.

L.R. 16-4.4 Jury Trial. The Memorandum shall state whether any issues are triable to a jury as a matter of right and, if so, whether a timely demand for jury has been made, or whether the matter will be tried to the Court (F.R.Civ.P. 38, L.R. 38). If less than all issues are triable to a jury, the issues triable to a jury and to the Court shall be listed separately, with appropriate citation of authorities.

L.R. 16-4.5 Attorneys' Fees. If a party claims that attorneys' fees are recoverable, the Memorandum shall discuss the factual and legal basis of such claim.

L.R. 16-4.6 Abandonment of Issues. The Memorandum shall identify any pleaded claims or affirmative defenses which have been abandoned.

L.R. 16-5 Witness List. Each party shall serve and file under separate cover, at the same time as the Memorandum of Contentions of Fact and Law, a witness list containing the information required by F.R.Civ.P. 26(a)(3)(A). An asterisk shall be placed next to the names of those witnesses whom the party may call only if the need arises. Any objections to the use under F.R.Civ.P. 32 of a deposition designated under F.R.Civ.P. 26(a)(3)(A) shall be stated in the Final Pretrial Conference Order.

L.R. 16-6 Exhibits

L.R. 16-6.1 Joint Exhibit List. Not later than twenty-one (21) days before the Final Pretrial Conference, all parties shall file a joint list of exhibits containing the information required by F.R.Civ.P. 26(a)(3)(A)(iii). The exhibits shall be listed in numerical order. When an exhibit has been numbered at a deposition, the same number shall be used for that exhibit at trial. If an exhibit has not been marked at a deposition, it shall be given the appropriate number in accordance with the requirements of L.R. 26-3. It is recognized that not all exhibits marked at depositions may be offered at trial so that there may be gaps in the numerical sequence on the exhibit list. An asterisk shall be placed next to the exhibits which a party may offer only if the need arises.

The exhibit list shall be substantially in the form indicated by the following example:

Case Title: _____ Case No._____

No. of Exhibit	Description	Date Identified	Date Admitted
3	1/30/80 letter from Doe to Roe		
105	$500 check dated 2/3/82 drawn on Roe payable to Doe		
1002*	Handwritten notes dated 1/16/80		

[* An asterisk shall be placed next to the exhibits which a party may offer if the need arises.]

L.R. 16-6.2 Enlarged Copies of Exhibits. At trial, an enlarged copy of an exhibit may be used with the original exhibit. The enlarged copy shall be given the same number as the original exhibit, with a

subdesignation (e.g., Exh. 24A) and shall be returned to counsel by the Clerk at the conclusion of the trial.

L.R. 16-6.3 Objections to Exhibits. The list of objections required by F.R.Civ.P. 26(a)(3)(B) shall be included in the proposed Final Pretrial Conference Order. The grounds for all objections shall be stated separately as to each exhibit.

L.R. 16-6.4 Marking of Exhibits for Trial. Counsel shall prepare official exhibit tags to be placed on all exhibits for trial. These exhibit tags may be obtained from the Clerk.

L.R. 16-7 Final Pretrial Conference Order. A Final Pretrial Conference Order shall be prepared by plaintiff's counsel and signed by all counsel. It is the duty of all counsel to cooperate with plaintiff's counsel in the preparation and submission of the Final Pretrial Conference Order as required by this rule. Failure of counsel to comply shall subject counsel to the sanctions provided by L.R. 83-7 and 28 U.S.C. § 1927.

L.R. 16-7.1 Lodging. Plaintiff shall lodge the Final Pretrial Conference Order with the Clerk eleven (11) days before the date set for the Final Pretrial Conference.

L.R. 16-7.2 Form. The Final Pretrial Conference Order shall be substantially in the form shown in Pretrial Form No. 1 set forth in Appendix A to these Local Rules.

L.R. 16-8 Final Pretrial Conference. Each party appearing at the Final Pretrial Conference shall be represented by the attorney (or the party, if appearing *pro se*) who is then contemplated to have charge of the conduct of the trial on behalf of such party. At the Final Pretrial Conference the Court will consider:

L.R. 16-8.1 Unserved Parties. Any party not theretofore dismissed who is unserved at the time of the Final Pretrial Conference will be dismissed from the action without prejudice.

L.R. 16-8.2 Other Matters. Any matter arising from the Memorandums of Contentions of Fact and Law, Witness or Joint

Exhibit Lists, Proposed Final Pretrial Conference Order, or other matter which needs to be addressed.

L.R. 16-8.3 Setting of Trial Date. The Court expects that at the Final Pretrial Conference the parties will then be ready to proceed to trial. If not previously set, the trial date shall be set at the earliest date permitted by the Court's calendar.

L.R. 16-9 Continuances. No continuance of the Final Pretrial Conference shall be granted merely on the stipulation of the parties. If the Court is satisfied that counsel are preparing the case diligently and that additional time is required to comply with this rule, the Final Pretrial Conference may be continued upon submission of a timely stipulation signed by all counsel setting forth the reasons for the requested continuance. The stipulation also shall describe what has been accomplished in preparing the case for the Final Pretrial Conference. No continuance of the Final Pretrial Conference will be granted unless the stipulation has been lodged before the date upon which the Final Pretrial Conference Order must be lodged with the Court. Counsel shall inform the Clerk immediately by telephone or other expeditious means when a stipulation is to be submitted for continuance of the Final Pretrial Conference.

A motion for continuance of the Final Pretrial Conference may be noticed upon five (5) days' notice to be heard not later than the last Motion Day before the date for which the Final Pretrial Conference has been set.

L.R. 16-10 Trial Brief. Unless the Court otherwise orders, at least seven (7) days before trial is scheduled to commence, each party may serve and file a trial brief which may:

(a) Update the Memorandum of Contentions of Fact and Law by citing newly decided cases;

(b) Brief such issues as directed by the Court; and

(c) Reply to the Memorandum of Contentions of Fact and Law of any other party.

L.R. 16-11 Waiver of Pretrial. In their report to the Court pursuant to F.R.Civ.P. 26(f), the parties may suggest to the Court that the matter should

not be subject to the pretrial procedures in L.R. 16-2 through 16-10, and may request a waiver of those procedures. The report shall explain why counsel request the waiver.

L.R. 16-11.1 Procedure on Waiver. If the Court agrees that the case should not be subject to L.R. 16-2 through 16-10, the Court shall so indicate in its scheduling order entered under F.R.Civ.P. 16(b).

L.R. 16-11.2 Preparation for Trial. When the Court has granted a waiver of L.R. 16-2 through 16-10, the lead trial attorneys for the parties shall meet thirty (30) days before the date set for commencement of the trial and each party shall file not less than fourteen (14) days before the date set for commencement of the trial:

(a) A succinct statement of the factual and legal issues;
(b) Unless otherwise ordered by the Court, in non-jury cases, the direct testimony of all witnesses reasonably available to the party, in declaration or narrative form, who shall be subject to cross examination at trial by the opposing party as provided in L.R. 43-1;
(c) A witness list;
(d) An exhibit list;
(e) Depositions to be used at trial marked as required by L.R. 16-2.7; and
(f) A trial brief which provides the theory of the case and statutory or precedential support for the theory together with any unusual evidentiary or legal questions which may be anticipated at trial.

L.R. 16-11.3 Guideline for Granting Waiver. Unless otherwise ordered by the Court, waiver of L.R. 16-2 through 16-10 shall apply only to cases that are realistically estimated to consume no more than two (2) trial days.

L.R. 16-12 Exemptions. In the following categories of cases, the Court need not issue a scheduling order or hold a Final Pretrial Conference under F.R.Civ.P. 16:

(a) Petitions filed under 28 U.S.C. §§ 2241 et seq., or their functional equivalents;

(b) Actions for judicial review of a decision by the Commissioner of Social Security under 42 U.S.C. § 405(g);
(c) Any case in which the plaintiff is appearing pro se, is in custody, and is not an attorney;
(d) Any case removed to this Court from the small claims division of a state court;
(e) Appeals from the bankruptcy court;
(f) Extradition cases;
(g) Actions to enforce or quash an administrative summons or subpoena; and
(h) Actions by the United States to collect on a student loan guaranteed by the United States.

L.R. 16-13 Representation at Conferences. Each party appearing at any Scheduling or Pretrial Conference held under F.R.Civ.P. 16 shall be represented by the attorney (or the party if appearing pro se) who is then contemplated to have charge of the conduct of the trial on behalf of such party.

L.R. 16-14 Modification of Scheduling Orders and Pretrial Orders. Any application to modify an order entered pursuant to F.R.Civ.P. 16 shall be made to the judicial officer who entered the order.

L.R. 16-15 Policy Re Settlement & ADR. It is the policy of the Court to encourage disposition of civil litigation by settlement when such is in the best interest of the parties. The Court favors any reasonable means to accomplish this goal. Nothing in this rule shall be construed to the contrary. The parties are urged first to discuss and to attempt to reach settlement among themselves without resort to these procedures. It is also the policy of the Court that unless an Alternative Dispute Resolution (ADR) Procedure is selected by the parties, the judge assigned to preside over the civil case (the trial judge) may participate in facilitating settlement.

L.R. 16-15.1 Proceedings Mandatory. Unless exempted by the trial judge, the parties in each civil case shall participate in one of the ADR Procedures set forth in this rule or as otherwise approved by the trial judge.

L.R. 16-15.2 Time for Proceedings. Except as otherwise ordered by the Court, a Request: ADR Procedure Selection, signed by counsel for

both sides, shall be filed with the parties' F.R.Civ.P. 26(f) report. Unless otherwise ordered, no later than forty-five (45) days before the Final Pretrial Conference, the parties shall participate in the ADR process approved by the Court.

L.R. 16-15.3 Court-Ordered Proceedings. If the parties do not file a timely Request: ADR Procedure Selection, the trial judge may order the parties to participate in any of the ADR Procedures set forth in this rule.

L.R. 16-15.4 Suggested ADR Procedures

ADR PROCEDURE NO. 1 - The parties shall appear before the district judge or magistrate judge assigned to the case for such settlement proceedings as the judge may conduct or direct.

ADR PROCEDURE NO. 2 - The parties shall appear before a neutral selected from the Court's Mediation Panel.

ADR PROCEDURE NO. 3 - The parties shall participate in a private dispute resolution proceeding.

L.R. 16-15.5 Requirements for ADR Procedures. With the exception of subsection (a) which applies only to settlement proceedings before a district judge or magistrate judge, the following requirements shall apply to all ADR Procedures unless otherwise ordered by the settlement judge or the neutral:

(a) STATEMENT OF CASE - The parties shall submit in writing to the settlement judge, in camera (but not file), a confidential settlement statement (not to exceed five (5) pages) setting forth the party's statement of the case and the party's settlement position, including the last offer or demand made by that party and a separate statement of the offer or demand the party is prepared to make at the settlement conference. This confidential settlement statement shall be delivered to the settlement judge at least five (5) days before the date of the conference.

(b) APPEARANCE BY PARTY - Each party shall appear at the settlement proceeding in person or by a representative with final authority to settle the case, which in the case of lawsuits brought by or against the United States or any of its agencies as a party, shall involve the attendance of an attorney charged with responsibility for the conduct of the case and who has final settlement authority as provided by his or her superiors. A corporation or other non-governmental entity satisfies this attendance requirement if represented by a person who has final settlement authority and who is knowledgeable about the facts of the case. Representatives of insurers with decision-making authority are required to attend settlement proceedings, unless personal attendance is excused by the settlement officer. At the discretion of the settlement officer, and only with the settlement officer's express authorization, parties residing outside the District may have a representative with final settlement authority available by telephone during the entire proceeding, in lieu of personal appearance.

(c) APPEARANCE BY LEAD TRIAL ATTORNEY - Each party shall be represented at the settlement proceeding by the attorney who is expected to try the case, unless excused by the settlement officer.

(d) PREPARATION BY PARTY - Each party shall have made a thorough analysis of the case prior to the settlement proceeding and shall be fully prepared to discuss all economic and non-economic factors relevant to a full and final settlement of the case.

L.R. 16-15.6 Optional Requirements for ADR Procedures. In settlement proceedings before a district judge or magistrate judge, any of the following procedures may be required:

(a) An opening statement by each counsel.
(b) With the agreement of the parties, a "summary" or "mini-trial," tried either to the settlement officer or to a mock jury.
(c) Presentation of the testimony, summary of testimony or report of expert witnesses.
(d) A closing argument by each counsel.

(e) Any combination of the foregoing.

L.R. 16-15.7 Report of Settlement. If a settlement is reached, counsel shall (a) immediately report the settlement to the trial judge's courtroom deputy clerk; and (b) timely memorialize the terms of the settlement.

L.R. 16-15.8 Confidentiality. This rule applies only to ADR Procedure No. 2, mediations conducted by the Court's Mediation Panel.

(a) CONFIDENTIAL TREATMENT - Except as provided in subsection (b) of this local rule, this Court, the mediator, all counsel and parties, and any other persons attending the mediation shall treat as "confidential information" the contents of the written mediation statements, any documents prepared for the purpose of, in the course of, or pursuant to the mediation, anything that happened or was said relating to the subject matter of the case in mediation, any position taken, and any view of the merits of the case expressed by any participant in connection with any mediation. "Confidential information" shall not be:

(1) disclosed to anyone not involved in the litigation;
(2) disclosed to the assigned judges; or
(3) used for any purpose, including impeachment, in any pending or future proceeding in this Court or any other forum.

(b) LIMITED EXCEPTIONS TO CONFIDENTIALITY - This rule does not prohibit:

(1) disclosures as may be stipulated by all parties and the mediator;
(2) disclosures as may be stipulated by all parties, without the consent of the mediator, for use in a subsequent confidential ADR or settlement proceeding;
(3) a report to or an inquiry by the ADR Judge regarding a possible violation of policies and procedures governing the ADR program;

(4) the mediator from discussing the mediation process with the Court's ADR staff, who shall maintain the confidentiality of the process;
(5) any participant or the mediator from responding to an appropriate request for information duly made by persons authorized by the Court to monitor or evaluate the Court's ADR program;
(6) disclosures as are required by General Order, related ADR forms, and as otherwise required by law; or
(7) in an action or proceeding to enforce a settlement, the admission of a written settlement agreement or a settlement placed on the record, reached as a result of mediation.

(c) CONFIDENTIALITY AGREEMENT - The mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement on a form provided by the Court and available on the court website. The confidentiality provisions of this section apply regardless of whether a confidentiality agreement is signed.

(d) SCOPE - Nothing in this rule is intended to limit any applicable privilege or rule of evidence designed to protect mediation confidentiality, and any such broader protection shall control if applicable.

L.R. 16-15.9 Rule Non-Exclusive. Nothing in this rule shall preclude or replace any settlement practice used by any district judge or magistrate judge of the Court. The provisions of this rule are not exclusive and nothing in this rule shall preclude any district judge or magistrate judge of the Court from dispensing with any provision of this rule as to any case or category of cases, as the judge, in his or her discretion, determines to be appropriate.

IV. PARTIES

F.R.Civ.P. 17. PLAINTIFF AND DEFENDANT; CAPACITY; PUBLIC OFFICERS

L.R. 17-1 Minors or Incompetents

L.R. 17-1.1 Minors or Incompetents - Appointment of Guardian Ad Litem. When the appointment of a guardian ad litem is required by F.R.Civ.P. 17(c)(2), a relative or friend of the minor or incompetent person, the minor if age 14 or over, or other suitable person must file a Petition for the Appointment of a Guardian Ad Litem at the time of the minor's or incompetent person's first appearance.

L.R. 17-1.2 Minors or Incompetents - Settlement of Claim of Minor or Incompetent. No claim in any action involving a minor or incompetent person shall be settled, compromised, or dismissed without leave of the Court embodied in an order, judgment, or decree.

L.R. 17-1.3 Minors or Incompetents - Settlement of Claim Procedure. Insofar as practicable, hearings on petitions to settle, compromise, or dismiss a claim in an action involving a minor or incompetent person shall conform to Cal. Civ. Proc. Code § 372 and California Rule of Court 3.1384.

L.R. 17-1.4 Minors or Incompetents - Attorney's Fees. In all actions involving the claim of a minor or incompetent person, whether resolved by settlement or judgment after trial, the Court shall fix the amount of attorney's fees.

L.R. 17-1.5 Minors or Incompetents - Judgment or Settlement Funds. All monies or property recovered on behalf of a minor or incompetent person, either by settlement or judgment, shall be paid into the registry of the Court unless otherwise ordered by the Court. All monies received by the Clerk representing a settlement or judgment on behalf of a minor or incompetent person shall be deposited by the Clerk in accordance with L.R. 67-1 and 67-2.

L.R. 17-1.6 Minors or Incompetents - Disbursement of Funds. All monies or property deposited with the Clerk pursuant to L.R. 17-1.5 shall be disbursed by the Clerk only in accordance with an order of the Court.

> ***L.R. 17-1.6.1 Conformance to State Law.*** Unless otherwise ordered by the Court, disbursement of funds of California residents or foreign nationals under this L.R.17-1.6 shall be

made by the Clerk in accordance with the provisions of California Probate Code §§ 3600 *et seq*. If the minor, incompetent person, guardian, custodian, or parent is a resident of a state of the United States other than California, the funds or property shall be disbursed pursuant to restrictions of the state of residence similar to the provisions of California Probate Code §§ 3600 *et seq*.

L.R. 17-1.7 Minors or Incompetents - Letters of Guardianship or Custody - Bond. Before any funds or property are ordered distributed to any guardian or custodian, the following documents shall be filed with this Court:

(a) A certified copy of letters of guardianship or an order of appointment as custodian of the estate of an incompetent; and

(b) A certificate by a state court certifying that a surety bond has been filed by the guardian or custodian in a sum at least equal to the amount of money or value of property to be distributed.

L.R. 17-1.7.1 Corporate Guardian. If letters of guardianship or an order of appointment as custodian of the estate of an incompetent person have been issued to a corporate guardian authorized by state law to so act, no certificate showing filing of a bond shall be necessary.

F.R.Civ.P. 18. JOINDER OF CLAIMS

F.R.Civ.P. 19. REQUIRED JOINDER OF PARTIES

L.R. 19-1 Fictitiously Named Parties. No complaint or petition shall be filed that includes more than ten (10) Doe or fictitiously named parties.

L.R. 19-2 Misjoinder. No complaint or petition alleging violation of copyright, patent or trademark shall contain causes of action of different owners claiming violation of different copyrights, patents or trademarks, unless the complaint or petition is accompanied by a declaration of counsel setting forth grounds showing that the interests of justice will be advanced, and a multiplicity of actions avoided, by such joinder.

F.R.Civ.P. 20. PERMISSIVE JOINDER OF PARTIES
F.R.Civ.P. 21. MISJOINDER AND NONJOINDER OF PARTIES
F.R.Civ.P. 22. INTERPLEADER

F.R.Civ.P. 23. CLASS ACTIONS

L.R. 23-1 Caption. The title of any pleading purporting to commence a class action shall include the legend: "(Title of Pleading) Class Action."

L.R. 23-2 Class Allegations. Any pleading purporting to commence a class action shall contain a separate section entitled "Class Action Allegations." The information required in L.R. 23-2.1 and 23-2.2 shall be set forth in that section.

L.R. 23-2.1 Statutory Reference. The section shall contain a reference to the portion or portions of F.R.Civ.P. 23 under which it is contended that the suit is properly maintainable as a class action.

L.R. 23-2.2 Class Action Requisites. The section shall contain appropriate allegations thought to justify the action's proceeding as a class action, including, but not limited to:

(a) The definition of the proposed class;
(b) The size (or approximate size) of the proposed class;
(c) The adequacy of representation by the representative(s) of the class;
(d) The commonality of the questions of law and fact;
(e) The typicality of the claims or defenses of the representative(s) of the class;
(f) If proceeding under F.R.Civ.P. 23(b)(3), allegations to support the findings required by that subdivision; and
(g) The nature of notice to the proposed class required and/or contemplated.

L.R. 23-3 Certification. Within 90 days after service of a pleading purporting to commence a class action other than an action subject to the Private Securities Litigation Reform Act of 1995, P.L. 104-67, 15 U.S.C. § 77z-1 et seq., the proponent of the class shall file a motion for certification

that the action is maintainable as a class action, unless otherwise ordered by the Court.

F.R.Civ.P. 23.1. DERIVATIVE ACTIONS
F.R.Civ.P. 23.2. ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS
F.R.Civ.P. 24. INTERVENTION
F.R.Civ.P. 25. SUBSTITUTION OF PARTIES

V. DISCLOSURES AND DISCOVERY

F.R.Civ.P. 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

L.R. 26-1 Conference of Parties; Report. At the conference of parties held pursuant to F.R.Civ.P. 26(f), the parties shall discuss the following matters in addition to those noted in F.R.Civ.P. 26(f):

(a) *Complex Cases.* The complexity of the case, and whether all or part of the procedures of the Manual For Complex Litigation (current edition) should be utilized. Counsel may propose to the Court modifications of the procedures in the Manual to facilitate the management of a particular action.

(b) *Motion Schedule.* The dispositive or partially dispositive motions which are likely to be made, and a cutoff date by which all such motions shall be made.

(c) *ADR.* Selection of one of the three ADR Procedures specified in L.R. 16-15.4 as best suited to the circumstances of the case, and when the ADR session should occur. For cases in the Court-Directed ADR Program, counsel are directed to furnish and discuss with their clients the Notice to Parties of Court-Directed ADR Program in preparation for this conference. A settlement conference with a magistrate judge is generally not available for such cases.

(d) *Trial Estimate.* A preliminary estimate of the time required for trial.

(e) *Additional Parties.* The likelihood of appearance of additional parties.

(f) *Expert Witnesses.* The proposed timing of disclosures under F.R.Civ.P. 26(a)(2).

In their written report required by F.R.Civ.P. 26(f), the parties shall include their views and proposals, including any areas of disagreement, on the matters listed in this local rule. The Court will consider this report in making a referral to ADR.

L.R. 26-2 Discovery Documents - Filing. When a discovery request or response is required for use in a proceeding, only that part of the document which is in issue shall be filed. All such discovery documents shall be held by the attorney pending use for the period specified in L.R. 79-3 for the retention of exhibits, unless otherwise ordered by the Court. Discovery documents lodged with the Court for a motion or a trial which are not used in said motion or trial shall be returned by the clerk to the party lodging the document at the conclusion of the motion or trial.

L.R. 26-3 Exhibits in Discovery

L.R. 26-3.1 Numbering of Exhibits. Documents introduced in discovery shall be numbered sequentially. Only one exhibit number shall be assigned to any given document. Exhibits shall be numbered without regard to the identity of the party introducing the exhibits.

If possible, each new exhibit shall be given the next available number. If it is not possible to do so (as, for example, when multiple depositions are conducted on the same day), then the parties shall break the sequence and use higher numbers to avoid duplication.

L.R. 26-3.2 Duplicate Exhibits. Any exhibit which is an exact duplicate of an exhibit previously numbered shall bear the same exhibit number regardless of which party is using the exhibit. Any version of any exhibit which is not an exact duplicate shall be marked and treated as a different exhibit bearing a different exhibit number.

L.R. 26-3.3 Inadvertent Numbering of a Duplicate Exhibit. If, through inadvertence, the same exhibit has been marked with different exhibit numbers, the parties shall assign the lowest such exhibit number to the exhibit and conform all deposition transcripts and

exhibits to reflect the lowest number. The superseded number shall not be reused by the parties.

Example: If the same exhibit has been marked as 52 in the deposition of A and 125 in the depositions of B, C and/or D, the exhibit marked 125 shall be renumbered 52 and the depositions of B, C and D shall be conformed to the renumbered exhibit. Thereafter, number 125 shall not be used.

L.R. 26-3.4 Designation of Exhibit Sub-Parts. If it is necessary to identify sub-parts of a document that has been marked as an exhibit, then such sub-parts shall be designated by the number of the exhibit followed by a number designation.

Example: If a three-page contract is marked as Exhibit No. 12, the pages of the contract may be marked as Exhibits 12-1, 12-2, and 12-3; the entire document shall be referred to as Exhibit 12.

L.R. 26-3.5 Exhibits - Internal Control Numbering. In addition to exhibit numbers, documents may bear other numbers or letters used by the parties for internal control purposes.

F.R.Civ.P. 27. DEPOSITIONS TO PERPETUATE TESTIMONY
F.R.Civ.P. 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN
F.R.Civ.P. 29. STIPULATIONS ABOUT DISCOVERY PROCEDURE
F.R.Civ.P. 30. DEPOSITIONS BY ORAL EXAMINATION
F.R.Civ.P. 31. DEPOSITIONS BY WRITTEN QUESTIONS

F.R.Civ.P. 32. USING DEPOSITIONS IN COURT PROCEEDINGS

L.R. 32-1 Use at Trial or an Evidentiary Hearing. Deposition transcripts to be used at trial or an evidentiary hearing shall be marked as provided in L.R. 16-2.7. The original deposition shall be lodged with the Clerk on or before the first day of a trial or at least ten (10) days before an evidentiary hearing unless required to be filed earlier under L.R. 16-11.2. In addition, all original depositions not so lodged shall be brought to court by the attorney in custody of the same for any trial. Any party may by notice require an original deposition to be lodged for a trial or an evidentiary hearing. At a trial or an evidentiary hearing, the Court may order a lodged deposition to be filed or received in evidence, or may direct a party to prepare extracts from a

deposition to be filed or received in evidence. The requirement for marking depositions shall not apply to depositions intended to be used at trial solely for impeachment.

L.R. 32-2 Original of Transcript. The original transcript of a deposition shall, unless otherwise stipulated to on the record at the deposition, after signing and correction, or waiver of the same, as provided in F.R.Civ.P. 30(e), be sent to the attorney noticing the deposition. The said attorney shall maintain control of the original deposition until final disposition of the case or until called upon to lodge the original deposition with the Court pursuant to L.R. 32-1. A copy of a deposition signed and certified as required in F.R.Civ.P. 30(e) and (f) may be used in lieu of an original.

F.R.Civ.P. 33. INTERROGATORIES TO PARTIES

L.R. 33-1 Numbering. Interrogatories shall be numbered sequentially without repeating the numbers used on any prior set of interrogatories propounded by that party.

L.R. 33-2 Answers and Objections. The party answering or objecting to interrogatories shall quote each interrogatory in full immediately preceding the statement of any answer or objection thereto.

L.R. 33-3 Original. The original of the interrogatories served on the opposing party shall be held by the attorney propounding the interrogatories pending use or further order of the Court.

F.R.Civ.P. 34. PRODUCING DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS, OR ENTERING ONTO LAND, FOR INSPECTION AND OTHER PURPOSES

L.R. 34-1 Numbering. Requests for production shall be numbered sequentially without repeating the numbers used on any prior set of requests for production propounded by that party.

L.R. 34-2 Responses and Objections. The party responding or objecting to requests for production shall quote each request for production in full immediately preceding the statement of any response or objection thereto.

L.R. 34-3 Original. The original of the requests for production of documents or to inspect tangible things served on the opposing party shall be held by the attorney propounding the requests pending use or further order of the Court.

F.R.Civ.P. 35. PHYSICAL AND MENTAL EXAMINATIONS

F.R.Civ.P. 36. REQUESTS FOR ADMISSION

L.R. 36-1 Numbering. Requests for admissions shall be numbered sequentially without repeating the numbers used on any prior set of requests propounded by that party.

L.R. 36-2 Answers and Objections. The party answering or objecting to requests for admission shall quote each request in full immediately preceding the statement of any answer or objection thereto.

L.R. 36-3 Original. The original of the requests for admission served on the opposing party shall be held by the attorney propounding the requests pending use or further order of the Court.

F.R.Civ.P. 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY; SANCTIONS

L.R. 37-1 Pre-Filing Conference of Counsel. Prior to the filing of any motion relating to discovery pursuant to F.R.Civ.P. 26-37, counsel for the parties shall confer in a good faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the disputes as possible. It shall be the responsibility of counsel for the moving party to arrange for this conference. If both counsel are located within the same county of the Central District, the conference shall take place in person at the office of the moving party's counsel, unless the parties agree to meet someplace else. If both counsel are not located within the same county of the Central District, the conference may take place telephonically. Unless relieved by written order of the Court upon good cause shown, counsel for the opposing party shall confer with counsel for the moving party within ten (10) days after the moving party serves a letter requesting such conference. The moving party's letter shall identify each issue and/or discovery request in dispute, shall state briefly with respect to each such issue/request the moving party's position (and provide any legal authority which the moving party believes is

dispositive of the dispute as to that issue/request), and specify the terms of the discovery order to be sought.

L.R. 37-2 Moving Papers.[15] If counsel are unable to settle their differences, they shall formulate a written stipulation, unless otherwise ordered by the Court. The stipulation shall be filed and served with the notice of motion.

> ***L.R. 37-2.1 Form of Joint Stipulation.*** The stipulation must be set forth in one document signed by both counsel. The stipulation shall contain all issues in dispute and, with respect to each such issue, the contentions and points and authorities of each party. The stipulation shall not refer the Court to any other documents. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions as to that particular interrogatory, separately stated. If the allegations made in a prior filing are relevant, a copy of that prior filing should be attached as an exhibit. Exhibits to the stipulation may include declarations prepared in conformity with L.R. 7-7. The specification of the issues in dispute, and the parties' contentions and points and authorities with respect to such issues, may be preceded by an introductory statement from each party, provided that no party's introductory statement shall exceed three (3) pages in length. When a party states its contentions with respect to a particular issue, such party shall also state how it proposed to resolve the dispute over that issue at the conference of counsel.
>
> Although the stipulation should present the disputed issues as concisely as the subject matter permits, the page limitation established by L.R. 11-6 does not apply to stipulations regarding discovery disputes. Any stipulation exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof, but need not be accompanied by a table of authorities.
>
> The title page of the stipulation must state the discovery cutoff date, the pretrial conference date, and the trial date. In addition, a copy of the order establishing the initial case schedule, as well as any

[15] L.R. 37-2 amended, effective 12/1/15.

amendments, must be attached to the stipulation or to a declaration filed in support of the motion.

L.R. 37-2.2 Preparation of Joint Stipulation. Following the conference of counsel, counsel for the moving party shall personally deliver, e-mail, or fax to counsel for the opposing party the moving party's portion of the stipulation, together with all declarations and exhibits to be offered in support of the moving party's position. Unless the parties agree otherwise, within seven (7) days of receipt of the moving party's material, counsel for the opposing party shall personally deliver, e-mail, or fax to counsel for the moving party the opposing party's portion of the stipulation, together with all declarations and exhibits to be offered in support of the opposing party's position. After the opposing party's material is added to the stipulation by the moving party's counsel, the stipulation shall be provided to opposing counsel, who shall sign it (electronically or otherwise) and return it to counsel for the moving party no later than the end of the next business day, so that it can be filed with the notice of motion.

L.R. 37-2.3 Supplemental Memorandum. After the Joint Stipulation is filed, each party may file a supplemental memorandum of law not later than fourteen (14) days prior to the hearing date. Unless otherwise ordered by the Court, a supplemental memorandum shall not exceed five (5) pages in length. No other separate memorandum of points and authorities shall be filed by either party in connection with the motion.

L.R. 37-2.4 Failure to File Joint Stipulation. The Court will not consider any discovery motion in the absence of a joint stipulation or a declaration from counsel for the moving party establishing that opposing counsel (a) failed to confer in a timely manner in accordance with L.R. 37-1; (b) failed to provide the opposing party's portion of the joint stipulation in a timely manner in accordance with L.R. 37-2.2; or (c) refused to sign and return the joint stipulation after the opposing party's portion was added. If such declaration accompanies the motion, then L.R. 6-1, 7-9 and 7-10 apply.

L.R. 37-3 Hearing on Motion. The motion may be noticed to be heard on the particular judge's regular Motion Day which shall be not earlier than

twenty-one (21) days after the filing of the motion. Unless the Court in its discretion otherwise allows, no discovery motions shall be filed or heard on an ex parte basis, absent a showing of irreparable injury or prejudice not attributable to the lack of diligence of the moving party.

L.R. 37-4 Cooperation of Counsel - Sanctions. The failure of any counsel to comply with or cooperate in the foregoing procedures may result in the imposition of sanctions.

VI. TRIALS

F.R.Civ.P. 38. RIGHT TO A JURY TRIAL; DEMAND

L.R. 38-1 Jury Trial Demand - Included in Pleading. If the demand for jury trial is included in a pleading, it shall be set forth at the end thereof and be signed by the attorney for the party making the demand. The caption of such a pleading shall also contain the following: "DEMAND FOR JURY TRIAL."

L.R. 38-2 Jury Trial Demand - Removed Cases Where Jury Trial Not Demanded Prior to Removal. In all such cases removed to this Court which are not at issue at the time of removal, the demand for jury trial must be filed within ten (10) days after service of the last responsive pleading addressed to an issue triable by right by a jury. If the matter already is at issue at the time of removal, the demand must be filed within ten (10) days after the filing of the notice of removal if the demand is made by the removing party, and within ten (10) days after service of filing of the notice of removal if the demand is made by a party other than the removing party.

L.R. 38-3 Jury Trial Demand - Marking Civil Cover Sheet Insufficient. Marking the Civil Cover Sheet shall not be deemed a sufficient demand to comply with F.R.Civ.P. 38(b) or L.R. 38-1 and 38-2.

L.R. 38-4 Exceptions. The provisions of L.R. 38-3 shall not prevent the use of printed forms provided by the Clerk or by the Administrative Office of the United States Courts.

F.R.Civ.P. 39. TRIAL BY JURY OR BY THE COURT

F.R.Civ.P. 40. SCHEDULING CASES FOR TRIAL

L.R. 40-1 Continuances. Any application for continuance of any trial or similar proceeding shall be served and filed at least five (5) days before the day set for the trial or proceeding. The application shall set forth in detail the reasons therefor.

> ***L.R. 40-1.1 Notice of Application for Continuance.*** Counsel shall notify the court clerk immediately when a stipulation for the continuance of a hearing, pre-trial conference, trial or other proceeding is to be submitted for approval of the Court.
>
> ***L.R. 40-1.2 Application for Continuance - Approval of the Court.*** No continuance (whether stipulated to by counsel or not) shall be effective unless approved in writing or announced in open court by the judge.

L.R. 40-2 Notice of Settlement. Counsel shall inform the court clerk immediately by telephone or other expeditious means when a case set for trial or other proceeding has been settled.

L.R. 40-3 Late Notification. In any civil case, failure to comply with the provisions of L.R. 40-1 or 40-2 may subject counsel or the parties to the following sanctions:

(a) Payment of costs and attorneys' fees of an opposing party;

(b) Payment of reasonable charges reflecting the costs of compensating jurors for their unnecessary appearance; and

(c) Such other sanctions as may seem proper to the Court under the circumstances.

Notwithstanding compliance with L.R. 40-2, if counsel fails to inform the court clerk of settlement by 4 p.m. on the last business day prior to trial, the Court may assess counsel or the parties reasonable charges reflecting the costs of compensating jurors for their unnecessary appearance.

F.R.Civ.P. 41. DISMISSAL OF ACTIONS

L.R. 41-1 Dismissal - Unreasonable Delay. Civil suits which have been pending for an unreasonable period of time without any action having been taken therein may, after notice, be dismissed for want of prosecution.

L.R. 41-2 Dismissal - Effect. Unless the Court provides otherwise, any dismissal pursuant to L.R. 41-1 shall be without prejudice.

L.R. 41-3 Reinstatement - Sanctions. If any action dismissed pursuant to L.R. 41-1 is reinstated, the Court may impose such sanctions as it deems just and reasonable.

L.R. 41-4 Refiling of Dismissed Action. If any action dismissed pursuant to L.R. 41-1 is refiled as a new action, the party filing the later action shall comply with the requirements of L.R. 83-1.2.2.

L.R. 41-5 Dismissal - Failure to Appear. If a party, without notice to the Court, fails to appear at the noticed call of any action or proceeding, the matter is subject to dismissal for want of prosecution.

L.R. 41-6 Dismissal - Failure of Pro Se Plaintiff to Keep Court Apprised of Current Address. A party proceeding *pro se* shall keep the Court and opposing parties apprised of such party's current address and telephone number, if any, and e-mail address, if any. If mail directed by the Clerk to a *pro se* plaintiff's address of record is returned undelivered by the Postal Service, and if, within fifteen (15) days of the service date, such plaintiff fails to notify, in writing, the Court and opposing parties of said plaintiff's current address, the Court may dismiss the action with or without prejudice for want of prosecution.

F.R.Civ.P. 42. CONSOLIDATION; SEPARATE TRIALS

F.R.Civ.P. 43. TAKING TESTIMONY

L.R. 43-1 Non-Jury Trial - Narrative Statements. In any matter tried to the Court, the judge may order that the direct testimony of a witness be presented by written narrative statement subject to the witness' cross-examination at the trial. Such written, direct testimony shall be adopted by the witness orally in open court, unless such requirement is waived.

F.R.Civ.P. 44. PROVING AN OFFICIAL RECORD

F.R.Civ.P. 44.1. DETERMINING FOREIGN LAW

F.R.Civ.P. 45. SUBPOENA

L.R. 45-1 Motions Relating to Discovery Subpoenas. Except with respect to motions transferred to this district pursuant to F.R.Civ.P. 45(f), L.R. 37 applies to all motions relating to discovery subpoenas served on (a) parties and (b) non-parties represented by counsel.

F.R.Civ.P. 46. OBJECTING TO A RULING OR ORDER
F.R.Civ.P. 47. SELECTING JURORS
F.R.Civ.P. 48. NUMBER OF JURORS; VERDICT; POLLING

F.R.Civ.P. 49. SPECIAL VERDICT; GENERAL VERDICT AND QUESTIONS

L.R. 49-1 Request for Special Verdict or Interrogatories. Any request for a special verdict or a general verdict accompanied by answers to interrogatories shall be filed and served at least seven (7) days before trial is scheduled to commence.

L.R. 49-2 Form - Presentation By Counsel. Special verdicts or interrogatories shall not bear any identification of the party presenting the form. Identification shall be made only on a separate page appended to the front of the special verdict or interrogatory form.

F.R.Civ.P. 50. *JUDGMENT AS A MATTER OF LAW IN A JURY TRIAL; RELATED MOTION FOR A NEW TRIAL; CONDITIONAL RULING*

F.R.Civ.P. 51. INSTRUCTIONS TO THE JURY; OBJECTIONS; PRESERVING A CLAIM OF ERROR

L.R. 51-1 Requests for Instructions. Proposed instructions shall be in writing and shall be filed and served at least seven (7) days before trial is scheduled to begin unless a different filing date is ordered by the Court. The parties jointly shall submit a single set of instructions as to which they agree. In addition, each party shall submit separately those proposed instructions as to which all parties do not agree.

L.R. 51-2 Form of Requests. Each requested instruction shall:

(a) Be set forth in full on a separate page;
(b) Embrace only one subject or principle of law; and
(c) Not repeat the principle of law contained in any other request.

L.R. 51-3 Identity of Requesting Party. The identity of the party requesting the instructions shall be set forth on a cover page only and shall not be disclosed on the proposed instructions.

L.R. 51-4 Citation of Authority. The authority for or source of each proposed instruction shall be set forth on a separate page or document and shall not be disclosed on the proposed instruction.

L.R. 51-5 Objections. Objections shall be filed and served on or before the first day of trial unless the Court permits oral objections.

L.R. 51-5.1 Separate Objections. Written objections shall be numbered and shall specify distinctly the objectionable matter in the proposed instruction. Each objection shall be accompanied by citation of authority. Where applicable, the objecting party shall submit an alternative instruction covering the subject or principle of law.

F.R.Civ.P. 52. FINDINGS AND CONCLUSIONS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

L.R. 52-1 Non-Jury Trial - Findings of Fact and Conclusions of Law. In any matter tried to the Court without a jury requiring findings of fact and conclusions of law, counsel for each party shall lodge and serve proposed findings of fact and conclusions of law at least seven (7) days before trial.

L.R. 52-2 Other Findings of Fact and Conclusions of Law. In all other cases where findings of fact and conclusions of law are required under F.R.Civ.P. 41, 52, and 65, the attorney directed to do so by the Court shall lodge and serve proposed findings of fact within seven (7) days of the decision.

L.R. 52-3 Format. Proposed findings of fact shall:

(a) Be in separately numbered paragraphs;
(b) Be in chronological order; and

(c) Not make reference to allegations contained in pleadings.

Conclusions of law shall follow the findings of fact and:

(a) Shall be in separately numbered paragraphs, and
(b) May include brief citations of appropriate authority.

L.R. 52-4 Orders. Each order shall be prepared by the attorney directed to do so by the Court. The order shall comply with the requirements of L.R. 58-10. Within five (5) days of the ruling, the attorney preparing the order shall serve it on all parties and lodge it with the Clerk.

> ***L.R. 52-4.1 Separate Order.*** A separate proposed order shall be submitted with any stipulation, application, motion, or request of the parties requiring an order of the court. If the proposed order is the result of a stipulation, the pertinent elements requested in the stipulation shall be set forth in the order. Unless the filer is exempted from electronic filing pursuant to L.R. 5-4.2(a), the proposed order shall be submitted as provided in L.R. 5-4.4.

L.R. 52-5 Signing of Orders for Absent Judges. Except as otherwise provided by F.R.Civ.P. 63, application for any order in a civil action (including cases on appeal) shall be made to the judge to whom the case is assigned. If the judge to whom the action is assigned is not available and there is an emergency necessitating an order, the judge's court clerk shall be consulted to determine whether a judge of this Court has been designated to handle matters in the absence of the assigned judge. If a designation has been made, the application shall be presented to the designated judge. If no designation has been made by the assigned judge, then the matter shall be presented to the Chief Judge, or in the Chief Judge's absence, to any other available judge. If no emergency exists, the application will be held by the assigned judge's court clerk until the assigned judge is available.

L.R. 52-6 Service of Document. The attorney whose duty it is to prepare any document required by L.R. 52-1, 52-2, or 52-4 shall serve a copy on opposing counsel on the same day that the document is lodged with the Court. Alternatively, the attorney preparing the document may present it to opposing counsel for approval as to form before the document is lodged.

L.R. 52-7 Separate Objection. Opposing counsel may, within seven (7) days after service of a copy of a document prepared pursuant to L.R. 52-1, 52-2, or 52-4, file and serve objections to the form of the document and the grounds thereof. The failure to file timely objections shall be deemed a waiver of any defects in the form of the document.

L.R. 52-8 Endorsement of Counsel. Unless the Court otherwise directs, no document governed by L.R. 52-1, 52-2, or 52-4 will be signed by the judge unless either opposing counsel shall have endorsed thereon an approval as to form, or the time for objection has expired. If it finds the ends of justice so requires, the Court may conduct a hearing on the proper form of the document, or it may sign the document as prepared or as modified.

L.R. 52-9 Order Upon Stipulation [DELETED].

F.R.Civ.P. 53. MASTERS

L.R. 53-1 Appointment. Appointment of a master pursuant to F.R.Civ.P. 53 shall be made by written order of the Court.

L.R. 53-2 Fees and Expenses. A master's fees and expenses, when approved by the Court, shall be paid as the Court orders. Those amounts are recoverable as costs under L.R. 54-3.9.

VII. JUDGMENT

F.R.Civ.P. 54. JUDGMENT; COSTS

L.R. 54-1 Determination of Prevailing Party. The "prevailing party" entitled to costs pursuant to F.R.Civ.P. 54(d) shall be the party in whose favor judgment is rendered, unless otherwise determined by the Court. When a case is dismissed or otherwise terminated voluntarily, the Court may, upon request, determine the prevailing party.

L.R. 54-2 Application to Tax Costs Pursuant to F.R.Civ.P. 54(d); Bill of Costs. Parties applying for or objecting to an application to the Clerk to tax costs pursuant to F.R.Civ.P. 54(d) must familiarize themselves with the Court's Bill of Costs Handbook, available on the Court's website at www.cacd.uscourts.gov.

L.R. 54-2.1 Filing and Form. Within 14 days after the entry of judgment, the party entitled to costs shall file and serve, in accordance with L.Rs. 5-3 and 5-4.1, a completed Form CV-59 "Application to the Clerk to Tax Costs." All costs shall be specified on Form CV-59 so that the nature of the claim can be readily understood. No hearing on the application will be held unless the Clerk notifies the parties otherwise. Once the Clerk has determined the allowable costs, the Clerk will file the Bill of Costs electronically.

L.R. 54-2.2 Objections. Within 7 days after service of an Application to the Clerk to Tax Costs under L.R. 54-2.1, any party may file and serve written objections to any cost claimed in the application. The grounds for each objection must be specifically stated. In the absence of a timely objection, any allowable item may be taxed as requested in the application.

L.R. 54-2.3. Response to Objections. Within 3 days after service of an objection under L.R. 54-2.2, the party applying for costs may file and serve a written response to the objection.

L.R. 54-3 Items Taxable as Costs. The following items are taxable as costs:

L.R. 54-3.1 Clerk's Fees. Filing fees paid to the Clerk (excluding *pro hac vice* fees).

L.R. 54-3.2 Fees for Service of Process. Fees for service of process (whether served by the United States Marshal or other persons authorized by F.R.Civ.P. 4) and for service of subpoenas pursuant to F.R.Civ.P. 45 (excluding all messenger fees).

L.R. 54-3.3 United States Marshal's Fees. Fees and commissions paid to the United States Marshal pursuant to 28 U.S.C. § 1921.

L.R. 54-3.4 Reporter's Transcripts. The cost of the original and one copy of all or any part of a trial transcript, a daily transcript, or a transcript of matters occurring before or after trial, if requested by the Court or prepared pursuant to stipulation.

L.R. 54-3.5 Depositions. Costs incurred in connection with taking oral depositions, including:

(a) The cost of the original and one copy of the transcription of the oral portion of all depositions used for any purpose in connection with the case, including non-expedited transcripts, the reporter's appearance fee, fees for binding, bates stamping, non-expedited shipping and handling, processing fee, ASCII disks, production and code compliance charge, electronic transmission charge, miniscripts and witness handling charges, but not including the cost of videotaping or recording depositions unless otherwise ordered by the Court;

(b) The reasonable fees of the deposition reporter, including reporter fees when a deponent fails to appear at a scheduled deposition, the notary, and any other persons required to report or transcribe the deposition, but not including the costs of video or audio technicians unless otherwise ordered by the Court;

(c) Reasonable witness fees paid to a deponent, including fees actually paid to an expert witness deponent pursuant to F.R.Civ.P. 26(b)(4)(E). However, such fees do not include expert witness fees paid to a trial witness in excess of the statutory witness fee unless otherwise ordered by the Court;

(d) Reasonable fees paid to an interpreter when necessary to the taking of the deposition; and

(e) The cost of copying or reproducing exhibits used at the deposition and made a part of the deposition transcript.

L.R. 54-3.6 Witness Fees. Statutory witness fees paid to witnesses, including:

(a) Per diem, mileage, subsistence, and attendance fees as provided in 28 U.S.C. § 1821 paid to witnesses subpoenaed or actually attending the proceeding;

(b) Witness fees for a party if subpoenaed by an opposing party; and

(c) Witness fees for officers and employees of a corporation or other entity, if they are not parties in their individual capacities.

L.R. 54-3.7 Interpreter's and Translator's Fees. Fees paid to interpreters and translators, including the salaries, fees, expenses, and costs incurred for oral translations as provided by 28 U.S.C. §§ 1827 and 1828.

L.R. 54-3.8 Docket Fees. Docket fees as provided by 28 U.S.C. § 1923 (only if incurred).

L.R. 54-3.9 Masters, Commissioners and Receivers. The reasonable fees and expenses of masters, commissioners, and receivers.

L.R. 54-3.10 Certification, Exemplification and Reproduction of Documents. Document preparation costs, including:

(a) The cost of copies (including Mandatory Chambers Copies) of documents necessarily filed and served;

(b) The cost of copies of documents or other materials admitted into evidence when the original is not available or the copy is substituted for the original at the request of an opposing party;

(c) Fees for an official certification of proof respecting the non-existence of a document or record;

(d) Patent Office charges for the patent file wrappers and prior art patents necessary to the prosecution or defense of a proceeding involving a patent;

(e) Notary fees incurred in notarizing a document when the cost of the document is taxable; and

(f) Fees for certification or exemplification of any document or record necessarily obtained for use in the case.

L.R. 54-3.11 Premiums on Undertakings and Bonds. Premiums paid on undertakings, bonds, security stipulations, or substitutes

therefor, where required by law or Court order, or where necessary to enable a party to secure a right granted in the proceeding.

L.R. 54-3.12 Other Costs. Upon order of the Court, the following items may be taxed as costs:

(a) Summaries, computations, polls, surveys, statistical comparisons, maps, charts, diagrams, and other visual aids reasonably necessary to assist the jury or the Court in understanding the issues at the trial;

(b) Photographs, if admitted in evidence or attached to documents necessarily filed and served upon the opposing party; and

(c) The cost of models.

L.R. 54-3.13 State Court Costs. Costs incurred in state court prior to removal which are recoverable under state statutes shall be recoverable by the prevailing party in this Court.

L.R. 54-4 Costs on Appeal. An application to tax costs on appeal that are taxable in the District Court under F.R.App.P. 39(e) shall be filed in the District Court no later than twenty-eight (28) days after the date the mandate or judgment is issued by the Court of Appeals.

L.R. 54-5 Costs on a Bankruptcy Appeal to the District Court. A Notice of Application to the Clerk to Tax Costs and Proposed Bill of Costs on a bankruptcy appeal decided in the District Court is to be filed within fourteen (14) days of the entered date of the order deciding that bankruptcy appeal. Taxable costs for bankruptcy appeals decided by the District Court shall be as provided for in Rule 8014 of the Federal Rules of Bankruptcy Procedure. To recover the costs of printing or otherwise reproducing briefs or excerpts of the record, a statement by counsel that the cost is no higher than is generally charged for such reproduction in the local area and that no more copies were reproduced than were actually necessary shall be required. No Clerk's fees not actually paid shall be recoverable.

L.R.54-6 [Abrogated]

L.R. 54-7 Clerk's Determination - Finality. After considering any objections to the Proposed Bill of Costs and any responses thereto, the Clerk shall tax costs to be included on the docket. The Clerk's determination shall be final unless modified by the Court upon review pursuant to L.R. 54-8.

L.R. 54-8 Review of Clerk's Determination. Review of the Clerk's taxation of costs may be obtained by a motion to retax costs filed and served within seven (7) days of the Clerk's decision. That review will be limited to the record made before the Clerk, and encompass only those items specifically identified in the motion.

L.R. 54-9 Writ of Execution for Costs. The Clerk shall, upon request, issue a writ of execution to recover attorney's fees awarded by the Court following a judgment and any separate award of costs by the Clerk:

(a) Upon presentation of a certified copy of the final judgment and separate Bill of Costs and, if appropriate, a certified copy of the order awarding attorney's fees; or

(b) Upon presentation of a mandate of the Court of Appeals to recover costs taxed by the appellate court.

L.R. 54-10 Filing Date for Requests for Attorneys' Fees. Any motion or application for attorneys' fees shall be served and filed within fourteen (14) days after the entry of judgment or other final order, unless otherwise ordered by the Court. Such motions and their disposition shall be governed by L.R. 7-3, *et seq.*

L.R. 54-11 Filing Date for Motions to Award Costs Not Governed by F.R.Civ.P. 54(d). Any motion for an award of costs not governed by F.R.Civ.P. 54(d), such as a motion for a discretionary award of costs pursuant to 28 U.S.C. § 1919, shall be served and filed within fourteen (14) days after the entry of judgment or other final order, unless otherwise ordered by the Court. Such motions and their disposition shall be governed by L.R. 7-3, *et seq.*

F.R.Civ.P. 55. DEFAULT; DEFAULT JUDGMENT

L.R. 55-1 Default Judgments. When application is made to the Court for a default judgment, the application shall be accompanied by a declaration in compliance with F.R.Civ.P. 55(b)(1) and/or (2) and include the following:

(a) When and against what party the default was entered;
(b) The identification of the pleading to which default was entered;
(c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;
(d) That the Servicemembers Civil Relief Act (50 U.S.C. App. § 521) does not apply; and
(e) That notice has been served on the defaulting party, if required by F.R.Civ.P. 55(b)(2).

L.R. 55-2 Default Judgment - Unliquidated Damages. If the amount claimed in a judgment by default is unliquidated, the applicant may submit evidence of the amount of damages by declarations. Notice must be given to the defaulting party of the amount requested. The party against whom judgment is sought may submit declarations in opposition.

L.R. 55-3 Default Judgment - Schedule of Attorneys' Fees. When a promissory note, contract or applicable statute provides for the recovery of reasonable attorneys' fees, those fees shall be calculated according to the following schedule:

Amount of Judgment	Attorneys' Fees Awards
$0.01 - $1,000	30% with a minimum of $250.00
$1,000.01 - $10,000	$300 plus 10% of the amount over $1,000
$10,000.01 - $50,000	$1200 plus 6% of the amount over $10,000
$50,000.01 - $100,000	$3600 plus 4% of the amount over $50,000
Over $100,000	$5600 plus 2% of the amount over $100,000

This schedule shall be applied to the amount of the judgment exclusive of costs. An attorney claiming a fee in excess of this schedule may file a written request at the time of entry of the default judgment to have the attorney's fee fixed by the Court. The Court shall hear the request and render judgment for such fee as the Court may deem reasonable.

F.R.Civ.P. 56. SUMMARY JUDGMENT

L.R. 56-1 Documents Required From Moving Party. A party filing a notice of motion for summary judgment or partial summary judgment shall lodge a proposed "Statement of Uncontroverted Facts and Conclusions of Law." Such proposed statement shall set forth the material facts as to which the moving party contends there is no genuine dispute. A party seeking summary judgment shall lodge a proposed Judgment; a party seeking partial summary judgment shall lodge a proposed Order.

L.R. 56-2 Statement of Genuine Disputes of Material Fact by Opposing Party. Any party who opposes the motion shall serve and file with the opposing papers a separate document containing a concise "Statement of Genuine Disputes" setting forth all material facts as to which it is contended there exists a genuine dispute necessary to be litigated.

L.R. 56-3 Determination of Motion. In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the "Statement of Genuine Disputes" and (b) controverted by declaration or other written evidence filed in opposition to the motion.

L.R. 56-4 Motions Under F.R.Civ.P. 56(d) [ABROGATED].

F.R.Civ.P. 57. DECLARATORY JUDGMENT

F.R.Civ.P. 58. ENTERING JUDGMENT

L.R. 58-1 Entry of Judgments and Orders. The entry of judgments and orders by the Clerk through notation in the appropriate civil docket pursuant to F.R.Civ.P. 58 and 79 shall be made at the earliest practicable time.

L.R. 58-2 Entry of Judgments - Costs. Entry of judgment shall not be delayed pending taxation of costs to be included therein pursuant to L.R. 54.

L.R. 58-3 Entry of Judgments and Orders - Clerk's Orders and Judgments. Orders and judgments signed by the Clerk pursuant to F.R.Civ.P. 55(a) and 77(c) and L.R. 58-1 shall be noted in the civil docket. That notation shall constitute entry of the judgment or order as provided by F.R.Civ.P. 58 and 79 (a).

L.R. 58-4 Entry of Judgments and Orders - Settlement of Orders or Judgments. Entry of judgments or orders shall not be made by the Clerk until the Court has settled the form of judgment or order as provided in L.R. 52-8.

L.R. 58-5 Judgment by Clerk. Judgments may be entered by the Clerk without further direction from the judge in the following instances:

(a) Judgments on the verdict of a jury as provided in F.R.Civ.P. 58 unless the judge directs otherwise;
(b) Judgments by default as set forth in F.R.Civ.P. 55(b)(1), provided that no judgment shall be entered without a declaration that any natural person against whom it is sought is not an infant, incompetent person, or exempted under the Servicemembers Civil Relief Act, 1940; and
(c) Judgments on offers of judgment as set forth in F.R.Civ.P. 68.

The Clerk may require the party obtaining a judgment or order to prepare and present same.

L.R. 58-6 Entry of Judgment - Memorandum of Decision, Opinion, Minute Order. Notation in the civil docket of entry of a memorandum of decision, an opinion of the Court, or a minute order of the Clerk shall not constitute entry of judgment pursuant to F.R.Civ.P. 58 and 79(a) unless specifically ordered by the judge.

L.R. 58-7 Entry of Judgment - Settlement of Interest. If interest is accruing or will accrue on any judgment, decree or order, the party preparing the proposed form of judgment, decree or order shall indicate by memorandum attached thereto the applicable interest rate as computed under 28 U.S.C. § 1961(a) or 26 U.S.C. § 6621 and the amount of interest to be added for each day the document remains unsigned.

L.R. 58-8 Entry of Judgment - Award - Tax Cases. In tax cases involving overpayments or deficiencies, and in such other cases as it deems appropriate, the Court may withhold entry of judgment to permit the parties to submit, either separately or jointly by stipulation, the computation of the amount of money to be awarded in accordance with the Court's determination of the issues.

L.R. 58-9 Judgment, Order, Decree - United States a Party - Duty of Clerk. When a judgment, order or decree is entered by the Court directing any officer of the United States to perform any act, unless such officer is present in Court when the order is made, the Clerk shall forthwith transmit a copy of the judgment, order or decree to the officer ordered to perform the act.

L.R. 58-10 Signature Line for Signature of Judge. At least two lines of the text of any order or judgment shall appear on the page that has the line provided for the signature of the judge. Next to the signature line shall be the word "Dated:" with a blank left for the judge to write in the date. At least two lines above the signature line shall be left blank for the judge's signature.

L.R. 58-11 Default Judgment - Separate Document. A proposed default judgment shall be submitted as a separate document in compliance with F.R.Civ.P. 58.

F.R.Civ.P. 59. NEW TRIAL; ALTERING OR AMENDING A JUDGMENT

L.R. 59-1 New Trial - Procedure

L.R. 59-1.1 Specification of Ground - Error of Law. If the ground for the motion is an error of law occurring at the trial, the error shall be specifically stated.

L.R. 59-1.2 Specification of Ground - Insufficiency of Evidence. If the ground for the motion is the insufficiency of the evidence, the motion shall specify with particularity the respects in which the evidence is claimed to be insufficient.

L.R. 59-1.3 Specification of Ground - Newly Discovered Evidence. If the ground for the motion is newly discovered evidence, the motion shall be supported by a declaration by the party, or the agent of the party having personal knowledge of the facts, showing:

(a) When the evidence was first discovered;
(b) Why it could not with reasonable diligence have been produced at trial;

(c) What attempts were made to discover and present the evidence at trial;
(d) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify; and
(e) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available.

L.R. 59-1.4 New Trial - Hearing. The motion shall be considered upon:

(a) The pleadings and documents on file;
(b) The minutes of the court clerk;
(c) The reporter's notes or transcript; and
(d) Declarations, if the ground is other than error of law or insufficiency of the evidence and the facts or circumstances relied on do not otherwise appear in the file.

L.R. 59-1.5 New Trial - Declarations - Time for Filing.
Declarations in support of a motion for a new trial shall be filed concurrently with the motion unless the Court fixes a different time.

L.R. 59-1.6 New Trial - Calendaring of Motion. The motion for a new trial shall be noticed and heard (if required by the Court) as provided in L.R. 7-3 et seq.

F.R.Civ.P. 60. RELIEF FROM A JUDGMENT OR ORDER
F.R.Civ.P. 61. HARMLESS ERROR
F.R.Civ.P. 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT
F.R.Civ.P. 62.1. INDICATIVE RULING ON A MOTION FOR RELIEF THAT IS BARRED BY A PENDING APPEAL
F.R.Civ.P. 63. JUDGE'S INABILITY TO PROCEED

VIII. PROVISIONAL AND FINAL REMEDIES

F.R.Civ.P. 64. SEIZING A PERSON OR PROPERTY

L.R. 64-1 Issuance of Writ. All writs or other process issued for the seizure of persons or property pursuant to F.R.Civ.P. 64 shall be issued, attested, signed and sealed as required for writs issued out of this Court.

L.R. 64-2 Writs or Other Process of Seizure - Civil Cases - Execution and Return. Any writ or other process for seizure in a civil action shall only be directed to, executed and returned by the United States Marshal or by a state or local law enforcement officer authorized by state law or a private person specially appointed by the Court for that purpose. Unless otherwise relieved by the Court, an attorney for the seizing party must be available to the seizing officer at the time of the seizure.

L.R. 64-3 Process Requiring Entry Upon Premises. An order of Court requiring entry upon private premises without notice shall only be executed by the United States Marshal, a state or local law enforcement officer, or a private person specially appointed by the Court for that purpose. If process is to be executed by a private person, the private person shall be accompanied by a United States Marshal or a state or local law enforcement officer, who shall be present upon the premises during the execution of the order.

L.R. 64-4 Applications Concerning Provisional Remedies. Applications concerning provisional remedies other than injunctive relief shall be made to a magistrate judge of this Court, unless otherwise ordered.

F.R.Civ.P. 65. INJUNCTIONS AND RESTRAINING ORDERS

L.R. 65-1 Temporary Restraining Orders and Preliminary Injunctions. A party seeking a temporary restraining order ("TRO") must submit an application, a proposed TRO, and a proposed order to show cause why a preliminary injunction should not issue. If the TRO is denied, the Court may set the hearing on the order to show cause without regard to the twenty-eight (28) days notice of motion requirement of L.R. 6-1.

When a TRO is not sought, an application for a preliminary injunction shall be made by notice of motion and not by order to show cause.

L.R. 65-2 Approval of Bonds, Undertakings and Stipulations of Security. The Clerk is authorized to approve on behalf of the Court all bonds, undertakings and stipulations of security given in the form and amount prescribed by statute, order of the Court or stipulation of counsel, which comply with the requirements of L.R. 65-3, and contain a certificate by an

attorney pursuant to L.R. 65-5, except where the approval of a judge is specifically required by law.

L.R. 65-3 Bonds or Undertakings - Sureties - Qualifications. No bond or undertaking requiring third-party sureties will be approved unless it bears the names and addresses of third-party sureties and is accompanied by a declaration by the surety stating that:

(a) The surety is a resident of the State of California;
(b) The surety who intends to deed real property as security owns the real property within the State of California;
(c) The security posted by the surety is worth the amount specified in the bond or undertaking, over and above just debts and liabilities; and
(d) The property, real or personal, which is to be conveyed as security, is not exempt from execution and prejudgment attachment.

If specifically approved by the Court, real property in any other state of the United States may be part of the surety's undertaking.

L.R. 65-4 Bonds or Undertakings - Corporate Surety. Before any corporate surety bond or undertaking is accepted by the Clerk, the corporate surety must have on file with the Clerk a duly authenticated copy of a power of attorney appointing the agent executing the bond or undertaking. The appointment shall be in a form to permit recording in the State of California.

L.R. 65-5 Bonds or Undertakings - Certificate by Attorney. A bond or undertaking presented to the Clerk for acceptance must be accompanied by a certificate by the attorney for the presenting party in substantially the following form:

> This bond (or undertaking) has been examined pursuant to L.R. 65-3 and is recommended for approval. It (is) (is not) required by law to be approved by a judge.
>
> _____ _____
> Date Attorney

L.R. 65-6 Certificate by Attorney - Meaning. A certificate by an attorney made pursuant to L.R. 65-5 certifies to the Court that:

(a) The attorney has carefully examined the bond or undertaking;
(b) The attorney knows the content of the bond or undertaking;
(c) The attorney knows the purpose for which the bond or undertaking is executed;
(d) In the attorney's opinion, the bond or undertaking is in due form;
(e) The attorney believes the declarations of qualification by the surety are true; and
(f) The attorney has determined whether the bond or undertaking is required by law to be approved by a judge.

L.R. 65-7 Bonds or Undertakings - Approval of Judge. If a bond or undertaking is required by law to be approved by a judge, it shall be presented to the judge with the attorney's certificate required by L.R. 65-5 before it is filed by the Clerk.

L.R. 65-8 Bonds or Undertakings - Summary Adjudication of Obligation and Execution - Proceeding. An indemnitee or party in interest seeking a judgment on a bond or undertaking shall proceed by Motion for Summary Adjudication of Obligation and Execution. Service of the motion on personal sureties shall be made pursuant to F.R.Civ.P.5(b). Service shall be made on a corporate surety as provided in 31 U.S.C. §9306.

L.R. 65-9 Bonds or Undertakings - Surety - Judges and Attorneys. No bankruptcy judge, magistrate judge, or district judge, and no attorney appearing in the case, will be accepted as surety upon any bond or undertaking in any action or proceeding in this Court.

L.R. 65-10 Bonds or Undertakings - Cash Deposit. In any civil proceeding, a cashier's check may be deposited with the Clerk in lieu of any bond or undertaking requiring a personal or corporate surety. Such deposit shall be subject to all of the provisions of the F.R.Civ.P. applicable to bonds and undertakings.

F.R.Civ.P. 65.1. PROCEEDINGS AGAINST A SURETY

F.R.Civ.P. 66. RECEIVERS

L.R. 66-1 Temporary Receiver. Upon good cause shown by verified pleadings or declaration, the Court may in its discretion appoint a temporary receiver without notice to creditors.

L.R. 66-2 Temporary Receiver - Term of Appointment. A temporary receiver shall not be appointed for a period longer than the next Motion Day following the expiration of twenty (20) days after the date of appointment.

L.R. 66-3 Permanent Receiver - Order to Show Cause. Concurrently with appointment of a temporary receiver, the Court shall issue an order to show cause requiring the parties and the creditors of the defendant to show cause why a permanent receiver should not be appointed.

L.R. 66-4 Permanent Receiver - Notice. A copy of the Court's order to show cause why a permanent receiver should not be appointed shall be served on the defendant, any other parties to the action, and all known creditors of the defendant by the person requesting appointment of a receiver.

> ***L.R. 66-4.1 Notice - Change of Form.*** The Court may in its discretion, prescribe a different form of notice, other persons upon whom the notice shall be served, and the time for and manner of service.

L.R. 66-5 Schedule of Creditors. A schedule of names, addresses and amounts of claims of all known creditors of the defendant shall be filed by the temporary receiver within five (5) days after appointment of a permanent receiver. If no temporary receiver has been appointed, the defendant shall file that schedule within the same time.

> ***L.R. 66-5.1 Known Creditors - Defined.*** Known creditors shall mean those creditors who are listed as such in the records or books of account of the person or entity for which a receiver is appointed.

L.R. 66-6 Permanent Receivers - Reports

> ***L.R. 66-6.1 Report Required.*** Within six months of appointment, and semi-annually thereafter, the receiver shall serve and file with the Court a report showing:
>
> (a) The receipts and expenditures of the receivership; and
> (b) All acts and transactions performed in the receivership.

L.R. 66-7 Permanent Receivers - Notice of Hearing. The receiver shall give notice by mail to all parties to the action and to all known creditors of the defendant of the time and place for hearing of:

(a) Petitions for the payment of dividends to creditors;
(b) Petitions for the confirmation of sales of real property and personal property;
(c) Reports of the receiver;
(d) Applications for instructions concerning administration of the estate;
(e) Applications for discharge of the receiver; and
(f) Applications for fees and expenses of the receiver, the attorney for the receiver and any other person appointed to aid the receiver.

The provisions of L.R. 6-1 shall apply to such notice.

L.R. 66-8 Permanent and Temporary Receivers - Administration of Estate. Except as otherwise ordered by the Court, a receiver shall administer the estate as nearly as possible in accordance with the practice in the administration of estates in bankruptcy.

L.R. 66-8.1 Permanent Receivers - Attorney - Records. A receiver, the attorney for the receiver, and such other persons appointed by the Court or employed by the receiver to aid the receivership, shall keep an itemized record of time spent and services rendered.

L.R. 66-8.2 Failure to Maintain Itemized Record. Failure to maintain the itemized records required by L.R. 66-8.1 may be grounds for denying reimbursement or compensation.

F.R.Civ.P. 67. DEPOSIT INTO COURT

L.R. 67-1 Order of Deposit - Service on the Clerk. For purposes of F.R.Civ.P. 67, service on the Clerk of Court of an order for deposit to an interest-bearing account means personal service on the Clerk, Chief Deputy Clerk, Finance Director or Fiscal Operations Officer.

L.R. 67-2 Registry Fee on Funds Deposited. Whenever money is deposited into Court and is deposited by the Clerk into an interest-bearing account, by order of the Court or otherwise, the Clerk is authorized and directed by this rule to deduct from the income earned on the investment a

registry fee not to exceed the amount prescribed by the Judicial Conference of the United States.

L.R. 67-3 Financial Institution Fee on Funds Deposited. Whenever money is deposited into Court and is deposited by the Clerk into an interest-bearing account, there may be transaction or service fees charged by the financial institution where the money is deposited. Where there are not sufficient funds in the interest accrued to cover transaction or service fees, transaction or service fees may be deducted from the principal amount deposited into the account.

F.R.Civ.P. 68. OFFER OF JUDGMENT

F.R.Civ.P. 69. EXECUTION

L.R. 69-1 Writs and Examinations. A motion concerning execution of a judgment shall be made to the assigned District Judge, unless the motion relates to the scheduling and conducting of judgment debtor and third party examinations pursuant to Cal. Code Civ. Proc. §§ 708.110 et seq. or other post-judgment discovery, in which case the motion shall be made to the assigned Magistrate Judge.

F.R.Civ.P. 70. ENFORCING A JUDGMENT FOR A SPECIFIC ACT
F.R.Civ.P. 71. ENFORCING RELIEF FOR OR AGAINST A NONPARTY

IX. SPECIAL PROCEEDINGS

F.R.Civ.P. 71.1. CONDEMNING REAL OR PERSONAL PROPERTY

F.R.Civ.P. 72. MAGISTRATE JUDGES: PRETRIAL ORDER

L.R. 72-1 Duties and Functions of Magistrate Judges. United States Magistrate Judges of this Court are authorized to perform all of the duties and functions prescribed and authorized by 28 U.S.C. § 636, or any other statutes or Federal Rules of Procedure which authorize Magistrate Judges to perform judicial duties or functions, as set forth in General Order No. 05-07, or any successor General Order. Magistrate Judges shall have the inherent power of judicial officers to implement and enforce their own orders and to regulate proceedings before them, to the extent permitted by law.

L.R. 72-2 Nondispositive Rulings on Pretrial Matters

L.R. 72-2.1 Motions for Review of Nondispositive Rulings. Any party objecting under F.R.Civ.P. 72(a) to a Magistrate Judge's ruling on a pretrial matter not dispositive of a claim or defense must file a motion for review by the assigned District Judge, designating the specific portions of the ruling objected to and stating the grounds for the objection. Such motion shall be filed within fourteen (14) days of an oral ruling which the Magistrate Judge indicates will not be followed by a written ruling, or within fourteen (14) days of service of a written ruling.

L.R. 72-2.2 Effectiveness of Magistrate Judge's Ruling Pending Review. Regardless of whether a motion for review has been filed, the Magistrate Judge's ruling remains in effect unless the ruling is stayed or modified by the Magistrate Judge or the District Judge.

L.R. 72-3 Dispositive Motions and Prisoner Petitions

L.R. 72-3.1 Duties of Magistrate Judge. Upon the assignment of a case covered by F.R.Civ.P. 72, the Magistrate Judge shall conduct all necessary proceedings. Pursuant to Rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts, the duties imposed upon a Judge of the District Court may be performed by a full-time Magistrate Judge (except in death penalty cases).

L.R. 72-3.2 Summary Dismissal of Habeas Corpus Petition. The Magistrate Judge promptly shall examine a petition for writ of habeas corpus, and if it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief, the Magistrate Judge may prepare a proposed order for summary dismissal and submit it and a proposed judgment to the District Judge.

L.R. 72-3.3 Report by Magistrate Judge. In habeas cases that are not summarily dismissed, and in all other matters covered by F.R.Civ.P. 72(b) that the Magistrate Judge determines can be resolved without trial, the Magistrate Judge shall file a report which may contain proposed findings of fact, conclusions of law and recommendations for disposition. If the Magistrate Judge concludes that a trial by a

District Judge is required, the Magistrate Judge shall so report to the District Judge.

L.R. 72-3.4 Objections to Report Where Party In Custody. If a party is in custody at the time of the filing of the Magistrate Judge's report, the time for filing objections allowed under F.R.Civ.P. 72(b) shall be twenty (20) days or such further time as the Magistrate Judge may order.

L.R. 72-3.5 Determination of Objections by District Judge. If no objections are filed within the time allowed, the Magistrate Judge shall submit the matter to the District Judge on the basis of the original report. If objections are timely filed, the Magistrate Judge may issue a revised or supplemental report or submit the matter to the District Judge on the basis of the original report.

L.R. 72-3.6 Filing of Transcript. If an evidentiary hearing was conducted by the Magistrate Judge, the party objecting shall obtain and file a certified transcript of the hearing or pertinent part thereof. Upon application, the Magistrate Judge may extend the time to file the transcript.

L.R. 72-4 Post-Judgment Matters. Following entry of judgment, all motions or other matters not covered by L.R. 69-1 shall be considered and determined by the District Judge.

L.R. 72-5 Motion To Disqualify Magistrate Judge. A motion to disqualify a Magistrate Judge pursuant to 28 U.S.C. §§ 144 or 455 shall be made to the assigned District Judge. If such a motion is filed in a case to which no District Judge has been assigned, the motion shall be assigned to a District Judge for decision. A copy of the motion shall be submitted to the assigned Magistrate Judge, who shall not proceed with the matter until the motion has been determined. If the District Judge denies the motion, the case shall proceed as originally assigned. If the District Judge grants the motion, the case shall be returned to the Clerk for reassignment.

F.R.Civ.P. 73. MAGISTRATE JUDGES: TRIAL BY CONSENT; APPEAL

L.R. 73-1 Authorization. Any full-time Magistrate Judge may exercise the authority provided by Title 28, U.S.C. § 636(c), and may conduct any or all proceedings, including a jury or non-jury trial, in a civil case.

L.R. 73-2 Direct Assignment of Cases to Magistrate Judge.

L.R. 73-2.1 Notice. When a case is assigned initially only to a magistrate judge, the Clerk shall provide a Notice and Consent Form to the initiating party advising the parties that they may consent to have the assigned magistrate judge conduct all further proceedings in the case, including the entry of final judgment. The Notice shall advise the parties that they may consent to proceed only before the assigned magistrate judge. The initiating party must serve the Notice and Consent Form on each party at the time of service of the summons and complaint or other initial pleading.

L.R. 73-2.2 Proof of Service. In any case in which only a magistrate judge is initially assigned, plaintiff must file a proof of service within 10 days of service of the summons and complaint.

L.R. 73-2.3 Execution of Statement of Consent. If the parties agree to the exercise of jurisdiction by the magistrate judge, all counsel and any party appearing pro se shall jointly or separately execute and file a statement of consent setting forth such election.

L.R. 73-2.4 Filing of Statement of Consent. If all parties execute and file a statement of consent, the magistrate judge will preside over the case for all purposes, including trial and entry of final judgment as provided by 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73(b). Appeal from a final judgment entered at a magistrate judge's direction may be taken to the court of appeals as would any other appeal from a district-court judgment.

L.R. 73-2.4.1 Cases Originally Filed in District Court. Except as provided in L.R. 73-2.4.1.1, a case originally filed in District Court and initially assigned only to a magistrate judge shall be randomly reassigned to a district judge if any defendant has not filed a statement of consent within 42 days after service of the summons and complaint upon that defendant, if the plaintiff has not filed a statement of consent within 42 days after service

upon the first-served defendant, if any party applies for a temporary restraining order, or if any party makes a motion that the magistrate judge concludes cannot be decided by the magistrate judge and must be addressed before the period for consent expires.

L.R. 73-2.4.1.1 Exception for United States, its Agencies, Officers and Employees. If the United States, an agency of the United States, or an officer or employee of the United States is a defendant, a case originally filed in District Court and initially assigned only to a magistrate judge shall be randomly reassigned to a district judge if the government defendant has not filed a statement of consent within 60 days after service of the summons and complaint upon that defendant, if any party applies for a temporary restraining order, or if any party makes a motion that the magistrate judge concludes cannot be decided by the magistrate judge and must be addressed before the period for consent expires.

L.R. 73-2.4.2 Cases Removed from State Court. A case initially assigned only to a magistrate judge following removal under 28 U.S.C. § 1441 *et seq.* shall be randomly reassigned to a district judge if, within 14 days after the notice of removal is filed, plaintiff(s) and all defendants upon whom service has been effected have not filed a statement of consent, if any party applies for a temporary restraining order, or if any party makes a motion that the magistrate judge concludes cannot be decided by the magistrate judge and must be addressed before the period for consent expires.

L.R. 73-2.5 Party Added After Election to Proceed Before Magistrate Judge. If a party is added to the case after all previous parties have elected to proceed before a magistrate judge, the newly-added party may file a statement of consent within 42 days after the order allowing intervention, or after service of the summons and appropriate pleading. If the newly-added party does not file a statement of consent within this period, the case shall be randomly reassigned to a district judge for further proceedings.

L.R. 73-2.6 Discovery Assignment. For any case which is originally assigned only to a magistrate judge and then later reassigned to a district judge, a magistrate judge shall be randomly assigned to hear all referred discovery matters.

L.R. 73-3 Consent in Cases Assigned for Report and Recommendation. In any case assigned to a district judge and referred to a magistrate judge, pursuant to 28 U.S.C. §636(b), for a report and recommendation, the parties may, at any time prior to the entry of judgment, consent that the assigned magistrate judge may handle the case for all purposes. Upon the filing of the appropriate consent forms, the Clerk will reassign the case solely to the magistrate judge.

F.R.Civ.P. 74. [ABROGATED]
F.R.Civ.P. 75. [ABROGATED]
F.R.Civ.P. 76. [ABROGATED]

X. DISTRICT COURTS AND CLERKS; CONDUCTING BUSINESS; ISSUING ORDERS

F.R.Civ.P. 77. CONDUCTING BUSINESS; CLERK'S AUTHORITY; NOTICE OF AN ORDER OR JUDGMENT

L.R. 77-1 Procedures for Emergency Matters.[16] When court action is required prior to the next business day, relief should be sought by filing, during normal business hours, a written application for a temporary restraining order ("TRO") pursuant to F.R.Civ.P. 65 and L.R. 65-1, unless otherwise provided by federal statute, federal or local rule, or court order. After filing an application for a TRO, the filer must immediately notify the courtroom deputy for the assigned judge by telephone. If it is anticipated that an application for a TRO will be filed outside normal business hours, the filer must notify the courtroom deputy for the assigned judge in advance, during normal business hours. If an application for a TRO is or will be filed before a judge is assigned to the case, the filer should contact the Civil Intake Department in the Clerk's Office for the division in which the case is pending: Western Division (213) 894-3535, Eastern Division (951) 328-4470, or Southern Division (714) 338-4786. Failure to notify the court as directed may delay judicial action.

[16] L.R. 77-1 amended, effective 12/1/15.

F.R.Civ.P. 78. HEARING MOTIONS; SUBMISSION ON BRIEFS

L.R. 78-1 Motion Days. Each Monday, commencing at 10:00 a.m., shall be "Motion Day" on which motions will be heard unless set for another day or hour by order of the Court. If Monday is a national holiday, any motion noticed for that day shall be considered noticed for the next succeeding motion calendar of the judge before whom the motion is calendared without special order or further notice.

F.R.Civ.P. 79. RECORDS KEPT BY THE CLERK

L.R. 79-1 Clerk's Office - Removal of Records and Files. No records or objects belonging in the files of the Court may be taken from the office or custody of the Clerk except upon written order of the Court.

L.R. 79-2 Receipt for Removal. Any person removing records pursuant to L.R. 79-1 shall give the Clerk a descriptive receipt using the form prescribed by the Clerk.

> ***L.R. 79-2.1 Clerk's Office - Removal of Records and Files - Court Officers.*** The provisions of L.R. 79-1 shall not apply to a judge, master, examiner employed by the United States, United States Magistrate Judge, a judge's law clerk, court reporter, or court clerk requiring records or objects in the exercise of official duty. Any court officer removing records or objects shall provide the Clerk with a receipt as required in L.R. 79-2.

L.R. 79-3 Clerk's Office - Disposition of Exhibits - Civil Cases. All models, diagrams, documents or other exhibits lodged with the Clerk or admitted into evidence or marked at trial shall be retained by counsel of record until expiration of the time for appeal where no appeal is taken, entry of stipulation waiving or abandoning the right to appeal, final disposition of the appeal, or order of the Court, whichever occurs first.

L.R. 79-4 Clerk's Office - Removal of Contraband. Contraband of any kind coming into the possession of the Clerk shall be returned to an appropriate governmental agency. The agency shall give the Clerk the receipt required by L.R. 79-2. The agency shall be responsible for the contraband until expiration of the time for appeal, where no appeal is taken,

entry of stipulation waiving or abandoning the right to appeal, final disposition of the appeal, or order of the Court, whichever occurs first.

L.R. 79-5 Confidential Court Records – Under Seal[17]

L.R. 79-5.1 Definition.[18] A case or document that is "under seal" or "sealed" is one that is closed to inspection by the public. A person seeking to have a case or document sealed must follow the procedures set forth below. Parties should be familiar with the difference between *in camera* review (*see* L.R. 79-6) and under seal filings.

L.R. 79-5.2 Procedures.[19] Unless otherwise indicated in this L.R. 79-5.2, no case or document may be filed under seal without first obtaining approval by the Court.

All documents to be filed under seal and all Applications for Leave to File Under Seal must be filed electronically using the Court's CM/ECF System, unless otherwise indicated in this rule or exempted from electronic filing pursuant to L.R. 5-4.2. Before electronically filing any under-seal documents or any Applications for Leave to File Under Seal, filers must familiarize themselves with the Court's Guide to Electronically Filing Under-Seal Documents in Civil Cases, available on the Court's website at www.cacd.uscourts.gov. Failure to comply with the instructions in this Guide may result in the disclosure of confidential information.

Where this rule directs that documents must be presented for filing in paper format, the original and the judge's copy of all such documents must be submitted for filing in separate sealed envelopes, with a copy of the title page attached to the front of each envelope, and must be accompanied by a PDF version of the documents on a CD, unless otherwise ordered by the judge.

L.R. 79-5.2.1 Under-Seal Civil Cases.[20]

[17] L.R. 79-5 amended, effective 12/1/15.
[18] L.R. 79-5.1 amended, effective 12/1/15.
[19] L.R. 79-5.2 amended, effective 12/1/15.
[20] L.R. 79-5.2.1 new, effective 12/1/15.

(a) Case-Initiating Documents.

(i) If Filing Under Seal Is Already Expressly Authorized. If a statute, rule, regulation, or prior court order expressly provides that a case is to be filed under seal, the complaint (or other initiating document) and all concurrently filed documents must be presented to the Clerk for filing in paper format, in accordance with the applicable Federal Rules of Civil Procedure and the Local Rules of this Court. The caption must clearly indicate the authority for filing the case under seal by including, immediately under the title of the document: "FILED UNDER SEAL PURSUANT TO _____." If filing under seal is authorized by a court order, a copy of the order must be provided with the case-initiating document.

(ii) All Other Circumstances. In the absence of prior express authorization to file a case under seal, the filer must present to the Clerk for filing in paper format: (1) the case-initiating document(s); (2) an Application for Leave to File Case Under Seal; (3) a declaration establishing good cause or demonstrating compelling reasons why the strong presumption of public access in civil cases should be overcome; and (4) a proposed order. While the Application is pending, the Clerk must seal the case and all associated documents. If the Application is denied, the Clerk must, unless otherwise ordered by the Court, immediately unseal the case and all documents filed therein, and may do so without first notifying the filing party.

(b) Subsequent Documents. All documents filed in sealed cases must be presented to the Clerk for filing in paper format. All such documents will be accepted as filed under seal, without the need for a separate Application for Leave to File Under Seal.

L.R. 79-5.2.2 Under-Seal Documents in Non-Sealed Civil Cases.[21] In a non-sealed civil case, no document may be filed under seal without prior approval by the Court. A person seeking to file documents under seal must follow the procedures set forth below in subsection (a), unless someone else has designated these documents as confidential pursuant to a protective order, in which event those involved must follow the procedures set forth in subsection (b). Once the Court has granted leave to file under seal, documents to be filed under seal must be filed in accordance with subsection (c).

(a) Documents Not Designated by Another as Confidential Pursuant to a Protective Order. A person seeking leave of Court to file some or all of a document under seal (the "Filing Party") must file an Application for Leave to File Under Seal ("Application"). When possible, the Filing Party should file the Application in time to receive a determination before filing the motion or other paper that the proposed sealed document is intended to support. The Application will be open to public inspection. It must, however, describe the nature of the information that the Filing Party asserts should be closed to public inspection, and must be accompanied by:

(i) A declaration (1) establishing good cause or demonstrating compelling reasons why the strong presumption of public access in civil cases should be overcome, with citations to the applicable legal standard, and (2) informing the Court whether anyone opposes the Application. That the information may have been designated confidential pursuant to a protective order is not sufficient justification for filing under seal; a person seeking to file such documents under seal must comply with L.R. 79-5.2.2(b).

[21] L.R. 79-5.2.2 new, effective 12/1/15.

(ii) A proposed order, narrowly tailored to seal only the sealable material, and listing in table form each document or portion thereof to be filed under seal.

(iii) A redacted version of any document(s) of which only a portion is proposed to be filed under seal, conspicuously labeled "REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL."

(iv) An unredacted version of the document(s) proposed to be filed under seal, conspicuously labeled "UNREDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL," with any proposed redactions highlighted.

The declaration and the unredacted version of any document proposed for sealing will be closed to public inspection, but the redacted versions of those documents, the proposed order, and the docket entry text will be publicly viewable.

The Filing Party must provide a mandatory chambers copy of the Application and all associated documents as required by L.R. 5-4.5. The declaration and unredacted versions of documents for which sealing is sought must be provided in sealed envelopes, with a copy of the title page attached to the front of each envelope. The proposed order must be emailed to chambers as required by L.R. 5-4.4.2.

If the Application is granted, the Filing Party must thereafter file the sealed document pursuant to L.R. 79-5.2.2(c). The Clerk will not convert the PROPOSED sealed document submitted with the Application into a new filing.

If the Application is denied in its entirety, the document(s) proposed to be filed under seal will not be considered by the Court in connection with any pending motion, unless the Filing Party files an unredacted version of the document(s) within 3 days after the Application is denied.

If the Application is denied in part, the document(s) proposed to be filed under seal will not be considered by the Court in connection with any pending motion unless the Filing Party files a revised redacted version of the document(s) that comports with the Court's order within 3 days after the Application is denied.

(b) Documents Designated by Another as Confidential Pursuant to a Protective Order. At least 3 days before seeking to file under seal a document containing information previously designated as confidential by another pursuant to a protective order, the Filing Party must confer with the person that designated the material confidential (the "Designating Party") in an attempt to eliminate or minimize the need for filing under seal by means of redaction. If the document cannot be suitably redacted by agreement, the Filing Party may file an Application pursuant to subsection (a), but the supporting declaration must identify the material previously designated as confidential, as well as the Designating Party, and must describe in detail the efforts made to resolve the issue. The declaration must be served on the Designating Party on the same day it is filed, and proof of this service must be filed with the declaration. Subsequently:

(i) Within 4 days of the filing of the Application, the Designating Party must file a declaration establishing that all or part of the designated material is sealable, by showing good cause or demonstrating compelling reasons why the strong presumption of public access in civil cases should be overcome, with citations to the applicable legal

standard. If the Designating Party maintains that only part of the designated material is sealable, the Designating Party must file with its declaration a copy of the relevant material with proposed redactions highlighted. The declaration and, if applicable, the document highlighting proposed redactions will be closed to public inspection. Failure to file a declaration or other required document may be deemed sufficient grounds for denying the Application.

(ii) If the Application is denied, the Filing Party may file the document in the public case file (i.e., unsealed) no earlier than 4 days, and no later than 10 days, after the Application is denied, unless the Court orders otherwise.

(c) After Leave of Court Has Been Granted. Once the Court has granted leave to file a document under seal, the Filing Party must thereafter file the document with whatever motion or other document the under-seal filing is intended to support. The Clerk will not convert the PROPOSED sealed document submitted with the Application into a new filing. The caption of the under-seal document must clearly indicate the authority for filing the document under seal by including, immediately under the title of the document: "FILED UNDER SEAL PURSUANT TO ORDER OF THE COURT DATED _____"; if filed electronically, the under-seal document must also be linked, during the filing process, to the order authorizing its filing. Any document filed pursuant to this L.R. 79-5.2.2(c) that misstates the basis for filing under seal may be subject to public disclosure, and may subject the filer to sanctions.

L.R. 79-5.3 Service of Documents Filed Under Seal.[22] Filing a document under seal does not exempt the filer from the service requirements imposed by federal statutes, rules, or regulations, or by

[22] L.R. 79-5.3 amended, effective 12/1/15.

the Local Rules of this Court. Because documents filed under seal (even those filed electronically) are visible on CM/ECF or PACER only to Court personnel and the person who filed the document, a person electronically filing a document under seal may not rely on the Court's CM/ECF System to effect service as provided in L.R. 5-3.2.1. Service of such documents must be made in accordance with F.R.Civ.P. 5. At the time of filing, the documents must be accompanied either by a Proof of Service in the form required by L.R. 5-3.1.2 or by a declaration explaining why service is not required.

L.R. 79-6 Confidential Court Records – In Camera Review[23]

L.R. 79-6.1 In Camera Review.[24] A document accepted by the Court for review *in camera* will not, while under review, be made part of the Court's official case file, or be made available for inspection by the public or any party, and need not be served on any party when presented to the Court for review.

L.R. 79-6.2 Prior Court Approval Required.[25] No document may be presented for review *in camera* without prior approval of the Court. A person seeking *in camera* review of a document must describe its general nature and establish why it should be reviewed *in camera*, citing the applicable legal standard.

L.R. 79-6.3 After Review.[26] After reviewing a document *in camera*, the Court may order it to be filed publicly or under seal, with or without service, or otherwise disclosed to other parties. Unless the Court orders it to be filed, or unless otherwise ordered by the Court, a document reviewed *in camera* must afterward be retained by the counsel or party that presented it until final disposition of an appeal, entry of a stipulation waiving or abandoning the right to appeal, expiration of the time for appeal (where no appeal is taken), or order of the Court, whichever occurs first.

[23] L.R. 79-6 new, effective 12/1/15.
[24] L.R. 79-6.1 new, effective 12/1/15.
[25] L.R. 79-6.2 new, effective 12/1/15.
[26] L.R. 79-6.3 new, effective 12/1/15.

L.R. 79-7 Confidential Court Records – Disclosure[27]

L.R. 79-7.1 Non-Disclosure of Confidential Court Records.[28] Except upon written order of the Court, or as otherwise provided in this L.R. 79-7.1, the Clerk shall not disclose to the public, including attorneys and parties appearing in the case, a document that has been filed under seal or, for a case that has been sealed, the docket of that case. A document filed under seal in a civil case pending on or after the effective date of this L.R. 79-7.1 will, upon request, be open to inspection by the public and the parties to the case without further action by the Court 10 years from the date the case is closed. However, the party that filed the document in question or a party that designated the document as confidential pursuant to a protective order may, upon showing good cause prior to that date, seek an order to extend non-disclosure to a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records disposition policy or schedule of the United States Courts.

L.R. 79-7.2 Procedure for Disclosure of Confidential Court Records.[29] An application for disclosure of cases or documents filed under seal must be made to the Court in writing and must be filed by the person seeking disclosure. The application shall set forth with particularity the need for specific information in such records. The procedures of L.R. 7-3 *et seq.* shall govern the hearing of any such application. A nonparty seeking access to a sealed document may intervene in a case for the purpose of filing an application for disclosure of the document.

F.R.Civ.P. 80. STENOGRAPHIC TRANSCRIPT AS EVIDENCE

XI. GENERAL PROVISIONS

F.R.Civ.P. 81. Applicability of the Rules in General; Removed Actions
F.R.Civ.P. 82. Jurisdiction and Venue Unaffected

F.R.Civ.P. 83. Rules by District Courts; Judge's Directives

[27] L.R. 79-7 new, effective 12/1/15.
[28] L.R. 79-7.1 new, effective 12/1/15.
[29] L.R. 79-7.2 new, effective 12/1/15.

L.R. 83-1 Assignment of Cases - Notice of Related Cases in Central District, Other Actions, or Petitions to Multidistrict Panel

L.R. 83-1.1 Assignment of Cases. All actions shall be assigned when commenced to individual judges and magistrate judges of this Court in the manner provided by General Order.

L.R. 83-1.2 Refiling of Actions

L.R. 83-1.2.1 Improper Refiling of Actions. It is not permissible to dismiss and thereafter refile an action for the purpose of obtaining a different judge.

L.R. 83-1.2.2 Duty on Refiling of Actions. Whenever an action is dismissed by a party or by the Court before judgment and thereafter the same or essentially the same claims, involving the same or essentially the same parties, are alleged in another action, the later-filed action shall be assigned to the judge to whom the first-filed action was assigned. It shall be the duty of every attorney in any such later-filed action to bring those facts to the attention of the Court in the Civil Cover Sheet and by the filing of a Notice of Related Case(s) pursuant to L.R. 83-1.3.

L.R. 83-1.3 Notice of Related Cases

L.R. 83-1.3.1 Notice of Related Civil Cases. It shall be the responsibility of the parties to promptly file a Notice of Related Cases whenever two or more civil cases filed in this District:

(a) arise from the same or a closely related transaction, happening, or event;
(b) call for determination of the same or substantially related or similar questions of law and fact; or
(c) for other reasons would entail substantial duplication of labor if heard by different judges.

That cases may involve the same patent, trademark, or copyright does not, by itself, constitute a circumstance contemplated by (a), (b), or (c).

The Notice of Related Cases must include a brief factual statement that explains how the cases in question are related under the foregoing factors. All facts that appear relevant to such a determination must be set forth.

The Notice must be filed at the time any case (including a notice of removal or bankruptcy appeal) appearing to relate to another is filed, or as soon thereafter as it reasonably should appear that the case relates to another. The Notice must be served on all parties who have appeared in the case and concurrently with service of the complaint.

L.R. 83-1.3.2 Notice of Related Civil Forfeiture and Criminal Cases. It shall be the responsibility of the parties to promptly file a Notice of Related Cases whenever a civil forfeiture case and a criminal case:

(a) arise from the same or a closely related transaction, happening, or event;
(b) call for determination of the same or substantially related or similar questions of law and fact; or
(c) involve one or more defendants from the criminal case in common, and would entail substantial duplication of labor if heard by different judges.

The Notice must include a brief factual statement that explains how the cases in question are related under the foregoing factors.

The Notice must be filed at the time a civil forfeiture case appearing to relate to a criminal case is filed, or as soon thereafter as it appears such cases are related. The Notice must be served on all parties who have appeared in the case and concurrently with service of the complaint.

L.R. 83-1.3.3 Opposition. Within five days of receiving service of a Notice of Related Cases, or within five days of first appearing in the case, any party to the case may file and serve a short statement setting forth reasons that the case does not qualify as a related case under these rules.

L.R. 83-1.3.4 Continuing Duty. It shall be the continuing duty of the attorney in any case to file a Notice of Related Cases as required by these rules.

L.R. 83-1.4 Notice of Pendency of Other Actions or Proceedings

L.R. 83-1.4.1 Notice. Whenever a civil action filed in or removed to this Court involves all or a material part of the subject matter of an action then pending before the United States Court of Appeals, Bankruptcy Appellate Panel, Bankruptcy Court or any other federal or state court or administrative agency, the attorney shall file a "Notice of Pendency of Other Actions or Proceedings" with the original complaint or petition filed in this Court. The duty imposed by L.R. 83-1.4 continues throughout the time an action is before this Court.

L.R. 83-1.4.2 Notice - Contents. The Notice of Pendency of Other Actions or Proceedings shall contain:

(a) A description sufficient to identify all other actions or proceedings;
(b) The title of the court or administrative body in which the other actions or proceedings are pending;
(c) The names of the parties or participants in such other actions or proceedings;
(d) The names, addresses and telephone numbers of the attorneys in such other actions or proceedings; and
(e) A brief factual statement setting forth the basis for the attorney's belief that the action involves all or a material part of the subject matter of such other actions or proceedings.

L.R. 83-1.4.3 Notice of Petition to the Judicial Panel on Multidistrict Litigation - Duty of Counsel. The attorney shall comply with L.R. 83-1.4 promptly upon learning that an action or proceeding filed in this Court is the subject of or is related to an action which is before the Judicial Panel on Multidistrict Litigation, or which has been transferred by it pursuant to 28 U.S.C. § 1407.

L.R. 83-2 Attorneys; Parties Without Attorneys

L.R. 83-2.1 Attorneys

L.R. 83-2.1.1 Appearance Before the Court

L.R. 83-2.1.1.1 Who May Appear. Except as provided in L.R. 83-2.1.3, 83-2.1.4, 83-2.1.5, 83-4.5, and F.R.Civ.P. 45(f), an appearance before the Court on behalf of another person, an organization, or a class may be made only by members of the Bar of this Court, as defined in L.R. 83-2.1.2.

L.R. 83-2.1.1.2 Effect of Appearance. Any attorney who appears for any purpose submits to the discipline of this Court in all respects pertaining to the conduct of the litigation.

L.R. 83-2.1.1.3 Form of Appearance - Professional Corporations and Unincorporated Law Firms. No appearance may be made and no pleadings or other documents may be signed in the name of any professional law corporation or unincorporated law firm (both hereinafter referred to as "law firm") except by an attorney admitted to the Bar of or permitted to practice before this Court. A law firm may appear in the following form of designation or its equivalent:

John Smith
A Member of Smith and Jones, P.C.
Attorneys for Plaintiff

L.R. 83-2.1.2 The Bar of this Court

L.R. 83-2.1.2.1 In General. Admission to and continuing membership in the Bar of this Court are limited to persons of good moral character who are active members in good standing of the State Bar of California. If an attorney admitted to the Bar of this Court ceases to meet these criteria, the attorney will be subject to the disciplinary rules of the Court, infra.

L.R. 83-2.1.2.2 Admission to the Bar of this Court. Each applicant for admission to the Bar of this Court must fill out and present to the Clerk an Application for Admission to the Bar of the Central District of California (available from the Court's website), together with the admission fee prescribed by the Judicial Conference of the United States and such other fees as may from time to time be required by General Order of this Court. The completed Application for Admission to the Bar of the Central District of California must include the following:

(a) certification that the applicant is familiar with the Court's Local Rules and Local Criminal Rules, the F.R.Civ.P., the F.R.Crim.P., and the F.R.Evid.; and

(b) either:

(1) registration for the Court's automated Case Management/Electronic Filing ("CM/ECF") System; or

(2) an active CM/ECF login ID previously issued to the applicant by the Central District of California.

L.R. 83-2.1.3 Pro Hac Vice Practice

L.R. 83-2.1.3.1 Who May Apply for Permission to Practice Pro Hac Vice. An attorney who is not a

member of the State Bar of California may apply for permission to appear pro hac vice in a particular case in this Court if the attorney:

(a) is a member in good standing of, and eligible to practice before, the bar of any United States Court, or of the highest court of any State, Territory, or Insular Possession of the United States;

(b) is of good moral character;

(c) has been retained to appear before this Court; and

(d) is not disqualified under L.R. 83-2.1.3.2.

L.R. 83-2.1.3.2 Disqualification from Pro Hac Vice Appearance. Unless authorized by the Constitution of the United States or Acts of Congress, an applicant is not eligible for permission to practice *pro hac vice* if the applicant:

(a) resides in California;

(b) is regularly employed in California; or

(c) is regularly engaged in business, professional, or other similar activities in California.

L.R. 83-2.1.3.3 How to Apply for Permission to Appear Pro Hac Vice. Applicants for permission to appear pro hac vice must submit, in each case in which the applicant seeks to appear, the following:

(a) a completed Application of Non-Resident Attorney to Appear in a Specific Case, which must include:

(1) certification that the applicant is familiar with the Court's Local Rules and Local Criminal Rules, the F.R.Civ.P., the F.R.Crim.P., and the F.R.Evid.;

(2) either:

(a) registration for the Court's automated Case Management/Electronic Filing System ("CM/ECF"); or

(b) an active CM/ECF login ID previously issued to the applicant by the Central District of California;

(3) identification of Local Counsel pursuant to L.R. 83-2.1.3.4; and

(4) a list of all *Pro Hac Vice* applications made to this Court within the previous three years;

(b) a separate proposed Order;

(c) the *Pro Hac Vice* fee set by General Order of the Court; and

(d) a Certificate of Good Standing from each state bar in which the applicant is a member, issued within thirty (30) days prior to the filing of the Application of Non-Resident Attorney to Appear in a Specific Case.

Approval of the applicant's *pro hac vice* application will be at the discretion of the assigned judge in each case in which an application is submitted.

L.R. 83-2.1.3.4 Designation of Local Counsel. Every attorney seeking to appear pro hac vice must designate as Local Counsel an attorney with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom documents may be served. An attorney may be designated as Local Counsel only if he or she: (1) is a member of the Bar of this Court; and (2) maintains an office within the District.

L.R. 83-2.1.3.5 Designation of Co-Counsel. A judge to whom a case is assigned may, in the exercise of discretion, require the designation of an attorney who is a member of the Bar of this Court and who maintains an office within the District as co-counsel with authority to act as attorney of record for all purposes.

L.R. 83-2.1.4 Attorneys for the United States, or Its Departments or Agencies

L.R. 83-2.1.4.1 Attorney for the United States, or its Departments or Agencies. Any person who is not eligible for admission under L.R. 83-2.1.2 or 83-2.1.3, who is employed within this state and is a member in good standing of, and eligible to practice before, the bar of any United States Court, the District of Columbia Court of Appeals, or the highest court of any State, Territory or Insular Possession of the United States, and is of good moral character, may be granted leave of court to practice in this Court in any matter for which such person is employed or retained by the United States, or its departments or agencies. The application for such permission must include a certification filed with the Clerk showing that the applicant has applied to take the next succeeding Bar Examination for admission to the State Bar of California for which that applicant is eligible. No later than one year after submitting the foregoing application, the applicant must submit to this Court proof of admission to the State Bar of California. Failure to do so will result in revocation of permission to practice in this Court.

L.R. 83-2.1.4.2 Special Assistant United States Attorneys. Notwithstanding L.R. 83-2.1.4.1, any United States Armed Forces attorney who has been appointed a Special Assistant United States Attorney pursuant to 28 U.S.C. sections 515 and 543 may handle misdemeanor matters before this Court.

Attorneys employed by the United States Department of Justice specially appointed by the United States Attorney General to conduct any kind of legal proceeding, civil or criminal, pursuant to 28 U.S.C. § 515(a), may appear without filing an Application of Non-Resident Attorney to Appear in a Specific Case.

L.R. 83-2.1.5 Registered Legal Services Attorney. A registered legal services attorney authorized to appear in the state courts of California pursuant to California Rules of Court, Rule 9.45, may apply for permission to appear in a case before this Court under the conditions set forth in that rule. Such an applicant must submit, in each case in which he or she seeks to appear, the following:

(a) a completed Application of Registered Legal Services Attorney to Practice Before the Court, which must include:

(1) certification that the applicant is a registered legal services attorney authorized to practice law in the state courts of California pursuant to California Rules of Court, Rule 9.45 (or a successor rule);

(2) certification that the applicant is familiar with the Court's Local Rules and Local Criminal Rules, the F.R.Civ.P., the F.R.Crim.P., and the F.R.Evid.;

(3) either:

(a) registration for the Court's automated Case Management/Electronic Filing System ("CM/ECF"); or

(b) an active CM/ECF login ID previously issued to the applicant by the Central District of California;

(4) identification of a supervising attorney who is a member in good standing of the Bar of this Court, and who must appear with the registered legal services attorney as one of the attorneys of record;

(b) a separate proposed Order.

Approval of the application will be at the discretion of the assigned judge in each case in which an application is submitted.

By practicing in this Court, the registered legal services attorney submits to the disciplinary authority of the Central District of California concerning attorneys admitted to practice in this Court.

L.R. 83-2.2 Parties Without Attorneys

L.R. 83-2.2.1 Individuals. Any person representing himself or herself in a case without an attorney must appear *pro se* for such purpose. That representation may not be delegated to any other person -- even a spouse, relative, or co-party in the case. A non-attorney guardian for a minor or incompetent person must be represented by counsel.

L.R. 83-2.2.2 Organizations. Only individuals may represent themselves *pro se*. No organization or entity of any other kind (including corporations, limited liability corporations, partnerships, limited liability partnerships, unincorporated associations, trusts) may appear in any action or proceeding unless represented by an attorney permitted to practice before this Court under L.R. 83-2.1.

L.R. 83-2.2.3 Compliance With Federal Rules. Any person appearing *pro se* is required to comply with these Local Rules, and with the F.R.Civ.P., F.R.Crim.P., F.R.Evid. and F.R.App.P.

L.R. 83-2.2.4 Sanctions. Failure to comply with the rules enumerated in L.R. 83-2.2.3 may be grounds for dismissal or judgment by default.

L.R. 83-2.3 Withdrawal and Substitution of Attorneys

L.R. 83-2.3.1 Appearance by Attorney. Whenever a party has appeared by an attorney, the party may not thereafter appear or act pro se, except upon order made by the Court after notice to such attorney and to any other parties who have appeared in the action.

L.R. 83-2.3.2 Motion for Withdrawal. An attorney may not withdraw as counsel except by leave of court. A motion for leave to withdraw must be made upon written notice given reasonably in advance to the client and to all other parties who have appeared in the action. The motion for leave to withdraw must be supported by good cause. Failure of the client to pay agreed compensation is not necessarily sufficient to establish good cause.

L.R. 83-2.3.3 Individuals. When an attorney of record for any reason ceases to act for a party, such party must appear pro se or appoint another attorney by a written substitution of attorney signed by the party and the attorneys.

L.R. 83-2.3.4 Organizations. An attorney requesting leave to withdraw from representation of an organization of any kind (including corporations, limited liability corporations, partnerships, limited liability partnerships, unincorporated associations, trusts) must give written notice to the organization of the consequences of its inability to appear pro se.

L.R. 83-2.3.5 Delays by Substitution of Attorneys. Unless good cause is shown and the ends of justice require, no

substitution or relief of attorney will be approved that will cause delay in prosecution of the case to completion.

L.R. 83-2.4 Notification of Change of Name, Address, Firm Association, Telephone Number, Facsimile Number or E-Mail Address. An attorney who is a member of the bar of this Court or who has been authorized to appear in a case in this Court, and any party who has appeared pro se in a case pending before the Court, and who changes his or her name, office address (or residence address, if no office is maintained), law firm association (if any), telephone number, facsimile number, or e-mail address must, within five (5) days of the change, notify the Clerk of Court in writing. If any actions are currently pending, the attorney or party must file and serve a copy of the notice upon all parties.

L.R. 83-2.5 Communications with the Judge. Attorneys or parties to any action or proceeding shall refrain from writing letters to the judge, sending e-mail messages to the judge, making telephone calls to chambers, or otherwise communicating with a judge in a pending matter unless opposing counsel is present. All matters must be called to a judge's attention by appropriate application or motion filed in compliance with these Local Rules.

L.R. 83-3 Attorney Disciplinary Rules of the Court

L.R. 83-3.1 Discipline. Nothing contained in these Rules shall be construed to deny the Court its inherent power to maintain control over the proceedings conducted before it or to deny the Court those powers derived from statute, rule or procedure, or other rules of court. When alleged attorney misconduct is brought to the attention of the Court, whether by a Judge of the Court, any lawyer admitted to practice before the Court, any officer or employee of the Court, or otherwise, the Court may, in its discretion, dispose of the matter through the use of its inherent, statutory, or other powers; refer the matter to an appropriate state bar agency for investigation and disposition; refer the matter to the Standing Committee on Discipline; or take any other action the Court deems appropriate. These procedures are not mutually exclusive.

L.R. 83-3.1.1 The Standing Committee on Discipline. At all times the Court will maintain a Standing Committee on Discipline (hereinafter "Committee"). The Committee shall consist of 13 attorneys who are members of the Bar of the Court. However, in the event of any vacancy or vacancies, the Committee may continue to perform any of the functions herein authorized so long as there are nine members in office.

Committee members shall be appointed by the Chief Judge with the concurrence of the Executive Committee. The Chief Judge shall designate one member to serve as the chair. A Committee member shall serve for a term of one to three years but may continue in office, upon order of the Chief Judge, beyond said three-year term until the completion of any disciplinary proceeding (which includes the initial investigation to presentation of disciplinary recommendations to the Court) in which the member is participating. Each committee member's term shall commence on January 1 of the year specified in the appointment, and appointments shall be staggered so that each year the terms of four members, not including the Chair, shall end. Should any Committee member not complete a three-year term, that member's replacement shall complete the length of term remaining. The Chair of the Committee shall serve a term of three years as Chair, regardless of previous time served as a Committee member.

The Chair of the Committee shall organize the Committee into four sections of three members each. Each section shall consist of one member who has one year remaining on his term, one member who has two years remaining on his term, and one member who has three years remaining on his term. The Chair of the Committee may assign any matter before the Committee to one of the sections for initial investigation and further proceedings described in these rules. Except for the requirement of seven affirmative votes for the imposition of discipline as specified in Rule 83-3.1.5, the Committee may perform or decide any matter arising under these rules by a majority vote. For any Committee meeting, a quorum of seven is required.

The Clerk of the Court shall be advised of, and keep a current list of, all matters referred to the Committee and each section, to assist the Court, the Committee, and the affected attorney or complaining person, in recording the status of each matter.

L.R. 83-3.1.2 Standards of Professional Conduct - Basis for Disciplinary Action. In order to maintain the effective administration of justice and the integrity of the Court, each attorney shall be familiar with and comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and the decisions of any court applicable thereto. These statutes, rules and decisions are hereby adopted as the standards of professional conduct, and any breach or violation thereof may be the basis for the imposition of discipline. The Model Rules of Professional Conduct of the American Bar Association may be considered as guidance.

L.R. 83-3.1.3 Possible Disciplinary Penalties. An order imposing discipline under this Rule may consist of any of the following:

(a) disbarment,
(b) suspension not to exceed three years,
(c) public or private reproval,
(d) monetary penalties (which may include an order to pay the costs of the proceedings), and/or
(e) acceptance of resignation.

In lieu of any of the foregoing disciplinary steps, the Court's Standing Committee on Discipline may issue an admonition as defined by California State Bar Rules, to wit, where the offense is not serious, or not intentional, or involved mitigating circumstances, or no significant harm resulted.

Any suspension or reproval imposed, or acceptance of resignation, may be subject to specified conditions, which may include, but are not limited to, continuing legal education

requirements, counseling and/or supervision of practice and periods of probation.

Any disbarment, suspension or acceptance of resignation from this Court will result in the deactivation of the attorney's CM/ECF login and password. The CM/ECF login and password will be reactivated upon application of the practitioner showing proof of an order of reinstatement.

L.R. 83-3.1.4 Who May Originate Complaints - Initial and Further Investigation - Hearing and Opportunity for Attorney Involved to Appear and Present Evidence. A complaint that an attorney has violated any of the standards of conduct specified in Rule 83-3.1.2, may come to the Committee from any District, Bankruptcy or Magistrate Judge of the Court or from any other person. The complaint shall be in writing addressed to the Committee in care of the Clerk of Court. Within 10 days of receipt, the Clerk shall serve a copy of the complaint on the Chair of the Committee, the attorney affected and the Clerk of the Bankruptcy Court.

Within 10 days of receipt of any such complaint, the Committee chair shall assign the matter of possible disciplinary action based on the complaint to one of the sections of the Committee for initial investigation and possible disciplinary proceedings. Any attorney of the assigned section who cannot participate shall so notify the Chair within 10 days of assignment so that a replacement can be assigned.

Within 60 days of receipt, the section to which such a complaint is referred shall conduct and complete an initial investigation. If the section determines that the complaint should not be the subject of further disciplinary action, and the Committee concurs in that determination, the matter will thereupon be closed. Notice of closing shall be promptly sent to the complainant, the attorney affected and the Chief Judge. If the Committee determines that the complaint should be further investigated as being one that may result in disciplinary action, the section shall thereupon within 60 days conduct and complete such further investigation and inquiries as it deems

necessary. The section, in so doing, may take the testimony of witnesses and may seek from the Chief Judge, or his or her designee, any subpoena necessary for its investigation and the Clerk shall promptly issue any such requested subpoena. The affected attorney may also apply to the Chief Judge, or his or her designee, for any necessary subpoenas.

All final disciplinary actions will be distributed to the judicial officers of the Court. Final disciplinary action, including the name of the attorney, will be posted on the Court's website when it consists of (a) disbarment; (b) suspension; (c) public reproval; or (d) resignation with charges pending. It may be ordered posted if the disciplinary action consists of monetary penalties.

Other final disciplinary actions may be posted, without the name of the attorney, to promote understanding of the level of practice expected in this district.

The deadlines in this paragraph may be extended by the Committee Chair for a period of up to six months, for good cause at the request of the section or the affected attorney. The deadlines may be extended for a longer time in consultation with the Chief Judge.

L.R. 83-3.1.4.1 Appointment of Prosecutor. At the request of the investigating section, concurred in by the Chair of the Committee, the Chief Judge may appoint a member of the Bar of the Court who is not a Committee member to (1) supervise and conduct such further investigation as may be appropriate; (2) prosecute the matter at any hearing conducted by the section or the Committee or any other proceeding the Court may require before entering an order of discipline; and (3) defend any order of discipline on appeal.

By order of the Chief Judge, with the concurrence of the Executive Committee, the prosecutor shall be compensated for services out of the Attorneys' Admission Fund

L.R. 83-3.1.4.2 Duties of the Chief Judge. If the Chief Judge is recused or otherwise is unavailable to perform the duties as outlined in this rule, the duties shall be referred to the next available district judge in regular active service who is senior in commission of all the active judges.

L.R. 83-3.1.4.3 Indemnification of Prosecutor, Section, and Committee. Any expenses incurred in the prosecution of a disciplinary proceeding and any award of court costs against the Section, the Committee or the prosecutor shall likewise be paid out of the Attorneys' Admission Fund.

L.R. 83-3.1.5 Right of Attorney Involved to a Hearing and to Present Evidence. Before recommending the imposition of any discipline, the investigating Section shall provide to the attorney involved a statement of the charges and a description of the discipline which the Section is considering recommending. The Section, upon request of the attorney involved, shall conduct a hearing on the charges, which hearing shall be recorded electronically or by a court reporter. The attorney involved shall have the right to be represented by counsel and to be personally heard under oath at said hearing. The attorney involved may also present sworn testimony of relevant witnesses and may submit briefing and evidentiary exhibits at said hearing. Following the said hearing, the section shall formulate its findings of fact and conclusions of law in writing together with a statement of the discipline, if any, which it recommends. Where the imposition of discipline is recommended, the Section shall, within 30 days of the hearing or of the completion of the investigation, transmit to the Committee, along with its recommendation, copies of its proposed findings of fact and conclusions of law, the exhibits which it received in evidence and the record of testimony which was presented to it. The Committee shall thereafter promptly adopt, modify or reject the section's recommended action. The Committee may, but need not, hear any further statement by the attorney affected or his or her counsel, or receive any further

evidence or briefing. If the Committee determines to recommend the imposition of discipline, it must do so at a meeting, which may be held telephonically, with at least seven members voting in favor of the recommendation.

L.R. 83-3.1.6 Confidentiality of Proceedings. The record in a disciplinary proceeding shall not be public (unless otherwise ordered by the Court) but shall become public if and when a final order imposing discipline is entered. If the final order imposing discipline consists of private reproval, the record shall only be made public upon an order of the Court.

L.R. 83-3.1.7 Presentation of Disciplinary Recommendations to the Court. When the Committee has determined that discipline should not be imposed, the matter will thereupon be closed. Notice of the closing shall be promptly sent to the complainant, the attorney affected, the Chief Judge, and the Clerk of the Court.

When the Committee has determined that discipline should be imposed, it shall promptly transmit to the Chief Judge and the Clerk of the Court its recommendation (in court document format) and the complete record, including the section's proposed findings of fact and conclusions of law, and shall request an order of the Court imposing the recommended discipline. A copy of the Committee's recommendation shall also be sent to the attorney affected and his or her counsel.

Within 15 days of the Chief Judge receiving a Committee recommendation, the matter of whether the Court should impose discipline shall be assigned to three judges of the Court selected at random in the same manner as civil cases are distributed, but not to include any judge who originated the complaint. The judges to whom the matter is assigned are not required to conduct any further hearing, to hear the attorney involved or his or her counsel, or to receive any further evidence or briefing before determining to issue an appropriate order. The assigned judges shall adopt, modify or reject the Committee's recommendation for the imposition of discipline. The decision of said judges shall be final. If the judges

assigned determine to impose discipline, they shall sign and file an appropriate order imposing it.

Appeals from such orders shall be in accordance with the F.R.A.P.

L.R. 83-3.1.8 Application For Reinstatement. Any attorney who has been suspended or disbarred under the Local Rules may make an application for reinstatement. The application for reinstatement shall be by written motion filed in paper format addressed to the Committee. The Committee shall consider the application and make a recommendation to the Chief Judge. The Chief Judge may, with the concurrence of the Executive Committee, adopt, modify or reject the recommendation of the Committee concerning the application. Before making its recommendation, the Committee is not required to hear the attorney affected or his or her counsel and is not required to hear any testimony or receive any other evidence or briefing. Nor shall the Chief Judge or the Executive Committee be required to do so before deciding on the application.

L.R. 83-3.2 Enforcement of Attorney Discipline

L.R. 83-3.2.1 Disbarment or Suspension by Other Courts or Conviction of a Crime. Upon receipt of reliable information that a member of the Bar of this Court or any attorney appearing pro hac vice (1) has been suspended or disbarred from the practice of law by the order of any United States Court, or by the Bar, Supreme Court, or other governing authority of any State, territory or possession, or the District of Columbia, or (2) has resigned from the Bar of any United States Court or of any State, territory or possession, or the District of Columbia while an investigation or proceedings for suspension or disbarment was pending, or (3) has been convicted of a crime, other than in this Court, the elements or underlying facts of which may affect the attorney's fitness to practice law, this Court shall issue an Order to Show Cause why an order of suspension or disbarment should not be imposed by this Court.

Upon the filing of a judgment or conviction demonstrating that any attorney admitted to practice before this Court has been convicted in this Court of any serious crime as herein defined, the Chief Judge or his or her designee shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, nolo contendere, verdict after trial, or otherwise, and regardless of the pendency of any appeal. The suspension so ordered shall remain in effect until final disposition of the disciplinary proceedings to be commenced upon such conviction. A copy of such order shall be immediately served upon the attorney. Upon good cause shown, the Chief Judge or his or her designee may set aside such order when it appears in the interest of justice to do so.

The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction in which it was entered, involves false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or the use of dishonesty, or an attempt, conspiracy, or solicitation of another to commit a "serious crime."

If the attorney files a response stating that imposition of an order of suspension or disbarment from this Court is not contested, or if the attorney does not respond to the Order to Show Cause within the time specified, then the Court shall issue an order of suspension or disbarment. The order shall be filed by the Chief Judge or his or her designee.

L.R. 83-3.2.2 Alternatives. As an alternative to suspension or disbarment, the Committee may consider, and the Court may accept, the attorney's resignation, if the attorney both:

(a) Files a written response setting forth his or her status for the practice of law in all other jurisdictions where the attorney was or is admitted; and
(b) Tenders his or her resignation from the Bar of this Court.

A resignation with charges pending is not effective until accepted by the Court. An attorney will be on inactive status while the Court considers whether to accept the resignation. The acceptance of a resignation may be subject to additional conditions including but not limited to those under L.R. 83-3.1.3 and referral to, or resignation from, the Bar of another jurisdiction.

L.R. 83-3.2.3 Contested Matters. If the attorney files a written response to the Order to Show Cause within the time specified stating that the entry of an order of suspension or disbarment is contested, then the Chief Judge or other district judge who may be assigned shall determine whether an order of suspension or disbarment or other appropriate order shall be entered. Where an attorney has been suspended or disbarred by another Bar, or has resigned from another Bar while disciplinary proceedings were pending, the attorney in the response to the Order to Show Cause, must set forth facts establishing one or more of the following: (a) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (b) there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court should not accept as final the other jurisdiction's conclusion(s) on that subject; (c) imposition of like discipline would result in a grave injustice; or (d)other substantial reasons exist so as to justify not accepting the other jurisdiction's conclusion(s). In addition, at the time the response is filed, the attorney must produce a certified copy of the entire record from the other jurisdiction or bear the burden of persuading the Court that less than the entire record will suffice.

L.R. 83-3.2.4 Reinstatement. Unless stated otherwise by order of the Court, an attorney who has been suspended or disbarred from the Bar of this Court because of his resignation, suspension or disbarment from the Bar of another court will be reinstated upon proof of reinstatement as an active member in good standing in such other Bar.

L.R. 83-3.2.5 Discipline by Agencies. Information that a member of the Bar of this Court has been suspended or disbarred from practice by the order of any federal or state administrative agency, shall be treated as a complaint which can be the basis of disciplinary action by this Court. The matter shall be referred to the Committee for investigation, hearing and recommendation as provided hereinabove in the case of other complaints. All parties in interest are advised of the United States Bankruptcy Court for the Central District of California's Fourth Amended General Order No. 96-05 or any successor General Order governing attorney discipline proceedings in the Bankruptcy Court.

L.R. 83-3.2.6 Notice of Disciplinary Action to State Bar and Other Courts. The Clerk shall give prompt notice of any conviction of any attorney admitted to this bar of a serious crime as herein defined or imposing discipline under this Rule 83-3 to the Circuit Court of Appeals, to the Bankruptcy Court, to the California State Bar, and to the Bar or disciplinary body of those courts to which the attorney involved has been admitted to practice and of which the Clerk is aware.

L.R. 83-3.2.7 Powers of an Individual Judge to Deal with Contempt or Other Misconduct Not Affected. Disciplinary proceedings under Rule 83-3 shall not affect, or be affected by, any proceedings for criminal contempt under the U.S. Criminal Code, nor shall anything contained in this Rule 83-3 be construed to deny any judge of this Court said judge's inherent power to maintain control over the proceedings conducted before said judge, nor to deny the judge those powers derived from any statute or rule of court. Misconduct of any attorney in the presence of a court or in any manner in respect to any matter pending in a court may be dealt with directly by the judge in charge of the matter or at said judge's option, referred to the Committee, or both.

L.R. 83-3.3 Practice Prohibited While on Inactive Status. Any attorney previously admitted to the Bar of this Court who no longer is enrolled as an active member of the Bar, Supreme Court, or other governing authority of any State, territory or possession, or the

District of Columbia, shall not practice before this Court. Upon receipt of reliable information that such attorney is practicing before the Bar of this Court, this Court shall issue an Order to Show Cause why the attorney should not be disbarred from this Court, and shall proceed with the Order to Show Cause in the manner set forth in L.R. 83-3.2.1.

L.R. 83-3.4 Obligation to Notify Court of Felony Conviction or Change of Status. Any attorney admitted to the Bar of this Court or admitted *pro hac vice* shall promptly notify the Clerk of this Court of (1) the attorney's conviction of any felony, or (2) the imposition of discipline in any other jurisdiction, or (3) the attorney's resignation from the Bar while disciplinary investigation or proceedings were pending in any other jurisdiction.

L.R. 83-4 Student Practice

L.R. 83-4.1 Consent. An eligible law student acting under the supervision of a member of the bar of this Court may appear on behalf of any client, including federal, state, or local government bodies, if the client has filed a written consent with the Court. Additional written consent must be given if one eligible student is replaced by another.

L.R. 83-4.2 Requirements. An eligible student must:

(a) be enrolled and in good standing in a law school accredited by the American Bar Association or the State Bar of California;

(b) have completed one-half of the legal studies required for graduation;

(c) have completed a course in evidence. For civil cases, an eligible law student must have also completed a course in civil procedure. For criminal cases, an eligible law student must have completed courses in criminal law and criminal procedure. An eligible law student must also have knowledge of and be familiar with the Federal Rules of Civil and Criminal Procedure as well as the

Federal Rules of Evidence, the Rules of Professional Conduct of the State Bar of California and applicable statutory rules, and rules of this Court;

(d) be certified by the dean of a law school as being adequately trained to fulfill all responsibilities as a legal intern to the Court in compliance with L.R. 83-4.2(a) and (b);

(e) not accept compensation for his or her legal services directly or indirectly from a client; and

(f) file with the Clerk of the Court all documents required to comply with this rule.

L.R. 83-4.3 Supervising Attorney. The supervising attorney must:

(a) have such substantial litigation experience to satisfy the Court of his or her ability to supervise the student;

(b) be registered for the Court's CM/ECF System;

(c) file with the Clerk of the Court to whom each case has been assigned a "Request to Undertake the Supervision of an Eligible Law Student." The undertaking, if approved by the Court, may be withdrawn by the supervising attorney by filing a written notice with the Clerk of the Court and by giving notice of such withdrawal to the affected student;

(d) appear with the student in any oral presentations before this Court;

(e) sign all documents filed with this Court;

(f) assume personal professional responsibility for the student's work in matters before this Court;

(g) assist and counsel the student in the preparation of the student's work in matters before this Court; and

(h) be responsible to supplement oral or written work of the student as necessary to assure proper representation of the client. All written work will be filed over the signature of the supervising attorney. Written work may also be signed by the eligible law student who participated in such written work. The student, in signing the written work, must indicate his or her status as an eligible law student.

L.R. 83-4.4 Law School Dean's Certification. The dean's certification of the student:

(a) must be filed with the Clerk of the Court and must remain in effect for a period of three years or until withdrawn;

(b) must state that he or she knows of no reason which would render the law student ineligible under this rule;

(c) may be withdrawn for good cause by the dean with notice to the Court and to the student. Certification may only be withdrawn by the dean for good cause. Such cause must be stated in the notice filed with the Court.

L.R. 83-4.5 Student Appearance. Upon fulfilling the requirements of this rule, the student may appear and make oral presentations before this Court when accompanied by the supervising attorney.

L.R. 83-5 [Reserved]

L.R. 83-6 Possession and Use of Broadcasting, Recording, Photography, and Communications Equipment in the Court. Any person entering any Central District courthouse shall be subject to this L.R. 83-6 and all its subparts.

L.R. 83-6.1 Wireless Communication Devices.

L.R. 83-6.1.1 Definition. Wireless Communication Devices are portable electronic devices capable of sending or receiving

data such as text, still images, or audio or video recordings. Such devices shall include, but are not limited to, smart phones, Blackberries, laptop computers, tablets, personal digital assistants (PDAs), and similar devices.

L.R. 83-6.1.2 Possession. Subject to the conditions set forth in this L.R. 83-6.1, possession of Wireless Communication Devices is permitted in all Central District courthouses.

L.R. 83-6.1.3 Permissible Uses. Except in Restricted Areas (see L.R. 83-6.1.5), Wireless Communication Devices may be used in all Central District courthouses to make and receive phone calls and to send and receive e-mail, text messages, and other data communications.

L.R. 83-6.1.4 Prohibited Uses. Except as otherwise provided under L.R. 83-6, or unless expressly authorized by a judge of this court or a duly designated visiting judge, Wireless Communication Devices may not be used to take photographs or to make or transmit audio or video recordings in any of the areas identified in L.R. 83-6.2.3.

L.R. 83-6.1.5 Restricted Areas. Unless otherwise ordered by a judge of this court or a duly designated visiting judge, Wireless Communication Devices must be turned off completely in the following areas at the designated times: (1) all courtrooms at all times; (2) any other room in which court proceedings are being held, while those proceedings are in process; (3) any designated jury room, during jury deliberations; and (4) any area where relevant restrictions are posted.

L.R. 83-6.2 Other Broadcasting, Recording, and Photography Equipment.

L.R. 83-6.2.1 Prohibited Equipment. For purposes of this L.R. 83-6, "Prohibited Equipment" shall be defined as any device capable of taking, making, recording, or broadcasting any still image or audio or video recording that does not fall within the definition of Wireless Communications Devices set forth in L.R. 83-6.1.1.

L.R. 83-6.2.2 Use and Possession. Subject to the conditions set forth in this L.R. 83-6.2, the use or possession of Prohibited Equipment, unless expressly authorized by a judge of this court or a duly designated visiting judge, is not permitted in any of the areas identified in L.R. 83-6.2.3, below.

L.R. 83-6.2.3 Covered Areas. The restrictions on the use and possession of Prohibited Equipment set forth in this L.R. 83-6.2 shall apply in all courtrooms and the following areas:

WESTERN DIVISION SPRING STREET BUILDING - The following areas of the United States Courthouse, 312 North Spring Street, Los Angeles, California:

(a) The parking areas; and

(b) The Main Street and Spring Street floors, the second through fifth floors, and the eighth, ninth, tenth, and sixteenth floors, except any area designated as a Press Room.

WESTERN DIVISION ROYBAL BUILDING - The following areas of the Roybal Federal Building and United States Courthouse, 255 East Temple Street, Los Angeles, California:

(a) The parking areas;

(b) The Temple Street and Terrace floors, except the area designated as a Press Room; and

(c) The third, fifth through eighth, eleventh, and fourteenth floors.

SOUTHERN DIVISION - The following areas of the Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California:

(a) The parking areas; and

(b) The first, third, sixth, ninth and tenth floors, except the area designated as a Press Room.

EASTERN DIVISION - The following areas of the United States Courthouse, 3470 Twelfth Street, Riverside, California:

(a) The parking areas; and

(b) The Ground level, Plaza level, second floor, and third floor, except for any area designated as a Press Room.

L.R. 83-6.3 Exceptions.

L.R. 83-6.3.1 Official Recordings. Nothing in this L.R. 83-6 shall prohibit recordings made by official court reporters, recorders, or United States Magistrate Judges in the performance of their official duties. No other use may be made of an official recording of a court proceeding without an express, written order of the court.

L.R. 83-6.3.2 Video Testimony. Nothing in this L.R. 83-6 shall prohibit the recording of depositions for trial purposes, or the preparation and perpetuation of testimony, taken by or under the direction of a judge of this court or a duly designated visiting judge. Any equipment taken into or through the areas enumerated in L.R. 83-6.2.3 shall be subject to such security regulations as may be adopted by the court from time to time.

L.R. 83-6.3.3 Ceremonial Functions. Nothing in this L.R. 83-6 shall prohibit the taking or making of photographs, motion pictures, video recordings, or sound recordings at ceremonial functions, including naturalization ceremonies, if specifically authorized by the judge presiding at such an event, and subject to any limitations set by that judge.

L.R. 83-6.3.4 Press Conferences. Nothing in this L.R. 83-6 shall prohibit the possession or use of any equipment or devices at press conferences or public announcements made by the U.S. Attorney, the Federal Public Defender, or the District Court Executive, who will provide the United States Marshals Service

advance written notification of such press conferences or public announcements. A Court Security Officer will escort communications media personnel and their equipment to and from the site of such press conference or public announcement.

L.R. 83-6.3.5 Dictating Equipment. Nothing in this L.R. 83-6 shall prohibit the possession of equipment used to take dictation or audio recording devices such as tape recorders ("Dictating Equipment") by attorneys admitted to practice before this court or bona fide members of the print or electronic media (i.e., newspaper, magazine, radio, or television). Dictating Equipment and Wireless Communication Devices in the possession of attorneys admitted to practice before this court or bona fide members of the print or electronic media may be used to make audio recordings in the following areas: the attorney's lounge, a press room, a witness room, the library, or the Clerk's Office.

L.R. 83-6.4 Enforcement.

L.R. 83-6.4.1 Violations of Rule. Violations of this L.R. 83-6 may be enforced by any judge of this court or duly designated visiting judge, the United States Marshals Service, the Federal Protective Service, or Court Security Officers, to the full extent allowed by law.

L.R. 83-6.4.2 Contempt. A violation of L.R. 83-6 may constitute contempt of court. All proceedings for such contempt occurring in or in connection with a case assigned to a judge shall be heard by the judge presiding over such case. All other proceedings for such contempt shall be brought before a Criminal Duty Judge.

L.R. 83-7 Sanctions - Violation of Rule. The violation of or failure to conform to any of these Local Rules may subject the offending party or counsel to:

(a) monetary sanctions, if the Court finds that the conduct was willful, grossly negligent, or reckless;

(b) the imposition of costs and attorneys' fees to opposing counsel, if the Court finds that the conduct rises to the level of bad faith and/or a willful disobedience of a court order; and/or

(c) for any of the conduct specified in (a) and (b) above, such other sanctions as the Court may deem appropriate under the circumstances.

L.R. 83-8 Vexatious Litigants

L.R. 83-8.1 Policy. It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation. It is the intent of this rule to augment the inherent power of the Court to control vexatious litigation and nothing in this rule shall be construed to limit the Court's inherent power in that regard.

L.R. 83-8.2 Orders for Security and Control. On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs, sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as are appropriate to control the conduct of a vexatious litigant. Such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

L.R. 83-8.3 Findings. Any order issued under L.R. 83-8.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

L.R. 83-8.4 Reference to State Statute. Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §§ 391 - 391.8.

L.R. 83-9 Time Limits for Decisions by Court

L.R. 83-9.1 Time Limit Established. The Court shall render and file its decision on motions and non-jury trials within 120 days after the matter is submitted for decision.

L.R. 83-9.1.1 "Submitted" Defined

(a) A motion shall be deemed submitted for decision (I) on the date the Court announces on the record in open court, at the conclusion of the hearing thereon, that the matter is submitted for decision; or (ii) on the date the last memorandum or other document is permitted to be filed. If no oral argument is conducted on the motion, a motion shall be deemed submitted for decision as of the date the last memorandum or other pleading is permitted to be filed.

(b) A non-jury trial shall be deemed submitted for decision (i) on the date the Court announces on the record in open court, at the conclusion of the trial, that the matter is submitted for decision; or (ii) on the date the last memorandum or other document is permitted to be filed.

L.R. 83-9.2 Duty of Counsel. If the Court does not render and file its decision on a submitted matter within 120 days of submission, all counsel shall, within 130 days after the matter is submitted for decision, file with the Court a joint request that such decision be made without further delay. A copy of such request shall be sent to the Chief Judge.

L.R. 83-9.3 Duty of Court to Respond. Unless the Court makes its decision within 30 days after the filing of a joint request, it shall, within the same time period, advise the parties in writing of the date by which the decision will be made. A copy of such written advice shall be filed in the case and sent to the Chief Judge.

L.R. 83-9.4 Follow-Up Duty of Counsel. In the event the Court fails timely to make its decision or to advise the parties of an intended decision date, as required by L.R. 83-9.3, counsel shall then file a

joint request with the Chief Judge to establish an intended decision date. A copy of such request shall be filed in the case.

L.R. 83-9.5 Date of Intended Decision. Upon receipt of a request under L.R. 83-9.4, the Chief Judge shall, after consultation with the judge to whom the matter is assigned, establish a firm intended decision date by which the Court's decision shall be made. Such setting of a final intended decision date shall be in writing, shall be filed in the case, and shall be served on the parties.

L.R. 83-10 Appeals - Designation of Reporter's Transcript. The designation of a reporter's transcript on appeal shall specify each hearing date or dates ordered from the court reporter. That designation shall be made on the appropriate form, which is available from the Clerk.

L.R. 83-11 through 83-15 [Reserved]

L.R. 83-16 Habeas Corpus Petitions and Motions Under 28 U.S.C. Section 2255

L.R. 83-16.1 Court Forms. A petition for a writ of habeas corpus or a motion filed pursuant to 28 U.S.C. § 2255 shall be submitted on the forms approved and supplied by the Court.

L.R. 83-16.2 Verification - Other Than By Person in Custody. If the petition or motion is verified by a person other than the individual in custody, the person verifying the document shall set forth the reason why it has not been verified by the person in custody. The person verifying the document shall allege only facts personally known to that person. If facts are alleged upon information and belief, the source of the information and belief shall be stated.

L.R. 83-16.3 Habeas Corpus - Exclusion, Deportation and Removal Cases. A next friend petition for a writ of habeas corpus in exclusion, deportation and removal cases must allege that the petitioner has been authorized by the applicant for admission or respondent in the proceedings to file the petition. If the petition is filed by a relative who is the father, mother, husband, wife, brother, sister, uncle or aunt of the applicant for admission in the proceedings, that fact shall be alleged and authorization to file the petition need not be shown.

L.R. 83-17 Special Requirements for Habeas Corpus Petitions Involving the Death Penalty

L.R. 83-17.1 Applicability. This rule shall govern the procedures for a first federal habeas proceeding under Chapter 153 of Title 28 of the United States Code in which a petitioner seeks relief from a judgment imposing the penalty of death. The application of this rule may be modified by the judge to whom the case is assigned. These rules shall supplement the Rules Governing Section 2254 Cases in the United States District Courts.

L.R. 83-17.2 Timely Notice of Execution Dates From California Attorney General. Whenever an execution date is set for a petitioner who was convicted and sentenced in a county within the jurisdiction of the Central District of California, the California Attorney General must send notice to the Clerk of Court and any other recipients designated by the Clerk of Court, within seven (7) days.

L.R. 83-17.3 Initial Filings and Petitions

(a) A prisoner under a judgment of death may file a petition for writ of habeas corpus or a request for appointment of counsel. Such filings shall be made in the Western Division (Los Angeles) of the Central District. Upon such filing, the case shall be randomly assigned to a district judge through the district-wide Death Penalty Assignment Wheel. After filing and assignment, the matter shall be immediately referred to the Capital Case Committee for the appointment of counsel.

(b) Petitions shall be submitted on a form supplied by the Clerk of Court, filled in by printing or typewriting, or as a legible typewritten document which contains all of the information required by that form. All petitions or requests for appointment of counsel: (i) shall state whether the petitioner has previously sought habeas relief arising out of the same matter from this court or any other federal court, together with a copy of the ruling; and (ii) shall clearly identify in the caption any scheduled execution date. Any petition exceeding ten (10) pages in length, excluding exhibits, shall be accompanied by an

indexed table of contents setting forth the headings or subheadings contained in the body thereof.

(c) A pro se petitioner need only file the original of the petition. If the petitioner is represented by counsel, counsel for the petitioner shall file the petition in accordance with L.R. 5-4. No filing fee is required.

(d) If the petitioner is not represented by counsel, the Clerk of Court shall immediately serve the California Attorney General's Office by mail, e-mail or fax when an initial filing is received by the Court.

(e) When a petition or request for appointment of counsel is filed by a petitioner who was convicted outside of this district, the Clerk of the Court shall immediately advise the Clerk of the Court of the district in which the petitioner was convicted, and prepare a stay and transfer order for signature of a district court judge.

L.R. 83-17.4 Appointment of Counsel

(a) Initial Appointment of Counsel - Upon receipt of the habeas corpus petition or the initial request for appointment of counsel, unless the petition is patently frivolous, or the request for appointment of counsel is clearly premature, the Federal Public Defender's Office ("FPDO") will be appointed. If the FPDO has already been assigned the maximum number of cases, as determined by the Defender Services Committee of the United States Judicial Conference, and the FPDO has not agreed to an excess appointment, or otherwise has a conflict or cannot accept the appointment, lead and second counsel must be selected and appointed from a panel of attorneys, qualified for appointment in capital habeas corpus cases. In exceptional circumstances, the Court may appoint an attorney who is not a member of the panel.

(b) Subsequent Appointment of Second Counsel - If second counsel is not appointed at the time lead counsel is appointed, and lead counsel recommends that second counsel be

appointed, lead counsel must apply to the assigned judge for appointment of a second counsel.

(c) Substitution of First or Second Counsel - If the assigned judge, in his or her discretion, determines that the substitution of counsel is necessary, section (a) applies.

L.R. 83-17.5 Transfer of Venue

(a) Subject to the provisions of 28 U.S.C. § 2241(d), it is the policy of this Court that a petition should be heard in the district in which petitioner was convicted, rather than in the district of petitioner's present confinement.

(b) If an order for transfer of venue is made on a first petition for habeas corpus, the Court shall order a stay of execution which shall continue until such time as the transferee court acts upon the petition or the order of stay.

L.R. 83-17.6 Stays of Execution

(a) Stay Pending Final Disposition - Upon the filing of a habeas corpus petition, unless the petition is patently frivolous or clearly premature, the Court may issue a stay of execution pending final disposition of the petition in the district court.

(b) Stay for the Request for Appointment of Counsel - Upon the filing of a request for appointment of counsel, unless the request is patently frivolous or clearly premature, the Court must issue a temporary stay of execution. The stay must terminate not later than 90 days after counsel is appointed or the request for appointment of counsel is withdrawn or denied.

(c) Stay Pending Appeal - If the petition is denied and a certificate of appealability is issued, the Court may grant a stay of execution which will continue in effect until the Court of Appeals acts upon the appeal or the order of stay.

(d) Notice of Stay - Upon the granting of any stay of execution, the Clerk of the Court must immediately notify the Custodian of

the prisoner and the California Attorney General. The California Attorney General must assure that the Clerk of the Court has a twenty-four (24) hour telephone number to the Custodian.

L.R. 83-17.7 Procedures for Considering the Petition. Unless the Court summarily dismisses the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the following schedule and procedures shall apply subject to modification by the Court. Requests for enlargement of any time period in this rule shall comply with the applicable Local Rules of the Court.

(a) Respondent shall as soon as practicable, but in any event on or before thirty (30) days from the date of service of the petition, electronically lodge the following with the Court in accordance with L.R. 5-1 and 5-4.3.1:

(i) Transcripts of the state trial court proceedings.
(ii) Appellant's and respondent's briefs on direct appeal to the California Supreme Court, and the opinion or orders of that court.
(iii) Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings.
(iv) An index of all materials described in paragraphs (a)(i) through (a)(iii) above. Such materials are to be marked and numbered so that they can be uniformly cited.
(v) If any items identified in paragraphs (a)(i)through (a)(iv) are not available, respondent shall state when, if at all, such missing material can be filed.

(b) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (a), or if counsel for petitioner does not have copies of all the documents lodged with the Court by respondent, counsel for petitioner shall promptly file written notice thereof. Respondent shall supply copies of the missing documents forthwith, and file notice of compliance.

(c) (i) In the interest of expediting habeas death penalty cases, it is the policy of the Court to entertain unexhausted claims if the respondent expressly waives the exhaustion issue. However, if the respondent declines to waive the exhaustion issue with respect to any or all claims in the petition, prior to filing a motion, counsel for respondent must make a good faith effort to confer with counsel for petitioner regarding the exhausted status of each such claim. Unless relieved by written order of the Court upon good cause shown, counsel for petitioner must confer with counsel for respondent within seven (7) days after service of a letter requesting such conference. The respondent's letter must identify each claim that respondent contends is unexhausted, specify the basis for asserting that the claim is unexhausted, and provide any legal authority that respondent contends is dispositive of the exhausted status of that claim.

(ii) If, after the meeting, the parties continue to dispute the exhausted status of one or more claims, the respondent must file an appropriate motion no later than twenty-eight (28) days after service of the petition. In connection with any motion relating to exhaustion disputes, the parties must file a joint statement indicating (1) which claims the parties agree have been fairly presented to the state supreme court, (2) which claims the parties agree have not been fairly presented to the state supreme court, and (3) on which claims the parties disagree whether the claim has been fairly presented to the state supreme court. For each claim whose exhaustion status is in dispute, the petitioner must cite the specific pages of the state court record that petitioner contends fairly presented the claim to the state supreme court.

(d) If respondent does not intend to challenge the exhausted status of any claim in the petition, or is willing to expressly waive exhaustion as to all such claims, respondent must file an answer within twenty-eight (28) days from the date of service of the petition. Respondent must include in the answer the matters defined in Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and must attach any other relevant documents not already lodged or filed. An answer that exceeds ten (10) pages in length, excluding exhibits, must be

accompanied by an indexed table of contents setting forth the headings or subheadings contained in the body thereof.

(e) Unless otherwise ordered by the Court, within twenty-eight (28) days after respondent has filed the answer, petitioner may file a reply to the respondent's answer.

(f) No discovery shall be had without leave of the Court. A request for discovery shall be presented to the Court by way of a joint stipulation in substantially the same format as required by L.R. 37-2.1. The joint stipulation shall identify the discovery requested, a statement explaining the need for the requested discovery, and opposing counsel's position regarding the need for the requested discovery.

(g) Any request for an evidentiary hearing by either party must be made within twenty-eight (28) days from the filing of the reply to the respondent's answer, or within twenty-eight (28) days from the expiration of the time for filing the reply. The request must include a specification of the factual issues and the legal reasoning that require a hearing and a summary of the evidence of each claim the movant proposes to offer at the hearing. Any opposition must be filed within twenty-one (21) days after the request for an evidentiary hearing was filed. A reply to the opposition must be filed within fourteen (14) days after the opposition was filed.

L.R. 83-17.8 Evidentiary Hearing. If an evidentiary hearing is held, the proceedings must be recorded and a transcript of the proceedings must be prepared. The parties must agree to an equitable division of the cost and which party will order the transcript. In the absence of agreement, the parties may apply to the Court for an order allocating the cost.

L.R. 83-17.9 Budgeting Capital Habeas Cases.

(a) Budgeting Required - In all cases where attorneys' fees and investigative and expert fees and expenses are reimbursed pursuant to 18 U.S.C. § 3599, petitioner's counsel is required to prepare and submit to the Court a budget for each phase of the

proceedings. The Court may schedule one or more ex parte conferences with petitioner's counsel to implement the budgeting process.

(b) Filing of Budget Related Documents - Once the Court orders that a proper showing of the need for confidentiality of budget related documents has been made, the petitioner may file future budget related documents under seal without further approval by the Court. The title page for budget related documents, filed after the Court has so ordered, must contain the following language: "To Be Filed Under Seal Pursuant to Local Rule 79-5.1."

L.R. 83-17.10 Rulings. The Clerk of Court must immediately notify the Custodian of the prisoner and the California Attorney General whenever relief is granted on a petition.

The Clerk of the Court must immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of:

(a) the issuance of a final order denying or dismissing a petition without a certificate of appealability, or
(b) the denial of a stay of execution.

When a notice of appeal is filed, and if the certificate of appealability was denied in full, the Clerk of the Court must immediately transmit the record to the Court of Appeals. In all other instances the record must only be transmitted upon a request from the Court of Appeals.

After the issuance of the mandate of a reviewing court that results in the denial with prejudice of all habeas relief, and if the Court so orders, the respondent must lodge a complete copy of the state court record and all other items identified in L.R. 83-17.7 by the date set by the Court.

F.R.Civ.P. 84. FORMS

F.R.Civ.P. 85. TITLE

L.R. 85-1 Short Title. These rules may be cited as the Local Rules.

F.R.Civ.P. 86. EFFECTIVE DATE

END OF CHAPTER I - LOCAL CIVIL RULES

Appendix A to Local Rules

PRETRIAL FORM NO. 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(TITLE OF CASE)	)	CASE NO._____
	)	
	)	FINAL PRETRIAL
	)	CONFERENCE ORDER
	)	
	)	
	)	

Following pretrial proceedings, pursuant to F.R.Civ.P. 16 and L.R. 16, IT IS ORDERED:

1. The parties are: [list]

Each of these parties has been served and has appeared. All other parties named in the pleadings and not identified in the preceding paragraph are now dismissed.

The pleadings which raise the issues are: [list]

2. Federal jurisdiction and venue are invoked upon the grounds: [Give a concise statement of facts necessary to confer federal jurisdiction and venue. State whether the facts requisite to federal jurisdiction are denied or admitted.]

3. The trial is estimated to take _____ trial days. [Where counsel cannot agree set forth each side's estimate.]

4. The trial is to be a jury [non-jury] trial.

[If a jury trial add: At least seven (7) days prior to the trial date the parties shall file and serve by e-mail, fax, or personal delivery: (a) proposed jury instructions as required by L.R. 51-1 and (b) any special questions requested to be asked on voir dire.]

[If a non-jury trial add: At least seven (7) days prior to the trial date the parties shall lodge and serve by e-mail, fax, or personal delivery the findings of fact and conclusions of law the party expects the Court to make upon proof at the time of trial as required by L.R. 52-1.]

5. The following facts are admitted and require no proof: [list admitted facts]

6. The following facts, though stipulated, shall be without prejudice to any evidentiary objection: [list facts not to be contested though not admitted]

7. [This section of the Final Pretrial Conference Order is intended to finalize, in advance of trial, the claims and defenses to be presented at trial. In accordance with F.R.Civ.P. 16(c), parties will be precluded from presenting claims or defenses not set forth in this order, in the manner required by this order, unless the order is modified to prevent manifest injustice. Only claims or defenses contained in the complaint and answer and any court authorized amendment or supplement may be included in this Final Pretrial Conference Order. If a party chooses to abandon a claim or defense previously alleged, it may do so by not including it in this order, and the failure to include any pleaded claim or defense will be deemed to effect such a waiver. The following format must be employed:]

<u>Plaintiff(s):</u>

(a) Plaintiff plans to pursue the following claims against the following defendants:

[Here list claims in summary fashion, for example:

Claim 1: Defendant A breached his contract with Plaintiff;
Claim 2: Defendant A violated the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.]

(b) The elements required to establish Plaintiff's claims are: [List the elements separately for each claim, as found in standard jury instructions or case law. The parties should strive to agree on the elements. If the parties cannot agree on an element, then each party may state its version of the elements.]

(c) In brief, the key evidence Plaintiff relies on for each of the claims is: [List separately for each element of each claim.]

Defendant(s):

(a) Defendant plans to pursue the following counterclaims and affirmative defenses: [Insofar as defenses are concerned, Defendant should identify only *affirmative* defenses, which are those matters on which the Defendant bears the burden of proof. They are matters which would defeat Plaintiff's claim even if Plaintiff established the elements of the claim. Examples of such affirmative defenses – which must have been pleaded in Defendant's Answer – appear in F.R.Civ.P. 8(c). Insofar as counterclaims are concerned, Defendant should follow the same format as Plaintiff in listing claims.]

(b) The elements required to establish Defendant's counterclaims and affirmative defenses are: [List the elements separately for each counterclaim or affirmative defense as found in standard jury instructions or case law. The parties should strive to agree on the elements. If the parties cannot agree on an element, then each party may state its version of the elements.]

(c) In brief, the key evidence Defendant relies on for each counterclaim and affirmative defense is: [List separately for each element of each counterclaim or defense.]

Third Party Plaintiffs and Defendants:

[Claims and defenses in third-party cases should be analyzed and set forth in the same way as those of plaintiffs and defendants. Separate proposed pretrial conference orders will not be accepted.]

8. In view of the admitted facts and the elements required to establish the claims, counterclaims and affirmative defenses, the following issues remain to be tried: [list ultimate issues, not evidentiary issues]

9. All discovery is complete.

10. All disclosures under F.R.Civ.P. 26(a)(3) have been made.

The joint exhibit list of the parties has been filed under separate cover as required by L.R. 16-6.1. Unless all parties agree that an exhibit shall be withdrawn, all exhibits will be admitted without objection at trial, except those exhibits listed below:

Plaintiff objects to Exhibit Nos. _____.

Defendant objects to Exhibit Nos._____.

The objections and grounds therefor are: [list exhibit and grounds for objections separately as to each exhibit]

11. Witness lists of the parties have been filed with the Court.

Only the witnesses identified in the lists will be permitted to testify (other than solely for impeachment).

Each party intending to present evidence by way of deposition testimony has marked such depositions in accordance with L.R. 16-2.7. For this purpose, the following depositions shall be lodged with the Clerk as required by L.R. 32-1: [list]

[if appropriate:] Plaintiff (Defendant) objects to the presentation of testimony by deposition of the following witnesses:

12. The following law and motion matters and motions in limine, and no others, are pending or contemplated: [state "none" or list]

13. Bifurcation of the following issues for trial is ordered. [State "none" or identify those issues to be tried during the first stage of the trial and those to be tried later.]

14. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues remaining to be litigated, this Final

Pretrial Conference Order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Dated: _____, 20_____.

_____
UNITED STATES DISTRICT JUDGE

Approved as to form and content.

_____
Attorney for Plaintiff

_____
Attorney for Defendant

_____
Attorney for (indicate party represented)

Appendix B to Local Rules

AGREEMENT ON ACCEPTANCE OF SERVICE

To facilitate and assure timely service of process and to provide adequate time to answer habeas corpus petitions under 28 U.S.C. § 2241 or § 2254, the Clerk of Court of the United States District Court for the Central District of California and the Offices of the Attorney General of the State of California for Los Angeles and San Diego agree to the following procedures. This agreement addresses cases in which the United States District Judge or Magistrate Judge determines that service documents are to issue in all cases where petitioners have filed a habeas corpus petitions under 28 U.S.C. § 2241 or 28 U.S.C. § 2254.

1. **General Provisions**

A. At case opening, the case manager will add an appropriate entity which specifies the Attorney General as a "Notice Only Party" to the court's Case Management and Electronic Case Filing System (CM/ECF). The Attorney General's Office will thereby receive electronic notice of all case filings and activity, including the case initiating documents, to any e-mail accounts specified by that office in their "Notice Only" designation. If the Attorney General ultimately enters an appearance on behalf of one or more defendants in the case, the "Notice Only Party" will be terminated and the attorney/(s) who enters his/her appearance will be designated as the counsel to whom notice is sent.

B. These procedures shall take effect for any case filed after June 1, 2013, and remain in effect until terminated by the Attorney General or the Clerk.

2. **Habeas Corpus Petitions**

Pursuant to the Rules 4 and 5 Governing § 2254 Cases and 28 U.S.C. § 2243, following preliminary review by the Court, the respondent is only required to answer or otherwise respond to the petition if ordered to do so by the court. In its order the Court will fix the time by which response must be made. The Attorney General agrees that entry of the order to respond on the docket by the clerk

complies with the requirement of service of the petition on the respondent, the Attorney General, or other appropriate officer and will accept service of the same.

Office of the Attorney General
State of California

Terry Nafisi
District Executive & Clerk of Court
U.S. District Court, Central District of California

Appendix C to Local Rules

AGREEMENT ON ACCEPTANCE OF SERVICE

To facilitate and assure timely service of process and to provide adequate time to answer habeas corpus petitions under 28 U.S.C. § 2241 and 28 U.S.C. § 2255, the Clerk of Court of the United States District Court for the Central District of California and the United States Attorney's Office of the Central District of California agree to the following procedures. This agreement addresses cases in which the United States District Judge or Magistrate Judge determines that service documents are to issue in all cases where petitioners have filed habeas corpus petitions under 28 U.S.C. § 2241 and motions under 28 U.S.C. § 2255.

1. **General Provisions**

A. At case opening, the case manager will add an appropriate entity which specifies the U.S. Attorney's Office as a "Notice Only Party" to the court's Case Management and Electronic Case Filing System (CM/ECF). The U.S. Attorney's Office will thereby receive electronic notice of all case filings and activity, including the case initiating documents, to any e-mail accounts specified by that office in their "Notice Only" designation. If the U.S. Attorney's Office ultimately enters an appearance on behalf of one or more defendants in the case, the "Notice Only Party" will be terminated and the attorney/(s) who enters his/her appearance will be designated as the counsel to whom notice is sent.

B. These procedures shall take effect for any case filed after June 1, 2013, and remain in effect until terminated by the U.S. Attorney's Office or the Clerk.

2. **Habeas Corpus Petitions**

Pursuant to the Rules 4 and 5 Governing § 2254 Cases and 28 U.S.C. § 2243, following preliminary review by the Court, the respondent is only required to answer or otherwise respond to the petition if ordered to do so by the court. In its order the Court will fix the time by which response must be made. The U.S. Attorney's Office agrees that entry of the order to respond on the docket by the clerk complies with the requirement of service of the petition on the respondent,

the U.S. Attorney's Office, or other appropriate officer and will accept service of the same.

DATE: May 30, 2013

Stephanie Yonekura
Acting First Assistant United States Attorney
United States Attorney's Office

DATE: May 31, 2013

Terry Nafisi
District Executive & Clerk of Court
U.S. District Court, Central District of California

Our Reported Cases

Cislo & Thomas LLP Recent Successes

Below are some of the cases that we have successfully litigated in court for our clients, involving all aspects of patent, trademark, copyright, trade dress, trade secret, and domain dispute litigation. These successful cases appeared in various legal journals, and are now available for you below:

8975 Licensing, LLC v. MasterCare Software, LLC, U.S.D.C., Eastern District of Texas, Case No. 4:15-cv-00823-ALM (2016)

MasterCare Software, LLC was sued by 8975 Licensing in the United States District Court Eastern District of Texas (Sherman Division) for patent infringement related to a software process. MasterCare Software (represented by Cislo & Thomas in conjunction with Gary W. Nevers of Nevers, Palazzo, Packard, Wildermuth & Wynner, P.C.) aggressively notified counsel for 8975 Licensing of a number of defenses it would assert, as well as a motion to transfer the case from the Eastern District of Texas to the Central District of California that it intended to bring. Shortly thereafter, a favorable settlement was negotiated, and 8975 Licensing dismissed its case with prejudice.

Standup Paddle Sports, LLC v. Focus Surfboards, Inc., U.S.D.C., Central District of California, Case No. CV 15-8467 JAK-JC

Standup Paddle Sports, LLC ("SUP"), based in Santa Barbara, California, sued Focus Surfboards, Inc. ("Focus") for various violations of the Lanham Act, unfair competition, fraud, and breach of contract. The complaint alleged that Focus covered over, or allowed to be covered over, SUP's trademarks and logos on the standup paddle board used by Mo Freitas in a standup paddle board racing competition in Idaho that he won. This obscuring of SUP's trademarks cost SUP valuable publicity. SUP (represented by Cislo & Thomas and co-counsel David Tappeiner and Mark DePaco of Fell, Marking, Abkin, Montgomery, Granet & Raney LLP) forcefully stated SUP's claims in the complaint, and aggressively pursued early discovery in the case, resulting in a favorable settlement on behalf of SUP before litigation costs began to dramatically escalate.

Fitness International, LLC v. Alistair Swodeck / Victor and Murray, FA1506001623644

Cislo & Thomas was successful in obtaining transfer of the domain name lafitnessmodels.com for its client Fitness International, the owner of several LA FITNESS marks, under a Uniform Domain Name Proceeding before the Forum. The domain name holder was hiding behind a confidential proxy and was using the domain for purported services that appeared to be offered by the legitimate owner of the marks. Despite the improper domain name holder's attempt to hide behind a proxy, Cislo & Thomas successfully argued that the domain name holder had no legitimate rights in the domain name and registered it in bad faith, and the Forum ordered transfer of the domain.

The Tire Hanger Corp. v. My Car Guy Concierge Services, Inc., et al., U.S.D.C., Central District of California, Case No.5:14-cv-00549-ODW (MANx)

Cislo & Thomas partner Peter Veregge represented the plaintiff in successfully lifting an interim stay order. The case had been stayed pending the decision of the Patent Trial and Appeal Board ("PTAB") as to whether to institute *inter partes* review ("IPR") for the two asserted patents. When the PTAB denied one of the IPRs, we argued that the stay was not justified because fewer than all of the patents were under review. Relying on our arguments and case law, on June 16, 2015, the Court lifted the stay and allowed the case to proceed.

Long Beach City Employees Federal Credit Union v. Tech Domain Services Private Limited, FA1502001603023

Cislo & Thomas successfully obtained transfer of the domain name lbcefcu.com in a UDRP proceeding before the National Arbitration Forum on behalf of its client Long Beach City Employees Federal Credit Union. The panel found that the domain name holder had no legitimate rights in the mark LBCEFCU, and the registered domain name was being used by Tech Domain in bad faith. The ruling supports the client's long standing common law rights in and to its trademark LBCEFCU and successfully halted a rogue third party from creating confusion in the marketplace and profiting from our client's intellectual property.

Fitness International, LLC v. Holder of Domain Name, FA1411001592358

Cislo & Thomas successfully obtained transfer of the domain name lafitnessperspect.com in a UDRP proceeding before the National Arbitration Forum on behalf of its client Fitness International based upon its position that the domain name holder had no legitimate rights in the name LA FITNESS, and that it had registered and was holding the domain in bad faith. The ruling supports the client's long standing rights in and to its trademark LA FITNESS and successfully prevented a third party from trading off of the success of the name.

Table Bluff Brewing, Inc. v. Aviator Brewing Company, Inc.

Cislo & Thomas LLP (along with co-counsel Coats & Bennett of North Carolina) (representing Defendant Aviator Brewing Co.) successfully moved the Court to dismiss the case for lack of personal jurisdiction. Aviator Brewing was sued for trademark infringement, among other things, in the Northern District of California. It was determined that Aviator, based in North Carolina, had insufficient contacts with California for the Court to exercise personal jurisdiction over it. As a result, the Court dismissed the case against Aviator.

Lifetime Industries, Inc. v. Trim-Lok, Inc., Case No. 3:13-CV-819 RLM, U.S.D.C., Northern District of Indiana, 2014

Cislo & Thomas won a motion to dismiss a complaint for failure to state a claim upon which relief could be granted because the complaint was so lacking in facts that it could not provide the defendant proper notice as to which of their products was infringing the asserted patent. This case has particular significance because the complaint purportedly followed the guidelines of Form 18, which the Federal Rules of Civil Procedure states is adequate. The court, however, found Form 18 antiquated in light of recent case law. This decision continues to raise the pleading standards for patent infringement cases.

Amini Innovation Corporation v. McFerran Home Furnishings, Inc. and Sharon Lin, U.S.D.C., Central District of California, LEXIS 93477, July 9, 2014

Amini Innovation Corporation ("AICO") (represented by Cislo & Thomas LLP) is the owner of a substantial amount of intellectual property related to its furniture designs. Early in 2014, AICO

learned that the Defendants were offering for sale and selling items in a bedroom collection that AICO believed were within the scope of its intellectual property rights. AICO subsequently filed suit alleging copyright infringement and design patent infringement. In its complaint, AICO alleged that the infringements were willful based, in part, because of the defendants' past history of infringing AICO's and others' intellectual property rights related to furniture. The defendants filed a motion to strike the allegations, among other things, in the complaint regarding the defendants' alleged past history of infringements, claiming that such matter was, in the language of Fed.R.Civ.P. 12(f) immaterial and impertinent, as well as prejudicial. AICO successfully opposed the defendants' motion. The Court determined that the allegations in the complaint related to the defendants' past litigation history and past infringements was potentially relevant to the issue of willfulness, and hence, damages. As such, Judge Lew denied the defendants' motion to strike in that regard. The ruling is significant in that willfulness allegations are common in complaints for intellectual property infringement. The ruling makes it clear that a defendant that is allegedly a "repeat offender" can have its "repeat offender" status raised for purposes of demonstrating willful infringement.

Urban Home, Inc. v. Cordillera Investment Company, LLC, U.S.D.C., Central District of California, Case No. 13-8502 GAF(JEMx)

Plaintiff Urban Home, Inc. (represented by Cislo & Thomas LLP) filed an action for trademark infringement, unfair competition, and trademark dilution against Cordillera Investment Company, LLC in connection with Cordillera's use of the name "Urban Home" online and in video advertisements in what Urban Home alleged was a confusingly similar manner. Both companies are furniture retailers. In response to the complaint, Cordillera filed a motion to dismiss under Fed.R.Civ.P. 12(b)(6) asserting that the case was not ripe for adjudication and that it is a good faith remote junior user under the Tea Rose-Rectanus doctrine enunciated by the U.S. Supreme Court nearly 100 years ago. The Court ruled that Urban Home had adequately pled all the elements of its trademark infringement and unfair competition claims, that the case was ripe for adjudication, and that Urban Home had alleged sufficient facts to show that, if true, Cordillera may not be a good faith remote junior user, but that it may have "appropriated Plaintiff's name" and conducted business in Southern California after Urban Home was an established business. Thus, the Court held that Urban Home had pled sufficient facts to overcome the Tea Rose-Rectanus doctrine at the pleading stage. Accordingly, Cordillera's

motion to dismiss Urban Home's trademark infringement and unfair competition claims was denied. Interestingly, the Court questioned whether the Tea Rose-Rectanus doctrine would survive in the era of internet-based business, but did not make any definitive ruling on that point.

Imagenetix, Inc. v. Nikken, Inc., [and nine individual defendants], U.S.D.C., Central District of California, Case No. CV 11-3727 GHK (VBKx), June 18, 2014

Cislo & Thomas LLP represented all ten defendants-in-suit in which the plaintiff had alleged five of the corporate client's product lines infringed its patent and had sought $31 million in patent infringement damages. A settlement was reached on terms very favorable for our clients in which the plaintiff agreed that our clients did absolutely nothing wrong, and our clients continue to sell all of the accused products without restriction.

Amini Innovation Corporation v. McFerran Home Furnishings and Sharon Lin, U.S.D.C., Central District of California, Case No. 13-6496 RSWL(SSx), May 19, 2014

This action primarily involved product configuration trade dress infringement. The defendants served a deposition subpoena on Jane Seymour, actress and celebrity endorser of plaintiff Amini Innovation Corporation's Hollywood Swank bedroom collection. Ms. Seymour (represented by Cislo & Thomas LLP) filed a motion to quash the subpoena. In ruling for Ms. Seymour, the Court quashed the subpoena finding that the defendants did not adequately demonstrate that they had sought the discovery in question from the plaintiff, and that they could not obtain the discovery in question from the plaintiff, as opposed to Ms. Seymour. The Court rejected as unsupported the defendants' claim that Ms. Seymour did not have a right to object to the subpoena as seeking duplicative discovery. The Court also found that the burden for Ms. Seymour to comply with the subpoena would be great. Accordingly, the subpoena was quashed.

EDCO Plastics, Inc. v. Allynce, Inc., Ralph Dudley, Cassandra Samano, and Dispensing Dynamics International, U.S.D.C., Central District of California, Case No. 12-1168 JVS(JPRx), July 15, 2013

After Dispensing Dynamics International ("DDI") (represented by Cislo & Thomas LLP) succeeded in moving the Court to dismiss EDCO's breach of contract against DDI with prejudice, and EDCO's fraud claim against DDI without prejudice, DDI moved the Court for an

award of attorneys' fees and costs based on a contractual provision providing for prevailing party attorneys' fees and costs in any litigation arising out of an Asset Purchase Agreement between EDCO and DDI. In response to DDI's motion, the Court ruled that DDI was the prevailing party on both of EDCO's claims against it and awarded DDI the full amount of its attorneys' fees and costs requested ($147,342.69). In so ruling, the Court determined that the rates charged by Cislo & Thomas LLP's attorneys handling the case were reasonable.

World Trading 23, Inc. v. EDO Trading, Inc. et al., U.S.D.C., Central District of California, Case No. 12-10886 ODW(PJWx), April 24, 2013

Plaintiff World Trading 23, Inc. (represented by Cislo & Thomas) sued EDO Trading, Inc. et al. for infringing a copyright for the design of a remote control helicopter. The parties, having been in previous litigation over unrelated matters, entered into a settlement agreement with a broad, general release for past and future claims arising out of, connected with, or incidental to the settled action. In response to Plaintiff's complaint, Defendants filed a motion for judgment on the pleadings asserting that the release in the prior settlement agreement barred the present claim for copyright infringement. After converting the motion to a motion for summary judgment (because the settlement agreement was not in the pleadings), the Court determined that Plaintiff's copyright claim did not have the requisite nexus to the prior action such that it could be said that the present action arose out of, was connected with, or was incidental to the prior, settled action. Accordingly, the Court denied the Defendants' motion for summary judgment and allowed Plaintiff's claim to proceed.

EDCO Plastics, Inc. v. Allynce, Inc., Ralph Dudley, Cassandra Samano, and Dispensing Dynamics International, U.S.D.C., Central District of California, Case No. 12-1168 JVS(JPRx), March 18, 2013

In July of 2012, EDCO Plastics, Inc. ("EDCO"), owner of United States Patent 6,962,013, sued Allynce, Dudley, and Samano ("Allynce Defendants") for infringing the '013 Patent based on activities that occurred in 2012. In its answer to the complaint, the Allynce defendants asserted a generic invalidity defense. Apparently, one of the Allynce defendants obtained copies of invoices (whether legally or not is unclear) that purported to show that there may have been an alleged premature public disclosure of the subject matter of the '013 Patent.

In 2009, EDCO purchased the ‘013 Patent, among numerous other items, in an Asset Purchase Agreement with a predecessor of Dispensing Dynamics International (“DDI”). As a result of the alleged premature public disclosures, EDCO filed a first amended complaint in which it named DDI as a defendant, suing for fraud and breach of contract. EDCO claimed that DDI’s predecessor had misrepresented the validity of the ‘013 Patent during the negotiation of the Asset Purchase Agreement in 2009.

DDI responded to the first amended complaint by filing a motion to dismiss/strike and for a more definite statement. The Court granted the motion in part by dismissing with prejudice EDCO’s breach of contract claim against DDI based on the provisions of the Asset Purchase Agreement that specified the available remedies, none of which included a claim for breach of contract. The Court also granted DDI’s motion for more definite statement relating to the plea for special damages. EDCO thereafter filed a second amended complaint.

DDI responded to the second amended complaint by filing a motion to dismiss EDCO’s remaining fraud claim against it for lack of subject matter jurisdiction, asserting that subject matter jurisdiction was not available under “arising under” jurisdiction, nor under supplemental jurisdiction. DDI also asserted that the fraud claim against it was not ripe because the ‘013 Patent was presumed valid and no determination of invalidity had been made by a court or the USPTO. The Court granted DDI’s second motion to dismiss, determining that the Court lacked subject matter jurisdiction under “arising under” jurisdiction as well as supplemental jurisdiction. The Court relied upon the recently decided U.S. Supreme Court case, Gunn v. Minton, and decided against exercising its supplemental jurisdiction based on the fact that the patent infringement claim against the Allynce Defendants and the fraud claim against DDI did not arise from a common nucleus of operative facts. The Court further stated that even if supplemental jurisdiction existed, it would decline to exercise it because of the potential for jury confusion arising from EDCO’s contradictory positions with respect to the ‘013 Patent.

Urban Home v. Technology Online LLC/WhoisPrivacy Service Pty Ltd., Case No. D2012-2437, February 18, 2013

Cislo & Thomas successfully brought an action before the WIPO Arbitration and Mediation Center on behalf of its client Urban Home seeking transfer of the domain name urbanhome.com

under the Uniform Domain Name Dispute Resolution Policy ("Policy"). Urban Home is the owner of a U.S. Trademark registration for its URBAN HOME mark for use in connection with home furnishings, namely furniture, and retail and online store services featuring home furnishings and furniture. Technology Online was using the disputed domain name in connection with an active website that contained content related to furnishing home interiors and a number of pay-per-click links to competitor home furnishing suppliers. Technology Online vehemently disputed the evidence and contentions in its almost 300 page response and annexes. Despite Technology Online's position, the panel concluded that Urban Home's evidence and contentions supported transfer of the domain name and ruled in favor of Urban Home. In particular, the panel found that Technology Online was using the disputed domain name for commercial gain to attract Internet users to its website by creating confusion as to Urban Home acting as source, sponsor, affiliate or endorser of Technology Online's website.

Prototype Productions, Inc. et al. v. Reset, Inc., U.S.D.C., Eastern District of Virginia, 2012 U.S. Dist. LEXIS 1306 (Jan. 5, 2012, Decided), 2011 U.S. Dist. LEXIS 150666 (Oct. 14, 2011, Decided)

Reset (represented by Cislo & Thomas LLP) is a California corporation that was sued for patent infringement in the Eastern District of Virginia over a powered rail that provides power to accessories such as laser sights that are mounted on military rifles. Reset had not sold any units of the product at the time of the suit, although prototypes of its product had been promoted to the military and at various trade shows around the United States. Reset moved to dismiss the case for lack of personal jurisdiction or improper venue, or, in the alternative, to transfer the case to the Central District of California. In his October 14, 2011 ruling, Magistrate Judge F. Bradford Stillman found that personal jurisdiction over Reset was lacking because it had no presence in Virginia, and it had not marketed nor sold its powered rail product in Virginia. In addition, Magistrate Judge Stillman's report and recommendation found that jurisdiction under the "stream of commerce" theory was untenable. On January 5, 2012, District Judge Raymond A. Jackson adopted Magistrate Judge Stillman's report and recommendations, and overruled the plaintiff's objections thereto. Both judges also denied the plaintiff's request for jurisdictional discovery for lack of specificity as to the discovery sought. Accordingly, the case was transferred to the Central District of California.

Alacer Corp. v. AMT Group dba Imbide The Drink Tank, Case No. SACV 11-736-JVS (RNBx)

Cislo & Thomas, LLP successfully concluded an action filed on behalf of client Alacer Corp., the owner of the popular vitamin and nutritional supplement products called EMERGEN-C. In the action, Alacer claimed trademark infringement, false designation of origin, common law trademark infringement, unfair competition, and dilution based upon AMT Group's use of the mark RESURGEN-C for the same or similar products. The parties resolved their differences in a confidential settlement agreement wherein AMT Group agreed to cease using the offending mark.

Kim Seng Co. v. J&A Importers, Inc., U.S.D.C., Central District of California, Case No. 10-CV-00742-CAS, 810 F. Supp. 2d 1046, 2011

Cislo & Thomas successfully defended J&A Importers, Inc. against copyright and trade dress infringement claims involving rice noodle packaging. On summary judgment, we showed that the plaintiff did not have proper title to the copyright for the package photograph, which the plaintiff maintained was the basis for the infringement. In addition, we showed that the plaintiff did not have sufficient evidence of secondary meaning to prove its trade dress claims. We also defeated plaintiff's post-judgment motion to alter or amend the judgment. The plaintiff also brought a motion to enforce a settlement, which we defeated because the settlement offer had expired prior to the plaintiff's acceptance. In addition, we obtained an award of attorney fees exceeding $250,000 for our client, due in part to plaintiff's failure to have a reasonable basis for its copyright claims.

Clearpractice, LLC v. Nimble, LLC et al., Case No. 4:11CV00725 JCH, U.S.D.C., Eastern District of Missouri, 2011

Cislo & Thomas won a motion to dismiss for lack of personal jurisdiction in a declaratory judgment action for non-infringement against its client's trademark. Plaintiff, ClearPractice, asserted personal jurisdiction over Nimble based on Nimble's website, an alleged contact in Missouri, and a cease-and-desist letter. A parallel trademark infringement case was filed in the Central District of California by Nimble. Cislo & Thomas argued that Nimble's website lacked the level of interactivity required for personal jurisdiction, the allegations of a contact in

Missouri lacked persuasive evidence, and a cease-and-desist letter without more was not enough. Cislo & Thomas further defeated plaintiff's argument to apply the first-to-file rule to keep the lawsuit in Missouri. In granting Cislo & Thomas' motion to dismiss, the court agreed that a website that did not sell any products was not sufficient for personal jurisdiction even though potential customers could submit their contact information. In addition, the court agreed with Cislo & Thomas that plaintiff failed to prove any contacts in Missouri to the extent that jurisdictional discovery was not even warranted. Finally, the court found plaintiff's action of filing a declaratory judgment in response to a cease-and-desist letter was sufficient to abrogate the first-to-file rule as plaintiff could not prove that the cease-and-desist letter affected its business practices.

Reshare v. Nikken, Case No. 10-CV-01936 JNE (D. Minn.) 2011

Cislo & Thomas successfully negotiated a settlement of this patent infringement suit involving a computer assisted selling system.

Imagenetix, Inc. v. Nikken, Inc., [and nine individual defendants], U.S.D.C., Central District of California, Case No. CV 11-3727 GHK (VBKx), 2011

Representing all ten defendants in a $31 million patent infringement suit, Cislo & Thomas LLP brought the plaintiff's entire suit to a halt. It did so by persuading the U.S. Patent Office to order reexamination of the plaintiff's asserted patent based on Cislo & Thomas LLP's showing that the patent should be invalidated. The asserted patent claims a method of treating osteoarthritis using a particular active ingredient. Cislo & Thomas LLP presented numerous examples of related methods to show that the patented method was merely obvious and thus invalid. Cislo & Thomas then secured from the district court a dismissal of nine of the ten defendants, a stay of the lawsuit pending the reexamination, and the right of the lone remaining defendant to pursue its own breach of contract counterclaim against the plaintiff in a separate arbitration proceeding while the plaintiff's patent infringement suit remains stayed.

Thuan Phong Company v. SF Supermarket at Garden Grove et al., U.S.D.C., Central District of California, Case No. CV10-01450 CBM (RNBx), 2011

In a trademark infringement case involving rice paper and allegations of counterfeiting, Cislo & Thomas successfully negotiated a settlement agreement on behalf of the defendants during a settlement conference for a case, which the magistrate judge did not believe was ripe for settlement. By bringing the settlement before the magistrate judge, defendants exposed the weakness in plaintiff's counterfeiting claims, contributing to the settlement of the case for a small fraction of what plaintiffs originally requested.

Silverlit Toys Manufactory Ltd. et al. v. Ecoman Corporation et al., U.S.D.C., Central District of California, Case No. CV09-05803 CAS (JCx), 2010

Cislo & Thomas successfully negotiated a settlement agreement on behalf of the defendants to resolve a patent and copyright infringement case involving radio controlled toy helicopters. After opening briefs were submitted for the claim construction hearing, plaintiffs agreed to settle the case in which the defendants received an undisclosed amount for their false marking counterclaims and were permitted to continue to sell certain toy helicopters. We were successful because we were able to assert false marking by the plaintiffs in the millions of dollars.

MH Systems Inc. v. Peter McNulty et al., U.S.D.C., Central District of California, 2010

Cislo & Thomas successfully defended a client against patent infringement claims. Our client, NEI Treatment Systems, LLC, sold a ballast water treatment system that was accused of infringing a patent owned by MH Systems. The patent owner's claims were all dismissed, and the Court issued a judgment whereby the patent owner took nothing.

My Health, Inc. v. Top Tier Consulting, Inc., National Arbitration Forum Claim No. FA1006001332064

ICANN domain name arbitration proceeding, decided August 26, 2010, where Cislo & Thomas LLP successfully defended Top Tier Consulting, Inc. The panel declining relief, expressly found that Top Tier Consulting registered and used the domain name myhealth.com in good faith when registration occurred more than fourteen (14) months prior to the Complainant's first use of its

registered trademark My Health. The Panel also found that in spite of not making an active use of the domain name, Top Tier Consulting demonstrated it had rights or legitimate interests in the domain name by reason of its preparations to use the disputed domain name, which included efforts to seek funding for its medical website/healthcare portal. This effort was deemed to be in connection with a bona fide offering of goods and services under ICANN Policy.

Sunbeam Products, Inc. dba Jarden Consumer Solutions v. Hamilton Beach Brands, Inc., Homeland Housewares, LLC, Alchemy Worldwide, LLC, Alchemy Worldwide, Inc., and Back to Basics Products, LLC, U.S.D.C., Eastern District of Virginia, 2010 U.S. Dist. LEXIS 74001, July 22, 2010, Decided

In a patent infringement case involving blender patents, Plaintiff Sunbeam accused Homeland Housewares, LLC (represented by Cislo & Thomas LLP), among others, of patent infringement. During discovery in the case, Cislo & Thomas LLP learned that one of its former attorneys who while at Cislo & Thomas performed a substantial amount of patent prosecution and litigation on behalf of Homeland Housewares on the same product that was accused of infringement by Sunbeam, now worked at Steptoe & Johnson. Homeland Housewares moved to disqualify Steptoe & Johnson for a conflict of interest based on Virginia Rules of Professional Conduct 1.9(a) and 1.10(a). The main issue was whether the successive representations were substantially related. After a substantial amount of briefing and a hearing, the District Court granted Homeland Housewares' motion and disqualified Steptoe & Johnson from continuing to represent Plaintiff Sunbeam Products in the case.

International Seaway Trading Co. v. Walgreens Co., 589 F. 3d. 1233 (Fed. Cir. 2009)

The Federal Circuit Court of Appeals adopted our argument that the legal standard the Federal Circuit had used for over twenty-five years in determining whether a design patent is invalid must be overturned. As a result of this decision, design patents will in general be measurably easier for an alleged infringer to invalidate, and this new legal standard, as we argued, comports with U.S. Supreme Court precedent as well as more accurately mirrors the existing legal standard for determining whether a design patent is infringed by an accused design.

Kirby Morgan Dive Systems, Inc. v. Submarine Systems, Ltd., U.S.D.C., Central District of California, Case No. CV 08-7722 SVW (PJWx)

Kirby Morgan sought judgment against Submarine Systems for trademark and trade dress infringement of its registered helmet designs, breach of a prior settlement agreement between the parties, false advertising concerning commercial deep sea dive equipment, tortious interference with economic relations, and unfair competition. Submarine Systems defaulted and the Court entered an order of default judgment in Kirby Morgan's favor with respect to all of the claims. The Court also awarded Kirby Morgan $300,000 in damages in connection with its causes of action for trademark and trade dress infringement. Finding that such infringement was willful, the Court also awarded attorneys' fees and costs in the amount of $41,422.67.

Collezione Europa USA, Inc. v. Amini Innovation Corp., U.S.D.C., District of New Jersey, 2009 U.S. Dist. LEXIS 76411, August 26, 2009, Decided

In a long-running case between two companies in the furniture industry, Amini Innovation Corporation (represented by Cislo & Thomas LLP) alleged that Collezione Europa infringed a number of its copyrights and design patents. The Court granted Amini Innovation Corporation's motion for leave to file a second amended counterclaim to the extent the motion sought to add the two individual owners of Collezione Europa into the case as counterclaim-defendants. This case was commenced in 2006 largely as a declaratory relief action by Collezione Europa. Amini Innovation Corporation counterclaimed for, among other things, copyright and design patent infringement. In 2008, Collezione Europa filed for bankruptcy protection, and the case was automatically stayed pursuant to the bankruptcy laws. Amini Innovation Corporation obtained relief from the automatic stay and ultimately moved the district court for leave to file a second amended counterclaim to add the owners of Collezione as defendants in their individual capacities with a view towards holding them personally liable for Collezione's allegedly infringing activities. The Court granted this aspect of Amini Innovation Corporation's motion by rejecting Collezione's undue delay and futility arguments under Fed.R.Civ.P. 15(a), and noting that individuals who possess the right and ability to supervise the infringing conduct and who have an obvious and direct financial interest in the exploitation of copyrighted material can be held indirectly liable for copyright infringement. This ruling confirms that those with decision-

making power in companies that infringe the intellectual property rights of others may be subject to liability for the companies' infringing acts.

Amini Innovation Corp. v. Cosmos Furniture Ltd., U.S.D.C., Central District of California, 91 U.S.P.Q 2d 1150, 2009 U.S. Dist. LEXIS 29812, March 16, 2009, Decided

On March 16, 2009, a federal judge in the Central District of California denied a Canadian defendant's motion to dismiss for lack of personal jurisdiction where the complaint alleged willful copyright and design patent infringement. The record demonstrated that the defendant knew that the plaintiff resided in Southern California and that the alleged infringements would harm the Southern California company. This ruling is significant in several respects. First, in cases of intellectual property infringement where an out-of-state defendant brings a motion to dismiss for lack of personal jurisdiction under Fed.R.Civ.P. 12(b)(2), if the complaint alleges willful infringement and the plaintiff provides uncontroverted evidence tending to show that the defendant knew the plaintiff was a resident of the forum, then jurisdiction may attach under the Calder effects test. Second, this ruling extends the holding of Amini Innovation Corp. v. JS Imports, Inc., 497 F. Supp. 2d 1093 (C.D. Cal. 2007) to not only out-of-state defendants, but foreign (non-U.S.) defendants, which is particularly significant in today's global economy. This ruling provides plaintiffs suing out-of-state, or even non-U.S., defendants with a powerful tool to maintain intellectual property lawsuits in the plaintiff's home forum.

220 Laboratories, Inc. v. David Dadaii, et al., U.S.D.C, Central District of California, Case No. CV 08-6125 PSG (SSx)

In a case removed from the California Superior Court on grounds that the action involved federal claims preempted by the Copyright Act, 220 Laboratories successfully persuaded the Federal District Court that the case should be remanded back to state court. The Court determined on December 8, 2008, that claims arising out of the defendants' improper use of plaintiff's trade secrets did not involve "works" fixed in a tangible medium of expression as required by 17 U.S.C. § 102(a) and that the state law claims of having an "extra element" was not equivalent to the rights contained in the Copyright Act, thus remanding the case to state court. The decision confirms a plaintiff's right to be the "master of the claim" by bringing non-equivalent/non-copyright causes of action in state court, free from removal to Federal Court.

International Seaway Trading Corp. v. Walgreen Co. and Touchsport Footwear USA, Inc., 599 F.Supp.2d 1307 (S.D. Fla. 2009)

In a design patent infringement case, we successfully moved for summary judgment on invalidity of three design patents on behalf of Walgreens and Touchsport having to do with shoes. The Court agreed with our position that the patentee's designs were a "knock off" of existing Crocs shoes and designed to look similar to the original so that they could be mistaken for the Crocs design. The Court invalidated the patents as anticipated by the Crocs prior art and rendered judgment in favor of the defendants. The Court's opinion is noteworthy as it is the first case to apply the Federal Circuit's most recent design patent infringement opinion, Egyptian Goddess v. Swisa, 543 F.3d 665 (Fed. Cir. 2008) (en banc), to an invalidity analysis.

MH Systems v. McNulty, U.S.D.C., Central District of California, LEXIS 106916, Dec. 31, 2008

On behalf of the defendants, Cislo & Thomas successfully defended against a Rule 60(b) motion to vacate dismissal of the plaintiff's patent infringement case. After filing the complaint, Plaintiff filed a patent reissue application and requested a stay of the court case during its examination. After two years of complete inactivity on the reissue application, the Court demanded an explanation, but the plaintiff failed to provide one. Thus, the Court dismissed Plaintiff's complaint. The plaintiff then made a motion to vacate the dismissal. The Court denied Plaintiff's motion due to Plaintiff's unexplained delays in prosecuting the reissue application, as well as Plaintiff's failure to comply with the Court's orders. The final outcome was that the Court dismissed the plaintiff's case against our client.

Kirby Morgan Dive Systems v. Hydrospace Ltd. and Smith, U.S.D.C., Central District of California, Case No. CV 08-06531 PSG (FFMx)

Kirby Morgan successfully defeated a Petition to Quash a Claim in Arbitration filed by David Smith seeking to avoid the arbitration proceeding Kirby Morgan initiated against him and Hydrospace, Ltd. Smith filed the petition in the Central District of California claiming that Kirby Morgan lacked jurisdiction over him to bring him into the pending arbitration proceeding. The parties briefed complex issues of subject matter jurisdiction and personal jurisdiction with respect to an international party, Smith, and the ability to file a demand for arbitration against

him. On January 2, 2009, the Court sided with Kirby Morgan and dismissed Smith's petition for lack of subject matter jurisdiction because it did not have the proper authority to hear Smith's petition.

Girafa.Com, Inc. v. Snap Technologies, Inc., Amazon, Inc., Amazon Web Services, LLC, Alexa Internet, Inc., IAC Search & Media, Inc., Yahoo! Inc., Exalead, S.A., Exalead, Inc. U.S.D.C., District of Delaware, 2008 U.S. Dist. LEXIS 99196, December 9, 2008, Decided

Overview: Plaintiff sought a motion for preliminary injunction against Snap Technologies (represented by Cislo & Thomas LLP) among others to enjoin Snap from providing internet users with the ability to visually preview web pages referenced by hyperlinks on a web page, claiming that such actions infringed a utility patent for computer hardware and software that adds thumbnail images to web pages with hyperlinks. The opposition to Plaintiff's motion persuaded the court that Plaintiff's claim constructions in support of its motion were unsupported, that there was no irreparable harm to Plaintiff, and that the balance of hardships did not favor Plaintiff. As a result, the court denied Plaintiff's motion finding that substantial questions as to infringement and validity existed.

Amini Innovation Corporation v. JS Imports and Designer Furniture Warehouse, U.S.D.C., Central District of California, 497 F. Supp. 2d 1093, 2007 U.S. Dist. LEXIS 43758; May 21, 2007, Decided

Overview: New York and Maryland-based defendants were accused of willfully infringing copyrights and design patents owned by plaintiff and covering the ornamental features of the furniture plaintiff sells. Defendants moved to dismiss for lack of personal jurisdiction and/or improper venue or, in the alternative, to transfer the case to the Southern District of New York. The Court denied defendants' motion to dismiss under the Calder "effects test" finding that the evidence tended to show that defendants must have known that their alleged willful copyright infringements would cause harm plaintiff, a California corporation. The court denied defendants' motion to transfer because, among other things, they failed to set forth the identity and anticipated testimony of non-party witnesses who might be inconvenienced by the case going forward in California.

Alan Lee Distributors, Inc. dba ADI Pet, Inc. and Christopher Weinberg v. Van Brown, United States Court of Appeals for the Federal Circuit, 2007 U.S. App. LEXIS 12460; May 18, 2007, Decided

Overview: The Federal Circuit affirmed the district court's grant of summary judgment finding that the asserted claims of the patent-in-suit covering meat-filled rawhide chew toys for dogs were invalid for obviousness pursuant to 35 U.S.C. § 103.

Time 'N Temperature Co. (TNT), v. Sensitech, Inc., United States Court of Appeals for the Federal Circuit, 2007 U.S. App. LEXIS 2273; January 30, 2007, Decided

Overview: The Federal Circuit held that a patent directed to an electronic monitoring device capable of sensing and recording external parameters was invalid as anticipated by the prior art. The district court's order enjoining the sale of TNT's devices was reversed. A subsequent petition for rehearing was denied by the Federal Circuit.

Amini Innovation Corporation v. Anthony California, Inc., United States Court of Appeals for the Federal Circuit, 2007 U.S. App. LEXIS 420; January 8, 2007, Decided

Overview: The Federal Circuit reversed the district court's order granting summary judgment of non-infringement of a design patent for a dresser since it was improper to focus on specific elements of the dressers rather than analyzing the designs as wholes from the perspective of an ordinary observer. The design patent and a photograph of the competitor's dresser created a factual issue as to whether an ordinary observer was likely to purchase one dresser thinking it was the other.

Amini Innovation Corp. v. Anthony California, Inc., United States Court of Appeals for the Federal Circuit, 439 F.3d 1365; 2006 U.S. App. Lexis 5383; 78 U.S.P.Q.2d (BNA) 1147; Copy. L. Rep. (CCH) P29,142, March 3, 2006, Decided

Overview: In a case involving an alleged infringer of copyrights and a furniture design patent, because the Trial Court mistakenly applied both the extrinsic and intrinsic tests for substantial similarity in copyright infringement and an element-by-element test for design patent infringement, the Court reversed Summary Judgment Grant of Non-Infringement.

Switchmusic.com., Inc. v. U.S. Music Corp., U.S.D.C., Central District of California, 416 F. Supp. 2d 812; 2006 U.S. Dist. Lexis 25178, January 24, 2006, Decided

Overview: California guitar manufacturer was entitled to Summary Judgment in its action seeking a declaration of Non-Infringement of Trade Dress, 15 U.S.C.S. § 1125(A), as to body shape of Illinois guitar manufacturer's "Parker" line of guitars. The body shape trade dress was functional, did not have secondary meaning, and there was no likelihood of confusion.

Wolf Designs, Inc. v. DHR & Co., Collectives, Inc., U.S.D.C., Northern District of Georgia, Atlanta Division, 231 F.R.D. 430; 2005 U.S. Dist. Lexis 29653; 63 Fed. R. Serv. 3d (Callaghan) 179, September 27, 2005, Decided

Overview: In the trade dress and patent infringement action, Court refused to undo discovery rulings made by California Court prior to transfer under 28 U.S.C.S. § 1404(A) where discovery deadlines had expired. The Court disallowed competitors' leave to amend answer to add known affirmative defense where they failed to show good cause under Fed. R. Civ. P. 16.

Wolf Designs v. Donald McEvoy Ltd., Inc. U.S.D.C., Northern District of Texas, Dallas Division, 2005 U.S. Dist. Lexis 5853, April 6, 2005, Decided

Overview: A motion for reconsideration of the denial of a motion to transfer venue pursuant to 28 U.S.C.S. § 1404(A) was denied because Defendants failed to show that the cases could have been brought in the transferee forum and they possessed "new" evidence supporting minimum contacts with the transferee forum at the time they brought their original motion.

Lawrence Music, Inc. v. Samick Music Corp., U.S.D.C., Western District of Pennsylvania, 227 F.R.D. 262; 2005 U.S. Dist. Lexis 14741, March 23, 2005, Decided

Overview: Motion to intervene pursuant to Fed. R. Civ. P. 24(B) was denied because for the insurance exchange to interject itself into the proceedings at the extremely late date, disrupt the trial, and delay the proceedings was inexcusable given the time lapse and the fact that such problems could have easily been avoided if it had been diligent.

Wolf Designs, Inc. v. Donald McEvoy Ltd., Inc., U.S.D.C., Northern District of Texas, Dallas Division, 355 F. Supp. 2d 848; 2005 U.S. Dist. Lexis 3171, January 31, 2005, Decided

Overview: Where competitors who sought transfer of lawsuits alleging trade dress and patent infringement failed to prove that, absent their consent, they would have been subject to personal jurisdiction in Georgia when a patent holder filed instant suits in Texas. They also failed to establish that 28 U.S.C.S. § 1404 authorized transfer of suits to Georgia.

Amini Innovation Corporation v. Classic World Imports, Inc., U.S.D.C., Northern District of Texas, 2005 U.S. Dist. LEXIS 406; January 12, 2005, Decided

Overview: In an effort to prevent Plaintiff from enforcing its copyrights for furniture designs, Defendant requested that the court stay the action pending the resolution of certain allegedly related actions filed by Plaintiff in a California court claiming that a stay would promote judicial economy and avoid the possibility of inconsistent rulings between the Texas court and the court in California. The Texas court denied Defendant's motion finding that a stay would only delay Plaintiff's attempt to recover for the copyright infringements and not serve judicial economy where the cases in California were not shown to be related to the Texas action.

Amini Innovation Corporation v. Anthony California, Inc., U.S.D.C. Central District of California, 2004 U.S. Dist. Lexis 29980, November 29, 2004. Decided, December 3, 2004, Filed, Reversed by, Remanded by, Patent Interpreted by Amini Innovation Corp. v. Anthony California, Inc., 439 F.3d 1365, 2006 U.S. App. Lexis 5383 (Fed. Cir., 2006)

Lawrence Music, Inc. v. Samick Music Corp., U.S.D.C., Western District of Pennsylvania , 2004 U.S. Dist. Lexis 28217, November 17, 2004, Decided, Motion Denied by Lawrence Music, Inc. v. Samick Music Corp., 227 F.R.D. 262, 2005 U.S. Dist. Lexis 14741 (W.D. Pa., 2005)

Overview: A guitar dealer registered and commercialized a domain name containing a manufacturer's name; however it was an authorized dealer for the manufacturer, thus, the manufacturer's infringement, unfair competition, and false designation of origin counter claims under 15 U.S.C.S. §§ 1114, 1125(A), failed as to sales of the manufacturer's goods.

Lawrence Music, Inc. v. Samick Music Corp., U.S.D.C., Western District of Pennsylvania , 2004 U.S. Dist. Lexis 28216, November 4, 2004, Decided, Summary Judgment Granted in Part, Summary Judgment Denied in Part

Overview: In an action by a musical instrument seller against a musical instrument manufacturer, a portion of a transcript from a videotaped conversation was stricken from the evidence where, although there was a U.S. Const. Amend. v. self-incrimination issue raised by the videotape, the seller failed to disclose the transcript before the close of discovery.

Wolf Designs, Inc. v. Donald McEvoy Ltd., U.S.D.C., Northern District of Texas, Dallas Division, 341 F. Supp. 2d 639; 2004 U.S. Dist. Lexis 21894, October 15, 2004, Decided

Overview: Plaintiff's patent infringement action in Texas was stayed pending resolution of a California action because the issues in the cases were substantially similar, the witnesses overlapped, and the California action was the first-filed action.

Wolf Designs, Inc. v. DHR & Co., U.S.D.C., Central District of California, 322 F. Supp. 2d 1065; 2004 U.S. Dist. Lexis 12124, May 19, 2004, Decided

Overview: Personal jurisdiction existed over a Georgia resident, the president of a corporation, where there was evidence that the president was directly involved in the corporation's alleged passing off of inferior products as those of a seller.

Miracle Blade, LLC v. Ebrands Commerce Group, LLC, U.S.D.C., District of Nevada, 207 F. Supp. 2d 1136; 2002 U.S. Dist. Lexis 15120; 63 U.S.P.Q.2d (BNA) 1265; Copy. L. Rep. (CCH) P28,484, June 4, 2002, Decided

Overview: Knife retailer was denied preliminary injunction in its copyright infringement action as most of its infomercial was not based on original material or was scenes a faire, and there were significant differences in settings, moods, plots, and dialogue.

Guthy-Renker Corp. v. Bernstein, United States Court of Appeals for the Ninth Circuit, 39 Fed. Appx. 584; 2002 U.S. App. Lexis 8369; Copy. L. Rep. (CCH) P28,429, April 11, 2002, Argued and Submitted

Overview: Where a photograph was aired over 9,000 times before copyright holder alerted a corporation to its breach of the licensing agreement, it was not error to hold liquidated damages provision, requiring payment of $5,000 for each omission unenforceable.

Lohan Media LLC v. Thane Int'l., Inc., U.S.D.C., Central District of California, 2001 U.S. Dist. Lexis 23571; 62 U.S.P.Q.2d (BNA) 1042, November 16, 2001, Decided

Overview: Company's evidence that the competitor infringed the company's copyrighted infomercial failed where the two infomercials consisted of a series of non-original elements, which were not protectable.

Electropix Inc. v. Liberty Livewire Corp., U.S.D.C. for the Central District of California, 178 F. Supp. 2d 1125; 2001 U.S. Dist. Lexis 15228; 60 U.S.P.Q.2d (BNA) 1346, August 20, 2001, Decided

Overview: Injunctive relief was granted enjoining a competitor and its subsidiary from using producer's mark by itself or with generic or descriptive terms, but was denied as to use of mark in connection with competitor's and subsidiary's business.

Continental Lab. Prods. v. Medax Int'l., U.S.D.C., Southern District Of California, 114 F. Supp. 2d 992; 2000 U.S. Dist. Lexis 13762; 56 U.S.P.Q.2d (BNA) 1548, September 18, 2000, Decided

Overview: Trade dress infringement suit for disposable pipette tips trays failed as Plaintiff had no direct evidence of secondary meaning. Circumstantial evidence of advertising, promotional expenditures, and sales were insufficient to prove secondary meaning.

Guthy-Renker Corporation v. Bernstein, U.S.D.C., Central District of California, 1999 U.S. Dist. Lexis 23361; 27 Media L. Rep. 2084, March 5, 1999, Decided

Overview: A liquidated damage provision regarding a photographer's missing screen credit from an infomercial was held to be an unenforceable penalty where the parties made no effort to estimate the actual damages that would flow from the omission of such credit and where the liquidated damages amount had no reasonable relationship to damages.

Slip Track Sys. v. Metal Lite, United States Court Of Appeals for the Federal Circuit, 159 F.3d 1337; 1998 U.S. App. Lexis 22408; 48 U.S.P.Q.2d (BNA) 1055, September 14, 1998, Decided

Overview: A District Court improperly stayed Appellants' interfering patents suit where a foreseeable consequence of the stay was that Appellants would have been unable to raise the issue of prior invention in any forum.

Guthy-Renker Fitness LLC v. Icon Health & Fitness, U.S.D.C., Central District of California, 1998 U.S. Dist. Lexis 16553; 48 U.S.P.Q.2d (BNA) 1058, July 15, 1998, Decided

Overview: In a patent infringement claim, a motion to stay proceedings was warranted pending the reexamination of a patent and a security requirement during the stay was not required.

Jin Ching Indus. v. Wong's Int'l. Trading Import & Export U.S.D.C., Central District of California, 1998 U.S. Dist. Lexis 14759; 47 U.S.P.Q.2d (BNA) 1509, May 26, 1998, Decided

Overview: A summary judgment in favor of corporations was proper on their Copyright infringement claim as the mere fact that a similar, even identical, work by competitors predated the corporations' sculptures did not invalidate their Copyright. Successfully took over case and settled with insurance company paying all damages and no further obligation to clients.

Guthy-Renker Fitness LLC v. Icon Health & Fitness, U.S.D.C., Central District Of California, 179 F.R.D. 264; 1998 U.S. Dist. Lexis 7172; 46 U.S.P.Q.2d (BNA) 1344, March 16, 1998, Decided

Overview: A patent holder's letter to a manufacturer did not provide a sufficiently specific indication of the patent holder's intent to file suit that would justify departing from the first-to-file rule in the parties' competing suits.

Citicasters Co. v. Country Club Communs., U.S.D.C., Central District of California, 1997 U.S. Dist. Lexis 17238; 44 U.S.P.Q.2d (BNA) 1223, July 21, 1997, Decided

Overview: The Court had discretion under the "Primary Jurisdiction" Doctrine or through its power to monitor its own docket to grant corporation stay pending the Trademark Trial and Appeal Board's Decision in the cancellation proceeding involving broadcaster.

Suntiger, Inc. v. Telebrands Adver. Corp., U.S.D.C., Eastern District of Virginia, Alexandria Division, 1997 U.S. Dist. Lexis 24123, May 30, 1997, Decided

Overview: In a claim for infringement of four patents, Defendants' motions for summary judgment were denied as to one; action was stayed pending decision of Patent and Trademark Office on Plaintiffs' petition to revive application. As to one, Court could not find that original specification did not disclose invention and manner of making and using invention.

No Touch N. Am. v. Blue Coral, U.S.D.C., Central District of California, 1997 U.S. Dist. Lexis 16153; 43 U.S.P.Q.2d (BNA) 1862, May 29, 1997, Decided

Overview: Court had limited jurisdiction over Defendant where Defendant accepted assignment of trademark that was subject of lawsuit in district and Defendant did not show proceeding in district would result in clear inconvenience.

National Customer Eng'g v. Lockheed Martin, U.S.D.C., Central District of California, 1997 U.S. Dist. Lexis 10757; 43 U.S.P.Q.2d (BNA) 1036, February 14, 1997, Decided

Overview: Plaintiff's motion for preliminary injunction in trademark infringement action was granted because plaintiff showed probability of success on merits through likelihood of confusion, and showed possibility of irreparable harm.

Stulberg v. Intermedics Orthopedics, U.S.D.C., Northern District of Illinois, Eastern Division, 1995 U.S. Dist. Lexis 18408, November 29, 1995

Overview: Plaintiffs were not entitled to an Order to Stay pending arbitration of Defendant's Motion for Summary Judgment because Plaintiffs waived that right by engaging in considerable discovery prior to the motion.

Ellison Educ. Equip. v. Tekservices, Inc., U.S.D.C., District of Nebraska, 903 F. Supp. 1350; 1995 U.S. Dist. Lexis 19725; 37 U.S.P.Q.2d (BNA) 1563, April 12, 1995, Dated

Overview: Corporation granted preliminary injunction against alleged copyright infringer because demonstration of likelihood of success on merits and irreparable harm made; Court found no false advertising or trade dress infringement.

Magnesystems v. Nikken, U.S.D.C., Central District of California, 1994 U.S. Dist. Lexis 20182; 34 U.S.P.Q.2d (BNA) 1112, June 13, 1994, Decided

Overview: Plaintiff was granted summary judgment in patent infringement case where Plaintiff proved that the undisputed facts established literal infringement, and Defendants were unable to establish that Plaintiff's patent was invalid. Successfully settled case in favor of client.

BMMG, Inc. v. American-Telecast Corp., U.S.D.C., Central District of California, 1993 U.S. Dist. Lexis 21072, May 6, 1993, Decided

Overview: Infomercial producers were entitled to summary judgment because golf instruction video maker failed to show causation between alleged falsities and loss in sales when he assumed causation was proved by comparative sales instead of sales lost thereby.

Cablestrand Corp. v. Wallshein, United States Court of Appeals for the Federal Circuit, 989 F.2d 472; 1993 U.S. App. Lexis 4250; 26 U.S.P.Q.2d (BNA) 1079, March 8, 1993, Decided

Overview: Because the Court had no basis on which to review the Appealed Judgment in the patent infringement action without findings of fact and conclusions of law, remand was appropriate for the Trial Court to make the findings of fact and conclusions of law.

Westward Co. v. Gem Products, Inc., U.S.D.C., Eastern District of Michigan, Southern Division, 570 F. Supp. 943; 1983 U.S. Dist. Lexis 15379; 219 U.S.P.Q. (BNA) 784, July 18, 1983

Overview: Plaintiff was enjoined since there was a likelihood of confusion, secondary meaning was shown with product designators, and trade dress was similar; damages were denied because defendant did not establish actual damages.

Model Rectifier Corp. v. Takachiho Int'l., Inc., United States Court of Appeals for the Ninth Circuit, 709 F.2d 1517; 1983 U.S. App. Lexis 27579; 221 U.S.P.Q. (BNA) 502, May 18, 1983

Overview: Appellee was entitled to preliminary injunction in trademark infringement action against appellant importers and retailers by demonstrating probable success on the merits of its claim and irreparable harm.

Feltman-Langer, Inc. v. Coast Orient Trading Corp., U.S.D.C., Central District of California, 1983 U.S. Dist. Lexis 17711; 223 U.S.P.Q. (BNA) 366, April 14, 1983, Decided

Overview: Manufacturer was entitled to preliminary injunction under Lanham Act enjoining distributor from selling a product that was substantially identical to manufacturer's product in its configuration, trade dress, and packaging.

Model Rectifier Corp. v. Takachiho International, Inc., U.S.D.C., Central District of California, 1982 U.S. Dist. Lexis 17601; 220 U.S.P.Q. (BNA) 508, August 4, 1982

Overview: A trademark holder for plastic model kits won a preliminary injunction against importers because it was likely that the trademark holder would prevail in its suit against the importers for alleged trademark infringement and unfair competition.

Phoceene Sous-Marine, S. A. v. U.S. Phosmarine, Inc., United States Court of Appeals for the Ninth Circuit, 682 F.2d 802; 1982 U.S. App. Lexis 17091; 34 Fed. R. Serv. 2d (Callaghan) 951, April 8, 1982, Argued and Submitted

Overview: Default judgment was not a proper sanction for a party's deception where that deception related only to the need for a continuance not the merits of the case.

M-C Industries, Inc. v. Precision Dynamics Corp., United States Court of Appeals, Ninth Circuit, 634 F.2d 1211; 1980 U.S. App. Lexis 11074; 211 U.S.P.Q. (BNA) 22, December 29, 1980, Decided

Overview: After determining the scope and content of the prior art, the differences between the prior art and the claim at issue, and the level of ordinary skill in the art, patents were held invalid because they were not obvious.

Ajax Hardware Corp. v. Packaging Techniques, Inc., U.S.D.C., Central District of California, 1974 U.S. Dist. Lexis 9082; 182 U.S.P.Q. (BNA) 559, Apr. 8, 1974 and Apr. 23, 1974

Overview: Under Lanham Act of 1946, where party who registered a trademark did not have exclusive use of the mark for period preceding the registration, registration was invalid and subject to cancellation.

"Why International Inventors Might Want to Consider Filing Their First Patent Application at the United States Patent Office & the Convergence of Patent Harmonization and E-Commerce."

Article by Daniel M. Cislo, Michael H. Anderson, Jaime Saavedra, Kimberly Cameron (2014)

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Why International Inventors Might Want to Consider Filing Their First Patent Application at the United States Patent Office & the Convergence of Patent Harmonization and E-Commerce

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WHY INTERNATIONAL INVENTORS MIGHT WANT TO CONSIDER FILING THEIR FIRST PATENT APPLICATION AT THE UNITED STATES PATENT OFFICE & THE CONVERGENCE OF PATENT HARMONIZATION AND ECOMMERCE

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Abstract

On March 16, 2013, the United States implemented the Leahy-Smith America Invents Act (AIA). Enactment of the AIA substantially enhances the value of U.S. provisional and non-provisional patent applications (PPAs and NPAs) to foreign applicants. Here, the

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authors endeavor to outline the procedural and strategic considerations facing foreign applicants for PPAs by offering a brief survey of protective foreign patent application law, followed by an analysis of the modern benefits of PPA filing in the post-AIA world. The analysis here suggests that the traditional benefits to foreign filers of PPAs encompassing term extension, cost-efficiency and secrecy have been amplified by the establishment of a first-to-file priority system in the United States.

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INTRODUCTION

The U.S. provisional patent provided for in 35 U.S.C Section 111(b) was created in 1995 as component of the Uruguay Round implementation for the General Agreement on Tariffs and Trade (GATT).[1] Nearly two decades later, with the growth of eCommerce technologies[2] and the convergence of several international treaties,[3] these lower-cost filings have taken hold. Since 1995, over 1.7 million provisional applications have been filed,[4] with 160,000 provisional patent applications (PPAs) filed in 2012 alone.[5] According to United States Patent and Trademark Office (USPTO) annual reports, the provisional application filing-rate expanded from 27% of the non-provisional rate in 2002 to over 30% in 2007.[6] This growing rate is due, in part, to an increase in foreign applications, which accounted for 49% of total worldwide utility patents granted in 2007 (51% of U.S. origin).[7] By 2012, the percentage of total foreign utility patents granted grew to 52%.[8]

One important driver of this growth in U.S. patent filings is technology. In particular, modern web-based filing tools decrease the time and costs required to file patents internationally. Because

1. Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (codified as amended at 19 U.S.C. § 3501 (2012)).

2. *File Your Provisional Patent*, CISLO & THOMAS LLP (July 25, 2013), cisloandthomas.com/file-your-provisional-patent/ (discussing web-based filing tools like patentfiler.com). Alternate web-based filing services include patentexpress.com & EFS-Web, among others. While the primary authors here are biased, we find that patentfiler.com represents perhaps the most efficient tool available to search, consult and file patent applications from a single, integrated system.

3. Carolita L. Oliveros, *International Distribution Issues: Contract Materials, in* PRODUCT DISTRIBUTION AND MARKETING 779, 787 (2004) (discussing trade irritants resolved by NAFTA and the Trilateral Conference of the Japan Patent Office (JPO), USPTO, and EPO; also discussing, in September 1999, action by the Standing Committee on the Law of Patents (SCP) which harmonizes the Patent Law Treaty (PLT) with the Patent Cooperation Treaty (PCT) by standardizing several various patent filing formalities).

4. *See USPTO Annual Reports 1995-2012*, USPTO.GOV, http://www.uspto.gov/about/stratplan/ar/ (last visited Apr. 14, 2014).

5. *See Performance and Accountability Report: fiscal year 2012,* USPTO.GOV, http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf (last visited Apr. 14, 2014).

6. *Performance and Accountability Report Fiscal Year 2002*, USPTO.GOV, http://www.uspto.gov/about/stratplan/ar/USPTOFY2002PAR.pdf (last visited Apr. 14, 2014); *Performance and Accountability Report Fiscal Year 2007*, USPTO.GOV, http://www.uspto.gov/about/stratplan/ar/USPTOFY2007PAR.pdf (last visited Apr. 14, 2014).

7. USPTO, U.S. PATENT STATISTICS REPORT (2012), *available at* http://www.uspto.gov/web/offices/ac/ido/oeip/taf/reports.htm.

8. *Performance and Accountability Report: fiscal year 2012,* USPTO.GOV, http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf (last visited Apr. 14, 2014).

satisfaction of disclosure and written description criteria[9] most often require the guidance of a patent attorney, several proprietary providers such as patenfiler.com,[10] nolo.com,[11] and patentexpress.com,[12] have appeared, each offering interactive sites where applicants can search for prior art, consult with an attorney, and file electronic applications using a single resource.

Notwithstanding these technological advantages, the PPA has sustained popularity around the world due to its limited formal requirements.[13] To establish an effective filing date for a PPA, an applicant need only provide a brief description of the invention and drawings (if necessary for an understanding of the invention).[14] While the provisional application itself does not lead to the grant of a patent, it does give rise to a priority date for a subsequent, non-provisional application.[15] The non-provisional application must be filed within twelve months of the date of the PPA filing and must include a reference to the provisional application.[16]

With inexpensive filing fees, flexible language requirements, and the maintenance of secrecy for twelve months, the PPA allows early stage inventors to easily secure a priority date without publicly disclosing their invention.[17] The utility of these features has only been amplified by implementation of the Leahy-Smith America Invents Act (AIA)[18] on March 16, 2013. The two principal features of the AIA provisions impacting foreign filing practice are 1) the shift under the U.S. system from a "first-to-invent" priority principle to a "first-to-file" system, and 2) the extension of Section 102 protections to residents of foreign countries by removal of geographic limitations.[19]

9. 35 U.S.C. § 112 (2006).

10. Cislo & Thomas LLP, *Quick & Easy Patent Protection*, PATENTFILER.COM, http://patentfiler.com/ (last visited Apr. 14, 2014).

11. *NOLO Law for All*, NOLO.COM, http://www.nolo.com/ (last visited Apr. 14, 2014).

12. *Patent Attorney Guided Do-It-Yourself Service*, PATENT EXPRESS, http://www.patentexpress.com/ (last visited Apr. 14, 2014).

13. 35 U.S.C § 111(b) (2006) (discussing the formal requirements for filing a U.S. provisional patent application).

14. *Id*.

15. 35 U.S.C § 119(e)(1) (Supp. 2012).

16. *Id*. § 119(e).

17. *Id*.

18. Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284-341 (2011) (codified in scattered sections of title 35).

19. 35 U.S.C § 102 (Supp. 2012) (contrasting changes between pre- and post-AIA provisions).

By awarding priority rights to applicants who win "the race to the Patent Office", the AIA greatly accentuates the existing procedural and cost benefits of PPAs.[20] With these new advantages under the AIA, the U.S. Provisional Patent Application has emerged as an invaluable tool for foreign & domestic patent applicants who wish to commercialize their products in the United States. While filing in the U.S. first is generally advisable for foreign applicants, there are some important issues to consider when deciding whether to initiate a PPA application in the United States.

I. PRELIMINARY CONSIDERATIONS

Among the many considerations facing foreign patent applicants, it is particularly important to examine national patent laws. For example, some foreign laws limit the filing of patent applications abroad before a national patent application filing or authorization occurs.[21] What happens when a foreign entity or inventor first files a patent application in the U.S. and then subsequently files in her native country? The answer can vary by country and often depends on the nationality of the applicant and the jurisdiction in which the invention was made. This article makes no attempt to examine all international jurisdictions, although many of the applicable treaties would apply universally.[22]

The majority of industrialized countries that have enacted security provisions focus restrictions on the export of technology posing a potential threat to national security. Although these provisions vary substantially between jurisdictions and in some cases are ill-enforced, countries with protective patent laws generally fall into three categories: 1) countries with no security provisions, 2) countries with security provisions which only relate to defense related

20. Wilson Sonsini Goodrich & Rosati, *The Race to the Patent Office Begins March 16, 2013: Are you Ready?* (Jan. 25, 2013), http://www.wsgr.com/WSGR/Display.aspx?SectionName=publications/PDFSearch/wsgralert-race-to-the-patent-office.htm.

21. *See, e.g.*, Patent Law of the People's Republic of China (promulgated by Standing Comm. Sixth Nat'l People's Cong., Mar. 12, 1984, effective Apr. 1, 1985) art. 8 (P.R.C. Laws), *available at* http://www.chinatrademarkoffice.com/about/laws2.html; Loi 77-683 du 30 juin 1977 Code de law Propriété Intellectuelle [Law 614 of June 30, 1977 Intellectual Property Code Intellectual Property Code], art. 614 (Fr.), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=180336.

22. Neil Kenneth Ireland et al., *Export Restrictions Requiring First Filing With Inventors from Multiple Jurisdictions,* INTELLECTUAL PROPERTY OWNERS ASS'N (Dec. 2010), http://www.ipo.org/wp-content/uploads/2013/03/IPO_Committee_Newsletter-December2010.pdf.

technology, and 3) countries with security provisions which apply irrespective of invention subject matter.[23]

A. Countries with Defense Technology Requirements

Generally, the European Patent Convention (EPC) allows for a single application to be filed and prosecuted with the European Patent Office (EPO), and later to obtain a national patent in individual member countries.[24] However, the EPC does permit member countries the discretion to require prior application or authorization in order to safeguard inventions relevant to military purposes.[25] The United Kingdom[26] and Germany[27] represent two chief EU member states requiring prior authorization for defense technology (Table 1.1). Similarly, South Korea requires security clearance for inventions that are related to defense technology.[28]

B. Countries that Require a License for All Inventions

In some countries, like China, nearly all inventions require a foreign filing license.[29] Recent changes to Chinese patent laws, including changes to Rules 8 and 9, require entities and individuals wishing to file a patent application based on an invention or utility model "completed" in China to first seek approval from the State Intellectual Property Office (SIPO) via a "secrecy" examination

23. *See id*.

24. European Patent Organization, Convention on the Grant of European Patents (European Patent Convention) art. 2(1), Oct. 5, 1973, 1065 U.N.T.S. 199.

25. *Id*. art. 75(1)(a).

26. Patents Act, 1977, § 23 (U.K.). (requiring acquisition of security clearance for inventions that are related to defense technology).

27. Section 52 of Germany's Patent Law states:

> (1) A patent application containing a state secret (Section 93 of the Criminal Code) may only be filed, outside the territory to which this Act applies, with the written consent of the competent highest federal authority. Consent may be given subject to condition.
>
> (2) Any person who
>
> 1. files a patent application in violation of the first sentence of subsection (1) or
>
> 2. acts in violation of a condition under the second sentence of subsection (1)
>
> shall be liable to imprisonment not exceeding five years or to a fine.

Patentgesetz [PatG] [Patent Law], May 5, 1936, as amended by the Act on Improvement of Enforcement of Intellectual Property Rights of July 31, 2009, § 52 (Ger.), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=238776.

28. [Patent Act], Act No. 950, Nov. 28, 1949, as amended by Act No. 9985 of Jan. 27, 2010, art. 41 (S. Kor.).

29. Ireland et al., *supra* note 22.

procedure.[30] Rule 9 establishes a four-month waiting period before an applicant can proceed with a foreign patent application filing.[31] Other notable countries with similar licensing requirements include India,[32] Malaysia,[33] Singapore,[34] and New Zealand[35] (Table 1.1).

C. Countries with National-First Filing Requirements

There are also a number of countries with security provisions that require all patent applications to be filed nationally first. These countries do not typically grant foreign filing licenses.[36] For example, Portugal requires applicants with corporate offices or residence in Portugal to first file with the national office unless priority is claimed to a prior national application.[37] The Portuguese Patent Office then sends all filed patents falling within the code section to the Department of Defense Ministry for evaluation of the need to maintain the invention as a secret for national defense purposes.[38] Failure to comply with this requirement forfeits national patent protection.[39] Countries with similar provisions include France[40] and the Russian Federation,[41] although these provisions are often ill

30. Dr. Xuqiong Wu, *Impact of Recent Chinese Patent Law Amendments,* ROPES & GRAY LLP (Jan. 2010), http://www.ropesgray.com/files/Publication/cec6a587-475f-4906-8d66-4f0ec25fe06d/Preview/PublicationAttachment/6c2a5c84-dbeb-40fd-8748-51ea365d2fe5/ARTICLE_Wu_Law360.pdf.

31. *Id*.

32. The Patents Act (Act. No. 39/1970), § 39 (as amended by the Patents (Amendment) Act (Act. No. 15/2005)). A resident of India must either (1) first file in India and await a 6 week period for a security clearance from the Indian patent office; or (2) seek written permission for a foreign filing license. *Id*.

33. The Patents Act (Act No. 291/1983), § 23A (Malay.).

34. The Patents Act (Act No. 21/1994), § 34A (Sing.).

35. Patents Act 1953, § 25(5) (N.Z.).

36. Ireland et al., *supra* note 22.

37. *Patent First Filing Rule Interpreted by Lisbon Court of Commerce*, IP VIEWS&NEWS (Feb. 14, 2014), http://sgcr.wordpress.com/2011/12/28/first-filing-rule-in-portuguese-patent-law/ [hereinafter *Patent First Filing Rule*].

38. *Id*.; Decree Law (No. 42201/1959) art. 76 (Port.).

39. *See Patent First Filing Rule*, *supra* note 37.

40. Loi 77-683 du 30 juin 1977 Code de law Propriété Intellectuelle [Law 614 of June 30, 1977 Intellectual Property Code Intellectual Property Code], arts. 614-18, 614-20 (Fr.). Article 614-18 states: "International applications for the protection of an invention submitted by natural or legal persons having their place of residence or business in France must be filed with the National Institute of Industrial Property where no claim is made to priority under an earlier filing in France . . . ." *Id*.

41. Patentnii Zakon Rossiiskoi Federatsii [Patent Law of the Russian Federation], Vedomosti, S'ezda Narodnykh Deputatov Rossiiskoi Federatsii I Verkhovnogo Soveta Rossiskoi Federatsii [Gazette of the Congress of Peoples Deputies of the Russian Federation and the Supreme Soviet fo the Russian Federation], Issue #42, Item No. 2319, at 2973-89, art. 35 (22

enforced.

Application of some "national-first" filing laws are complicated by divergent judicial interpretation.[42] The relevant laws of the U.S., for example, apply only to inventions "made in this country."[43] Similar language appears in the patent laws of Russia and China.[44] In determining the locus of invention, each of these countries generally consider the site of facilities and labor, the place of invention conception, and the location of scientists with background knowledge indispensable to the invention.[45]

The relevant U.K. law, by contrast, applies to any "person resident" in the country and applies broadly to any invention made by a U.K. resident anywhere in the world.[46] The "person resident" language also appears in the patent laws of India, Malaysia, Singapore, South Korea, New Zealand and France.[47]

D. Countries with No Security Provisions

Although protective provisions are triggered in some countries when inventions are made by nationals of that country, in other countries there appear to be no such restrictions. For example, Australia, Japan, Canada, and Mexico require no security clearance before filing in another jurisdiction.[48] Smaller developing countries generally fall into this category. Indeed, neither Indonesia, Czech Republic, Cyprus, Slovak Republic, Switzerland nor Taiwan imposes export controls on inventions originating within their borders.

Oct. 1992). Where an invention is developed in Russia, the patent application should be first filed in Russia. *Id*.

42. Ireland et al., *supra* note 22.

43. *Id*.

44. *See* Patent Law of the People's Republic of China (promulgated by Standing Comm. Sixth Nat'l People's Cong., Mar. 12, 1984, effective Apr. 1, 1985) art. 8 (P.R.C. Laws), *available at* http://www.chinatrademarkoffice.com/about/laws2.html; Patentnii Zakon Rossiiskoi Federatsii [Patent Law of the Russian Federation], Vedomosti, S'ezda Narodnykh Deputatov Rossiiskoi Federatsii I Verkhovnogo Soveta Rossiskoi Federatsii [Gazette of the Congress of Peoples Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation], Issue #42, Item No. 2319, at 2973-89, art. 35 (22 Oct. 1992).

45. *Id*.

46. Patents Act, 1977, § 23 (U.K.).

47. Ireland, *supra* note 22.

48. Marc Sockol & Aaron Wininger, *Awareness of Foreign Filing Requirements For Inventions Originating Outside the United States Can Prevent Adverse Consequences*, PLI.EDU, http://www.pli.edu/emktg/toolbox/Foreign_Filing04.pdf.

1. First-Filing Requirement Summary

The table below provides a survey of countries incorporating protective patent law provisions, with a focus on the largest economies and most active patent offices. Measuring by number of patent applications filed, the five largest patent offices in 2011 included the Chinese Patent Office (SIPO), the U.S. Patent and Trademark Office (USPTO), the Japanese Patent Office (JPO), the Korean Patent Office (KIPO), and the European Patent Office (EPO).[49] If one expands this group to include the patent filings India, Russia, Canada, Australia, Brazil, Mexico, and Singapore, the total group would account for about 95% of patent applications filed worldwide and about 85% of worldwide gross domestic product (GDP).[50] Accordingly, the table below is arranged in descending order of 2013 worldwide gross domestic product, summarizing the majority of protective provisions imposed by the major industrialized countries of the world.[51]

49. *Patent Filing and Litigation Information by Country*, WITKOWSKI LAW, http://www.witkowskilaw.com/patent_filing_by_country.php (last visited Apr. 15, 2014).

50. *Id*.

51. IMF, *World Economic Outlook*, INT'L MONETARY FUND (Oct. 2013), http://www.imf.org/external/pubs/ft/weo/2013/02/.

Table 1. First Filing Requirement[52]

Country	Triggering Circumstances	Regulation	Length of Delay	Penalty for Violation
USA	Application Subject to Secrecy Order (includes modifications, amendments, and supplements) Willful publication or disclosure of invention despite knowledge of secrecy order	Foreign filing license must be obtained within six months of the U.S. filing date; foreign filing can only occur after the lifting of the Secrecy Order and the issuance of a foreign filing license Chapter 17 of Title 35 of the United States Code, 35 U.S.C. §§ 181 to 188, 35 U.S.C. § 186	A U.S. patent application describing a domestic invention must be filed *six months before the foreign filing* or a foreign filing license from the USPTO is required	Violation will *prevent issuance*. If already issued, violation will *invalidate* a patent Penalty of *imprisonment* up to 2 years, *fine* of up to $10,000, or both (35 U.S.C. § 186) If invention does not compromise national security and foreign application is filed without deceptive intent, the USPTO may grant a retroactive foreign filing license (35 U.S.C. §§ 184-185)
Peoples Republic of China	Invention or utility model *"completed" in China* (the substantive or material portion has been completed in China)	Art. 8, 9, and 20 of Chinese patent law Prior SIPO Approval Required	4 months or less	If the subject matter relates to national security, violation is subject to criminal penalties
Japan	No required security clearance to file in a foreign jurisdiction			

52. Karen Canaan, *Patent Application Foreign Filing Licenses; Countries with foreign filing license requirements*, CANAANLAW, P.C., http://www.canaanlaw.com/downloads/PSM_Aug2008.pdf; Wu, *supra* note 30; Loi 92-597 du 1 er juillet 1992 relative au code de la proprété intellectuelle [Law No 92-597 of July 1, 1992 relative to the Intellectual Property Code], Journal Officiel de la République Francaise [J.O.] [Official Gazette of France], July 3, 1992, p. 8801.

Country	Triggering Circumstances	Regulation	Length of Delay	Penalty for Violation
Germany	Application *describes state secret*	§ 52 of the German Patent Act Can only be filed abroad with a foreign filing license from the Federal Ministry of Defense. National filing is not required once the foreign filing license in obtained		Fine or imprisonment of up to five years
France	International protection of an invention submitted by "natural or legal persons having their *place of residence or business in France*" (where no claim is made to priority under an earlier filing in France) (emphasis added) Art. L. 614-18	Art. L. 614-18 & 614-20 of the French Patent Law		Violation is subject to penal sanctions, including imprisonment
United Kingdom	Residents of the U.K. (not citizens) who are filing a foreign patent application relating to *military technology,* or technology that may compromise national security		A U.K. patent application must be filed six weeks before foreign filing or a foreign filing license from the U.K Patent Office is required	Violation is subject to fine and imprisonment of up to two years
Russian Federation	All resident patent applications	Russian application must be filed prior to foreign filing or a foreign filing license is required		
India	Requires license to file nearly all inventions in a foreign country	Requires filing license in all foreign countries		

Country	Triggering Circumstances	Regulation	Length of Delay	Penalty for Violation
Canada	Government employee patent applications	Must obtain prior permission from the Minister of patent office		
Australia	No required security clearance to file in a foreign jurisdiction			
Mexico	No required security clearance to file in a foreign jurisdiction			
South Korea	A foreign filing license from the Korean Intellectual Property Office is required for a South Korean patent application describing *defense-related inventions*	Article 41 of the Korean Patent Act, No. 950 Foreign Filing License Required		Loss of right for the Korean patent
Indonesia	No required security clearance to file in a foreign jurisdiction			
New Zealand	All patent applications to be filed in a foreign country	§ 25(5) of the New Zealand Patent Act A New Zealand patent application must be filed before the foreign filing (6 weeks before) *or* a foreign filing license from the New Zealand Intellectual Property Office is required	Six weeks before foreign filing	Penalty includes fine of up to NZ$1000.00 or imprisonment of up to two years
Portugal	Any patent application to be filed in a foreign country	Mandatory national first filing with Subsequent evaluation by the Department of Defense Ministry	5 days	

Country	Triggering Circumstances	Regulation	Length of Delay	Penalty for Violation
Singapore	All patent applications to be filed in a foreign country	Foreign filing license required for all inventions		

Note: The list of countries contained in the Table above is not comprehensive. All non-U.S. residents should first consult with their country's patent office before filing a patent application in the United States.

II. TRADITIONAL BENEFITS OF U.S. PROVISIONAL PATENTS EXTEND FROM DOMESTIC TO FOREIGN FILERS

Regardless of their place of residence, every client should initiate their patent filing in the jurisdiction of the most commercial potential for their product. If a new invention is related to oil production, for example, one might consider filing a patent application in Venezuela, which contains the largest proven oil reserve in the World.[53] Similarly, if a new invention devised in Germany has significant U.S. market potential and does not trigger any national security protections, filing a U.S. provisional patent application (PPA) rather than a national stage application in Germany may serve a client's best interests. Foreign applicants increasingly rely on low-cost instruments like PPAs to establish priority, reduce inventive ideas to practice, and secure the earliest possible 102(e) date in the United States.

A. Mitigating the Risk of "Thin" Provisional Filings

With the exception of enablement and written description requirements, provisional applications are subject to very few formal requirements. In a 2012 study, Prof. Dennis Crouch found that, "around 35% [of domestic provisional applications surveyed] do not include even a single claim, and about 15% are essentially a stack of presentation materials."[54] While there is no formal requirement that a

53. Rupert Roling, *Venezuela Passes Saudis to Hold World's Biggest Oil Reserves*, Bloomberg News (June 14, 2012), http://www.bloomberg.com/news/2012-06-13/venezuela-overtakes-saudis-for-largest-oil-reserves-bp-says-1-.html.

54. Dennis Crouch, *Provisional Patent Applications as a Flash in the Pan: Many are Filed and Many are Abandoned*, PATENTLYO (Nov. 26, 2012), http://patentlyo.com/patent/2012/11/provisional-patent-applications-as-a-flash-in-the-pan-many-are-filed-and-many-are-abandoned.html.

provisional application include claims, applications lacking claims must ensure enablement, written description, and to a lesser extent, the best mode requirements are satisfied.[55] As discussed below, the best mode requirement has been abrogated under the new AIA patent system.[56]

If a provisional application lacks claims, one must also take care to use inclusive rather than limiting language. For example, the phrase "in a preferred embodiment" establishes a broader scope of protection than the phrase "the invention is." At a minimum, one should incorporate a statement in the description confirming that the description refers only to "a preferred embodiment."

B. "Thin" U.S. Provisional Applications Will Secure Priority

The fact that many domestic PPAs are filed without claims raises the question of whether foreign applicants can also reliably establish priority by filing a U.S. provisional application that lacks claims. Here, our analysis will focus on EU states, although our findings are in most cases generalizable.

In all countries party to the Paris Convention, EPC Article 87 dictates priority rights, and maintains, in relevant part, that applicants shall enjoy "a right of priority during a period of twelve months from the date of filing of the first application."[57] Further, Article 87 states that, "Every filing that is equivalent to a regular national filing under the national law of the State where it was made . . . shall be recognized as giving rise to a right of priority."[58] A "regular" national filing "shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be."[59] While a U.S. non-provisional application must have at least one claim to receive a filing date, 35 U.S.C Section 111 exempts provisional applications from the "one claim" requirement.[60] Because provisional applications in the United States that lack claims are considered a filing "equivalent to a regular national filing," they should reasonably give rise to a right of priority pursuant to EPC

55. 35 U.S.C. § 112 (2006).

56. Leahy-Smith America Invents Act (AIA) of 2011, Pub. L. No. 112-29, § 15, 125 Stat. 284-341 (2011).

57. *See* European Patent Organization, Convention on the Grant of European Patents (European Patent Convention) art. 87(1)(b), Oct. 5, 1973, 1065 U.N.T.S 199, 13 I.L.M. 268.

58. See *id*. art. 87(2).

59. *Id*.

60. 35 U.S.C. § 111(b) (2006).

Article 87.[61]

This interpretation of Article 87 was reinforced by a Notice from the President of the European Patent Office dated January 26, 1996 concerning the priority conferring effect of the "U.S. provisional application for patent."[62] The notice states, in relevant part:

> Since the provisional application meets in substantive terms the requirements the EPC places on a duly filed national application in order to establish priority and because the subsequent fate of this filing is immaterial, the EPO, while acknowledging the independent decision making competence of the EPO boards of appeal and the courts of the contracting states, recognises the provisional application for patent as giving rise to a right of priority within the meaning of Article 87(1) EPC.[63]

Thus, foreign applicants can be assured that PPAs lacking claims will establish an international right to priority. This feature of PPAs can become very important to practitioners and clients facing time constraints during the early stages of invention development.

C. Establishing Right to Priority via Provisional Patent May Extends Exclusivity Term from 20 to 21 Years

Although provisional and non-provisional filings can expect comparable pendency periods (time from application to issuance), use of a PPA may provide an extra year of patent eligibility. Specifically, an eventually filed non-provisional application will enjoy a term of up to twenty-one years from the filing date of the PPA.[64] This feature of provisional filing mirrors the common European practice of filing a regular application under the Paris Convention with a claim to priority based on a home country application.[65] That a PPA enables a potential extra year of patent eligibility at the end of the term is of particular importance to products with lengthy development pipelines. For this reason, new drug inventions often have the highest rate of association with provisional applications, while patents on electrical and electronic applications tend to have the lowest rate of provisional

61. *See* European Patent Organization, *supra* note 57, art. 87(2).

62. European Patent Office, Notice from the President of the European Patent Office dated January 26, 1996 concerning the priority conferring effect of the "U.S. provisional application for patent," O.J. EPO 1996, 81.

63. *Id*. at 82.

64. 35 U.S.C § 119(e) (Supp. 2012).

65. See European Patent Organization, *supra* note 57.

filing.[66]

D. Foreign Applicants Obtain Earlier 102(e) Prior Art Dates for their U.S. Patents if they are Based on Provisional Applications

Once granted, a U.S. patent becomes prior art against later filed U.S. patent applications.[67] If a foreign entity is granted a patent based on a provisional patent application, the patent will assume the 102(e) priority date established by the provisional application.[68] Conversely, if a foreign applicant for U.S. non-provisional patent rights makes a priority claim based solely on a national country patent application, the 102(e) date for U.S. examination purposes will be the filing date of the regular U.S. patent application. Thus, foreign applicants can obtain earlier 102(e) prior art dates for their U.S. Patents if they base them on provisional applications instead of basing them solely upon home country applications.

E. Favorable Costs

The multi-layered patent systems of many modern industrialized nations are costly and inefficient, usually imposing compulsory translation costs, validation fees, and yearly renewal fees. Together, the result is a total cost averaging five to twenty times the expense of a U.S. filing.[69] An applicant who, for example, chooses to initiate filings in Europe can expect to pay at least double the cost of a U.S. provisional application, whether filing directly in each country or via a Chapter I Patent Cooperation Treaty (PCT) application.[70] In the former case, each country requires its own examination process, annuity payments, translations (compulsory in some countries), and associated attorney's fees. While filing a Chapter I PCT application can delay the expense of direct filing in each country separately, PCT applications are still much more costly than their U.S. counterparts. In addition, those applicants who file a PPA are not restricted from filing a national stage application in their home country. In fact,

66. Dennis Crouch, *A First Look at Who Files Provisional Patent Applications*, PATENTLYO (June 03, 2008), http://patentlyo.com/patent/2008/06/a-first-look-at.html.

67. 35 U.S.C. § 102(e) (2006).

68. *Id*.

69. Bruno van Pottelsberghe de la Potterie & Malwina Mejer, *The London Agreement and the cost of patenting in Europe*, 29 EUR. J. LAW ECON. 211 (2010).

70. *PCT Fees in US Dollars*, USPTO.GOV (Feb. 24, 2014, 1:20:32 PM), http://www.uspto.gov/patents/init_events/pct/sample/fees.jsp.

national stage entry of an eventual non-provisional U.S. application having a "Positive Report" from a U.S. Examiner serving as the International Preliminary Examiner costs only $100.[71]

Even with these cost considerations in mind, if an applicant wishes to establish patent protection exclusively in EU countries, the most cost-effective approach may still be to file a PCT application. This route involves a two-layer patent system in which patent rights are granted through the European Patent Office (EPO), and later ratified at the national level. Though inexpensive relative to filing in each national patent office individually, yearly renewal fees must still be paid to each national patent office (NPO).

1. Initial Filing Fees in the U.S.

In addition to the advantages of limited formal requirements, applicants benefit from the very low filing fees. Currently, the provisional application filing fee is $260.00, with other possible charges for late fee submissions ($60.00) and applications exceeding one hundred sheets ($400.00 for each additional fifty sheets).[72]

The new USPTO fee schedule includes a 50% reduction for small entities and a 75% reduction for micro entities. These fee reductions apply to filing, search, examination, appeal, and maintenance of patent applications.[73] Applicants qualifying for a small entity discount of 50% must satisfy 35 U.S.C. Section 41(h)(1), while applicants qualifying for a micro entity discount of 75% must satisfy the definition outlined in the America Invents Act Section 11(g).[74] Many patent scholars in Europe have called for a discount on EPO fees for young companies as provided in the U.S. and Japan, but the EPO's board has continued to opt for a fee structure unfavorable to small businesses.[75]

2. Renewal Fees in U.S. vs. EU

In addition to base fees, most countries outside the United States require yearly renewal fees. In contrast, renewal fees in the U.S. are levied every 3.5, 7.5, and 11.5 years after grant of a patent.[76] Whether

71. John H. Hornickel, *The Third (and Best) Way to Use the PCT*, 5 L.J. NEWSL. PAT. STRATEGY & MGMT., July 2004, at 2.

72. 37 C.F.R. § 1.16(d) (fee code 1005 describing the fees for provisional patent filings).

73. *Id*.

74. *Id*.

75. Bruno van Pottelsberghe de la Potterie, 467 NATURE 395 (2010).

76. *United States Patent and Trademark Office Fee Schedule*, USPTO.GOV (Mar. 13,

an applicant filing in Europe decides to pay a single maintenance fee at the EPO every year or pay such fees to national patent offices individually, the fees are required in advance and result in abandonment if not filed in a timely fashion.[77] Furthermore, determining the most risk-averse method of payment in Europe can be very complicated, depending on the developmental stage of the invention and the number of countries in which the patent proprietor wants to maintain European patent protection. Early stage companies may be tempted to opt for national renewal filing, but may overlook the long-term expense when patent protection is later expanded to all of the EU countries. For example, whereas the renewal fee is €1420 for the tenth to twentieth year at the EPO (as of April 2010),[78] the sum of national renewal fees exceeds €7000 and €20,000 for the tenth and twentieth year, respectively.

With the exception of the United Kingdom and China, maintenance fees in other industrialized countries are due while an application is pending.[79] In the United States, no application fees are due while an application is pending,[80] maintenance fees are not required in advance,[81] and design and plant patents are not subject to maintenance fees at all.[82]

3. Contingency System

Notwithstanding the favorable fee structure in the United States, foreign applicants can often spare themselves the immediate expense of legal costs by engaging in contingency relationships with U.S. attorneys.[83] The United Kingdom is the only other country in the world that permits this practice, which entails the payment of a fee for legal services only in the event of a favorable legal outcome.[84] These contractual relationships serve to simultaneously discourage

2014, 17:41 PM), http://www.uspto.gov/web/offices/ac/qs/ope/fee031913.htm.

77. *See* European Patent Organization, Implementing Regulations to the Convention on the Grant of European Patents, (European Patent Convention) Rule 51 (Jan. 4, 2009).

78. *Official Journal*, EUROPEAN PATENT OFFICE (2010), http://archive.epo.org/epo/pubs/oj010/03_10/03_sup0.pdf.

79. Patents Rules, 1995, S.I. 1995/2093, Rule 39 (U.K.) (as amended).

80. *United States Patent and Trademark Office Fee Schedule*, USPTO.GOV (Mar. 13, 2014), http://www.uspto.gov/web/offices/ac/qs/ope/fee010114.htm#maintain.

81. 35 U.S.C. § 41(f) (2006).

82. U.S. PATENT & TRADEMARK OFFICE, MANUAL OF PATENT EXAMINING PROCEDURE § 2504 (8th ed., rev. 2008).

83. William R. Town, *U.S. Contingency Fees: A Level Playing Field?*, WIPO MAGAZINE (Feb. 2010), http://www.wipo.int/wipo_magazine/en/2010/01/article_0002.html.

84. *Id*.

infringement and encourage innovation by enabling entities of limited means to take on deep-pocketed infringers in court. Thus, litigation attorneys in the U.S. can help monetize and defend their patent portfolio immediately upon grant of a provisional patent. This is often a key strategic point motivating patent filing for inventors, educational institutions and companies around the world in which such relationships are illegal. In fact, the lack of a contingency system in Europe may be one of the primary reasons that European universities generally only apply for patent protection in the United States.

F. Language Allowances

The USPTO allows for provisional filing "in a language other than English,"[85] while most foreign patent offices impose compulsory translation requirements. The EPO, for example, requires that a translation be submitted in conjunction with any application that is not drafted in one of three official languages (English, French or German) before any Formality checks[86] or Search Reports[87] are conducted.

G. Multiple Provisional Filings Enable Iterative Improvements to Inventions

A formal application (utility or PCT) can claim priority to numerous provisional applications.[88] Often, an inventor will file a sequence of several provisional applications covering each major improvement in a technology. As discussed, by filing a PCT application within one year of the earliest provisional in such a sequence, a foreign applicant will enjoy protection for all of the inventive improvements covered by the provisional applications. In fact, an applicant may mark his or her product and its various iterations "patent pending" immediately upon filing an application, although in some international jurisdictions, such as the United Kingdom, a warning notice should indicate the number of pending applications.[89]

85. 37 C.F.R. § 1.52(d) (2012).

86. *See* European Patent Organization, *supra* note 57, art. 90-91.

87. *See id*. art. 92.

88. *See* Article 4 C(4) of the Paris Convention.

89. *Display your rights*, UK INTELLECTUAL PROPERTY OFFICE (August 5, 2009), http://www.ipo.gov.uk/types/patent/p-manage/p-useenforce/p-displayrights.htm.

H. U.S. Provisional Patents are Time-Efficient

Provisional patents can be filed rapidly and establish broad protection. Small ventures under time pressure increasingly utilize PPAs to secure priority in as little as twenty-four hours. In fact, considering the time difference between Europe and the east coast of the United States, European applicants benefit from an additional six hours to prepare and file such priority filings. This is so because the date of filing at the U.S. Patent Office is recorded as the official filing date.

Even foreign entities who do not face these extreme time constraints have grown weary of the time delays brought on by the requirements of coexisting EPC and national level offices. A newly initiated EU-wide "unitary system," designed to simplify heterogeneous patent policy in Europe,[90] in fact adds a third layer of complexity to the existing two-layered system of patent grant and ratification, further motivating use of PPAs to establish priority.

III. THE AMERICA INVENTS ACT BROADENS PATENT PROTECTIONS FOR FOREIGN APPLICANTS SEEKING PROVISIONAL PATENT PROTECTION

On March 16, 2013, the United States implemented the shift from a first-to-invent to a first-to-file system.[91] After ensuring compliance with "national-first" filing laws, foreign inventors contemplating entry into U.S. commercial markets should consider the impact of these recent changes on their international filing strategy.

A. First-to-file Transition Accentuates Streamlined Features PPAs

While the features of PPAs (i.e., no required claims, search, etc.) were originally crafted to facilitate proof of inventorship through early filing, these efficiencies now represent an enormous substantive advantage over other prosecution routes.

The transition to a first-to-file system represents a tremendous opportunity for inventors and small entities to level the playing field

90. Gail Edmondson, *Europe's unitary patent to launch in 2015 – but will companies embrace it?*, SCIENCEBUSINESS.NET (Oct. 16, 2013, 6:22 PM), http://www.sciencebusiness.net/news/76292/Europe's-unitary-patent-to-launch-in-2015-–-but-will-companies-embrace-it.

91. Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284-341 (2011) (codified in scattered sections of title 35).

with deep-pocketed competitors. The ease of gaining "patent pending" status under the new patent system contrasts with the pre-AIA system, where small entities facing priority contests with larger competitors would be forced to engage in expensive "interference proceedings" to determine the date of first invention. The streamlined features of provisional applications were originally devised to facilitate the establishment of priority in anticipation of such proceedings, and in the absence of evidence demonstrating inventorship at an earlier date. Now, however, with the elimination of inventorship requirements, this simplified filing method offers an unparalleled means of winning the race to the patent office.

1. Expanding Web Resources Expedite Assignment of Priority Date

The speed and simplicity of this process is only enhanced by the AIA's embrace of web-based resources. Online filing with web-resources like EFS-Web and patentfiler.com is quickly becoming the norm. Web resources like patentfiler.com offer the speed of online filing with the option of attorney oversight, a feature most applicants should consider in order to ensure compliance with the enablement, written description, and best mode requirements.[92] Notably, while best mode is still technically a requirement, AIA has eliminated the best mode defense as a means of invalidating claims.[93]

With a growing abundance of web-based resources, inventors can assure themselves of both thorough protection and significant cost savings through online filing. In fact, the cost of paper applications have increased, as the USPTO now assesses a fee of $400 ($200 for small entities) against applicants who choose not file applications electronically.[94] This fee is termed the "Luddite Penalty."[95]

92. 35 U.S.C. § 112 (2006).

93. Leahy-Smith America Invents Act (AIA) of 2011, Pub. L. No. 112-29, § 15, 125 Stat. 284-341 (2011).

94. *Id*. § 10(b).

95. ROBERT CHAMBERS, BOOK OF DAYS: A MISCELLANY OF POPULAR ANTIQUITIES IN CONNECTION WITH THE CALENDAR, PART I 357 (2004) ("'Luddite' is a reference to a group of 18th-century English textile artisans who revolted against advances in power loom technology.").

B. Elimination of Section 102 Geographical Limitations & "Grace Period" Provisions Embrace the Global Economy

1. Geographical Limitations Eliminated

The AIA effectively expands the scope of available prior art under Section 102 to include a wider range of activities in foreign countries. Pre-AIA Sections 102(a) and 102(b) required that non-documentary events ("known, "used," "in public use," "on sale," prior invention) occur "in this country."[96] However, in an increasingly globalized world, courts have encountered difficulty determining where these types of anticipating events actually transpired. The AIA has eliminated the geographical limitation "in this country" in an effort to alleviate these practical concerns, and perhaps more importantly, to equalize protections between domestic and foreign inventors.

This change allows international applicants to rely on their activities in non-U.S. territories to establish priority rights, either by publicly disclosing the invention or simply filing a provisional patent. As discussed, an important Federal Circuit decision[97] determined that 102(e) protections extend back to the filing date of qualifying provisional applications. Thus, a provisional application is often the most logical option for foreign applicants who wish to begin the process of protecting an invention in the U.S. without triggering local novelty bars by publicly disclosing an invention.

2. AIA Institutes a Unique "Grace Period" Provision

The Section 102 grace period is unique to the American system.[98] In contrast to the U.S. system, the EPC maintains a "true first-to-file" standard, wherein anyone may file and secure patent rights covering a technology the instant its details are publicly disclosed. Because PPAs are not published, a foreign PPA applicant of modest financial means can develop and monetize his invention in the United States for twelve months without fear of derivative applications from competitors.

Thus, recent Federal Circuit decisions and changes in Section 102 serve to encourage both the product development and provisional

96. 35 U.S.C. § 102(a)-(b) (2006).

97. *Ex parte* Yamaguchi, No. 2007-4412 (B.P.A.I. Aug. 29, 2008).

98. 35 U.S.C. § 102(a) (2006).

application process, while expanding the scope of available prior art during prosecution of subsequent non-provisional applications.

C. Alternate Considerations for Foreign Provisional Filers in Post-AIA World

1. Maintenance of Record Keeping and Notebooks for Derivation Proceedings

Under the pre-AIA system, detailed records and notebooks had to be maintained in order to provide evidence of inventorship in the event of a priority contest with competing applicants. As discussed above, the AIA alleviated the enormous discovery costs of these interference proceedings by eliminating them altogether. While inventor's notebooks are, therefore, no longer relevant to determination of priority rights, such documentation may prove very useful in the new derivation proceedings instituted under AIA. Derivation proceedings require a petition that "sets forth with particularity the basis for finding that an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application."[99] Thus, although AIA Section 102 renders inventorship irrelevant to the determination of priority rights, record keeping remains an important defensive consideration relevant to derivation proceedings.

2. AIA and the "Mixed Bag"

Whether claims of a patent application will be examined under the first-to-file or the first-to-invent rules will depend on the priority date accorded to the claims. In the event that all claims in a patent application are entitled to a priority date earlier than March 16, 2013, the claims will be examined under the pre-AIA rules. Likewise, if all claims are entitled to a priority date of March 16, 2013, or later, the claims will be examined under the AIA rules.

One must take care to ensure that a non-provisional application filed subsequent to a provisional application does not claim new matter beyond the scope of the PPA disclosure. If this occurs, the claims may contain a "mixed bag" of priority dates both preceding and following the effective AIA date of March 16, 2013.[100] If even

99. U.S. Patent & Trademark Office, *Derivation Proceedings*, USPTO.GOV (May 13, 2013, 5:28 PM), http://www.uspto.gov/aia_implementation/faqs_derivation_proceedings.jsp.

100. Timothy Holbrook, *Substantive Versus Process-based Formalism in Claim Construction*, 9 LEWIS & CLARK L. REV. 123, 133 (2005).

one claim in a "mixed bag" is denied priority to the PPA, all the claims will be examined under the pre-AIA rules.[101] In this scenario, all of the claims will be subject to interference proceedings.[102] However, applicants who find themselves in a mixed bag scenario may use continuing applications to segregate claims with different priority dates.

CONCLUSION

The growth of eCommerce technologies now allows international inventors to easily file their first patent application at the United States Patent Office. The USPTO allows inventors to file applications through EFS-Web[103] although there are now third-party providers offering simplified interface and billing systems, in addition to web-based tools with more front-end artificial intelligence. The authors have constructed one such web-based filing tool (patentfiler.com), but there are others currently available. With these resources, an international micro entity inventor may, for example, file a patent application for $298, compared with several thousand Euros or U.S. dollars necessary in other countries of the world. International treaties and the emergence of legal eCommerce have opened up this incredible opportunity to acquire international patent rights for relatively little cost.

Although determining the applicability of foreign "national-first" patent filing laws requires careful scrutiny, provisional patent applications often represent the most valuable initial-filing instrument available to foreign applicants seeking commercialization in the United States. While the simplified features of PPAs were originally crafted to facilitate identification of "first inventors," these procedural efficiencies now arm domestic and foreign applicants with substantive advantages over other prosecution tracks. In particular, the traditional benefits of PPA filing including term extension, speed, and low costs are greatly strengthened by the shift of the United States to a first-to-file system.

101. *See id.*

102. *See id*.

103. U.S. Patent & Trademark Office, *About EFS-Web*, USPTO.GOV (May 28, 2013, 11:40:15 AM), http://www.uspto.gov/patents/process/file/efs/.