



## **DEPARTMENT 21 - COMPLEX LITIGATION THE HONORABLE WINIFRED Y. SMITH PRESIDING**

### **GENERAL GUIDELINES**

#### **USE EMAIL - Dept21@alameda.courts.ca.gov -**

Email is the preferred method of communicating with court staff in Department 21, particularly for scheduling of law and motion, ex parte application, and case management events. Telephone communications are possible, but use of email will greatly facilitate a prompt response to your inquiries. When a copy of a document must be transmitted to court staff, an email attachment is preferable to fax. Neither should be used to send voluminous documents. Use of an email attachment or fax, however, is not a substitute for filing of pleadings or other documents.

All email communications should be copied to all parties for whom an email address is available, so inclusion of available email addresses in the caption of all filed papers, as required by California Rule of Court ("CRC") 2.111(1), is critical.

#### **HEARING DATES -**

Before contacting the clerk to request a hearing date or continuance, always meet and confer with opposing counsel regarding all counsel's availability. It is strongly suggested that you jointly contact the clerk by email with multiple dates on which all counsel are available.

#### **COURTESY COPIES -**

Paper courtesy copies of all documents filed in connection with law & motion matters and ex parte applications must be hand-delivered (not mailed or sent by overnight courier) directly to Department 21 as close to the time of filing as practicable. Absent prior permission, courtesy copies should not be sent to Department 21 via email.

#### **ELECTRONIC SERVICE -**

Parties should stipulate to electronic service early in the case, and each party should file and service notice pursuant to CRC 2.251(a)(2)(A). This will also facilitate

electronic service of orders, notices, etc. on the parties by the court, pursuant to CRC 2.251(h) if the court chooses to do so.

### **CASE MANAGEMENT CONFERENCES ("CMC") -**

CMC Statements ("CMS") should be in joint, narrative form and should identify the issues that the parties want to discuss with the court. Do not use CM-110s. Statements may be submitted using E-Delivery (emailing to EDelivery@alameda.courts.ca.gov). If otherwise filed in person or by fax, a courtesy copy must be hand delivered to Dept. 21. Statements should always be submitted at least five (5) court days before the CMC. Always check DomainWeb before the conference to see if a tentative case management order ("TCMO") has been posted.

### **PROTECTIVE ORDERS -**

A protective order should be entered as early in the case as practicable. Counsel should meet and confer about the form of order before the initial case management conference if possible. For a suggested form of order, see "Model Protective Order - Complex" in Department 21's "List of Documents."

### **DEMURRERS -**

Demurrers are often a poor use of resources, both private and judicial. To avoid wasting time, the parties should thoroughly meet and confer, including exchanging drafts of proposed demurrers and amended complaints, until they are at impasse. Only when the complaint is truly the best that the plaintiff can muster should a challenge be filed, and then only if it either will result in a complete dismissal or will significantly narrow the scope of discovery.

### **DISCOVERY -**

In most cases, counsel should focus their efforts on documents and depositions, and utilize interrogatories and requests for admission in a selective fashion. Consider numbering all documents once, good for all uses at deposition, motions and trial.

The parties are expected to be familiar with the document entitled "Discovery" in Department 21's List of Documents that outlines the court's Informal Discovery Dispute Resolution Process and explains that reservations for discovery motions are only given after a specially set Discovery CMC has been conducted.

### **CLASS CERTIFICATION -**

There is typically significant overlap between so-called "class certification" and "merits" discovery, and thus little or no basis to "stay merits discovery" early in the case. However, counsel should consider "staggering" discovery prior to class certification in the following manner:

- 1) Plaintiff takes all discovery needed to prepare and file the class certification motion, obtains a reservation number for a "placeholder" hearing date within a month after the motion will be filed and served, and files and serves the motion. A CMC will be set within 10 to 14 days after the motion is filed to set a briefing schedule.

- 2) Defendant evaluates the motion and determines the scope of discovery needed

to oppose; the parties meet and confer about defendant's discovery and due dates for the opposition and reply and submit a joint CMS. At the CMC, the Court sets the due dates and continues the class certification motion and CMC to the agreed hearing date.

3) After defendant files the opposition, plaintiff determines what, if any, further discovery is needed, and whether the proposed hearing date is still viable. If plaintiff needs more time for discovery and reply, the parties must meet and confer on those issues and a new hearing date, and should then either submit a stipulation to reset the hearing and reply dates or request a CMC to resolve their disputes.

#### **DISMISSAL OF CLASS CLAIMS -**

Any application that requests dismissal or has the effect of dismissing class claims or parties (e.g., stipulation to file an amended complaint) must comply with CRC 3.770, requiring court approval. This is why Judicial Council form CIV-110 expressly states that it may not be used in class actions (or in derivative actions). Approval may be obtained (a) by noticed motion, (b) by ex parte application, or (c) by presenting a declaration that complies with CRC 3.770(a) together with a proposed order of dismissal to the court at a CMC. In all of these scenarios, sufficient evidence must be presented upon which the court may base its CRC 3.770(c) findings regarding notice to the class.

#### **EVIDENTIARY OBJECTIONS -**

Formal objections to evidence are unnecessary in the context of most motion practice, including motions for class certification. (See, e.g., *Gonzales v. Millard Mall Services, Inc.*, 281 F.R.D. 455, 459-460 (S.D. Cal. 2012) [citing, inter alia, *Alonzo v. Maximus, Inc.*, 275 F.R.D. 513, 519 (C.D. Cal. 2011)].) The clear exception, of course, is motions pursuant to Code of Civil Procedure section 437c. Even in that context, however, parties are encouraged "to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices." (*Reid v. Google, Inc.* (2010) 50 Cal. 4th 512, 532.)