

GENERAL ORDER NO. 34
CASE MANAGEMENT PILOT PROGRAM

I. PURPOSE

The Northern District of California is one of three federal courts specifically mandated by Congress, under the Civil Justice Reform Act of 1990, to "experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution." 28 U.S.C. §471 Note. The Case Management Pilot Program (the "Pilot") is designed to enable parties to civil litigation who are proceeding in good faith to resolve their disputes sooner and less expensively.

The Pilot rules address three major causes of expense and delay: (1) excessive reliance on motion work and formal discovery to determine the essence of claims and defenses and to identify supporting evidence, (2) inattention to civil cases in their early stages, and (3) insufficient involvement of clients in decision-making about the handling of their cases.

Accordingly, the Pilot strives to replace some formal motion and discovery proceedings with early exchange of core information and meaningful dialogue about the merits and posture of the cases, including the Case Management Statement and Proposed Order which reflects the clients' cost-benefit analyses and which suggests specific limits on formal discovery.

II. SCOPE

All civil actions filed on or after December 1, 1993 that are assigned to the judges listed in Appendix A, except those types of cases listed in Appendix B, shall be included in the Pilot and governed by this Amended General Order. Pilot cases also shall remain subject to this court's Local Rules, but the provisions of this General Order shall supersede any conflicting provisions of the Federal Rules of Civil Procedure and the court's Local Rules (including Local Rule 220-10). The major deadlines are set forth in Appendix C.

III. SERVICE

A. Timing

As soon as practicable, but no later than 40 days after filing the complaint, plaintiff shall serve, on each defendant, the summons, complaint, a copy of this General Order, the Order Re Court Procedures, and the booklet entitled "Dispute Resolution Procedures in the Northern District of California."

B. Filing Proof(s) of Service

Proof(s) of service of process or waiver(s) of

service by the defendant(s) shall be filed with the court no later than 45 days after the complaint is filed.

C. Order to Show Cause

If by the 46th day after the complaint was filed, plaintiff has not filed proof of service showing that at least one defendant has been served, the court automatically will issue an Order To Show Cause why the complaint should not be dismissed or other sanctions imposed.

D. Additional Parties

Any party who, after the filing of the original complaint, causes a new party to be joined in the action shall promptly serve on that new party a copy of all items described in paragraph A of this section. Such additional parties must make the disclosures set forth in paragraph B of Section VII no later than 90 days after the filing of the complaint, or no later than 50 days after they were served with the complaint, whichever occurs later.

IV. REMOVED CASES

In cases removed to this court from a state court, the removing defendant(s) shall serve on the plaintiff(s) and all other parties, at the time of service of the notice of removal, a copy of this General Order, the Order re Court Procedures, and the booklet entitled "Dispute Resolution Procedures in the Northern District of California." The deadlines set forth in this General Order for disclosure and the meet and confer shall run from the date of the filing of the Notice of Removal.

The filing of a motion for remand does not relieve the moving party of any obligations under this General Order unless the assigned judge specifically grants such relief.

V. TRANSFERRED CASES

Within 30 days after the filing of a case transferred from another court, the assigned judge's courtroom deputy will notify counsel of the scheduling of a status conference at which the judge will decide whether the parties must comply with the obligations of this General Order. No obligations of this General Order shall apply unless the judge so orders.

VI. TEMPORARY SUSPENSION OF ALL FORMAL DISCOVERY ACTIVITY

Except by stipulation of all parties, or on written order of the court, no formal

discovery, including discovery from third parties, shall be initiated until after the parties have completed the disclosures required by section VII and the meet and confer required by section VIII.

VII. DUTIES OF DISCLOSURE AND SUPPLEMENTATION

A. Timing of Initial Disclosures

No later than 90 days after the complaint was filed, each party, regardless of whether defendant(s) has filed an answer, shall serve on every other party who has been served in the action, the disclosures set forth in paragraph B of this section.

B. Content of Initial Disclosures

After making in good faith such inquiry and investigation as is reasonable under the circumstances, each party shall disclose:

1. The full name, title, work or home address and telephone number of each person known to have discoverable information about factual matters relevant to the case.

2. All unprivileged documents in the party's custody or control that are then reasonably available that tend to support the positions that the disclosing party has taken or is reasonably likely to take in the case.

3. Copies of any apparently pertinent insurance agreements.

4. A computation by claimant(s) of any category of damages sought or likely to be sought, e.g., in a counterclaim.

5. All unprivileged documents and other evidentiary material in the party's custody or control that are then reasonably available that relate to damages, except punitive damages.

C. Procedures and Expenses re Inspecting and Copying Documents Subject to Disclosure

1. A party disclosing 100 or fewer pages of documents pursuant to this section may make copies, forward them to counsel for the other parties, and bill them at a reasonable rate.

2. A party whose disclosure would include more than 100 pages of documents shall telephone counsel for the other parties no fewer than five court days before the date the disclosure must be made under this General Order. The disclosing party shall describe to other counsel the volume and nature of its documents subject to disclosure. Each party to whom the disclosure would be made may elect to (a) inspect the documents to identify those it will arrange to have copied, (b) ask that the disclosing party copy and forward only

specified categories of the documents subject to disclosure, or (c) ask that the disclosing party copy all the documents subject to disclosure. A party copying documents at another party's request under this section may bill the receiving party for the copying at a reasonable rate. A party who requests copies of fewer than all of the documents subject to disclosure by another party does not thereby waive a right subsequently to inspect and/or obtain copies of the remaining documents.

D. Protective Order

If one or more parties desires protection of documents or other information disclosed under paragraph B of this section, the parties shall enter a reasonable protective order to govern the disclosed documents or information until further order of court.

E. Duty to Supplement

Each party shall have a continuing duty to supplement its disclosures (to the extent that the information has not already been revealed in discovery) on a timely basis. In a Case Management Order, the court may, on its own initiative or upon request, set time intervals for supplementation.

F. Format and Certification of Disclosures

Every disclosure and supplementation shall be:

1. Served with a document entitled "Initial Disclosure of *[name of party]* or "Initial Supplemental Disclosure of *[name of party]*," and

2. Signed by at least one attorney of record whose signature constitutes a certification that, to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the disclosure or supplementation is complete and correct as of the time it is made.

G. Disclosure of Expert Testimony Except as otherwise ordered by the assigned judge, Federal Rule of Civil Procedure 26(a)(2) shall apply to all cases subject to this General Order.

VIII. MEET AND CONFER RE CASE MANAGEMENT

No later than 100 days after the complaint was filed, lead counsel for each party shall meet and confer regarding the following matters. The meet and confer session shall be conducted in a face-to-face meeting unless the offices of the parties' lead trial counsel are separated by more than 100 miles, in which case counsel may conduct the conference by telephone.

A. Principal Issues and Evidence

1. Identify the principal factual and legal

issues that the parties dispute.

2. Discuss the principal evidentiary bases for claims and defenses.

B. Alternative Dispute Resolution and Settlement

Discuss utilization of alternative dispute resolution procedures. Options are discussed in the booklet entitled "Dispute Resolution Procedures in the Northern District of California" available in the clerk's office.

Discuss whether the case can be settled promptly and, if not, try to identify obstacles to settlement and to devise means to overcome them (e.g., by sharing specified information, by conducting key discovery, or by expeditiously filing a motion).

C. Jurisdiction by a Magistrate Judge

Discuss whether all parties will consent to jurisdiction by a magistrate judge under 28 U.S.C. § 636(c).

D. Additional Disclosure

1. Discuss whether additional disclosure of documents or other information should be made and, if so, when.

2. Recommend the dates or intervals for supplementation of disclosures.

E. Motions

Identify any motions whose early resolution would likely have a significant effect on the scope of discovery or other aspects of the litigation.

F. Discovery

1. Negotiate a plan for at least the first phase of discovery, specifically identifying the discovery tools the parties plan to use, the names of persons who will be deposed or who will receive discovery requests, the dates on which any depositions will occur or any requests will be served, and the purpose for each deposition or discovery request.

2. Discuss limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined.

3. Recommend protective orders, if appropriate.

G. Scheduling

1. Discuss dates by which discovery should be completed, expert witnesses disclosed, motions directed to the merits of all or part of the case heard, the papers required for the final pretrial conference filed, the final pretrial conference held, and the trial commenced.

These items also are set forth on the Form for Case Management Statement and Proposed Order attached as Appendix D.

IX. THE CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

No later than 10 days before the initial Case Management Conference, counsel shall file a concise, joint Case Management Statement and Proposed Order, in the Form attached as Appendix D, which shall:

A. Principal Issues

Include a brief statement of the principal facts and events underlying the action.

Identify the principal factual and legal issues that the parties dispute.

B. Alternative Dispute Resolution and Settlement

Identify the alternative dispute resolution procedure which counsel intend to use, or report specifically why no such procedure would assist in the resolution of the case.

Make suggestions about ways the court might help the parties position the case efficiently for settlement negotiations or otherwise help with the settlement process.

C. Jurisdiction by a Magistrate Judge

Indicate whether all parties consent pursuant to 28 U.S.C. § 636(c), to have a magistrate judge preside over a jury or court trial, with appeal lying to the United States Court of Appeals for the Ninth Circuit.

D. Disclosure

1. List by name and title the persons whose identities have been disclosed.

2. Describe by category the documents that have been disclosed under section VII.B. of this Order or produced through formal discovery.

3. Set forth the computations of damages.

4. Describe each additional category of documents that will be disclosed without imposing on other counsel the burden of serving a formal request for production of documents.

5. Recommend the dates or intervals for supplementation of disclosures.

E. Motions

Identify any motions whose early resolution would likely have a significant effect on the scope of discovery or other aspects of the litigation.

F. Discovery

1. Describe all discovery completed or in progress.

2. With respect to at least the first phase of discovery, the parties shall stipulate to a discovery plan. The plan shall detail the discovery tools the parties plan to use (e.g., depositions, interrogatories, document production requests). In addition, the discovery plan shall include the names of persons who will be deposed or who will receive discovery requests, the dates on

which any depositions will occur or any requests will be served, and the purpose for each deposition or discovery request.

3. Recommend limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to which discovery should be confined.

G. Trial

State the month and year in which the parties recommend the trial should commence, the anticipated length of trial and whether the trial will be before the court or a jury.

H. Additional Scheduling

1. Recommend time limits to conclude discovery and to hear motions.

2. Recommend the date for the pretrial conference and for filing the papers required for the pretrial conference.

X. THE INITIAL CASE MANAGEMENT CONFERENCE

Within 120 days of the filing of the complaint, or on the first date thereafter available on the judge's calendar, the judge will conduct the initial Case Management Conference, which shall be attended by lead trial counsel for each party. The judge may enter an order requiring the parties to participate, in person or by telephone, in the conference.

At the conference the court will:

A. Principal Issues

1. Identify, at least tentatively, the principal factual and legal issues in dispute.

2. Fix time limits to join other parties and to amend the pleadings.

B. Alternative Dispute Resolution

Consider referring the case to an alternative dispute resolution procedure.

C. Jurisdiction by a Magistrate Judge

Determine whether all parties consent to a jury or court trial presided over by a magistrate judge under 28 U.S.C. § 636(c).

D. Disclosure

1. Review the parties' compliance with their disclosure obligations.

2. Consider whether to order additional disclosures and fix the dates or intervals for supplementation of disclosures.

E. Motions

Determine whether to order early filing of any motions that might significantly affect the scope of discovery or other aspects of the litigation.

F. Discovery

1. Determine the plan for at least the first stage of discovery.

2. Impose limitations on each discovery tool and, if appropriate, on subject areas, types of witnesses, and/or time periods to

which discovery should be confined.

G. Trial

Fix the date or the time period (by month and year) for commencement of the trial.

H. Additional Scheduling

1. Fix time limits to conclude discovery and to hear motions.

2. Fix the date for the pretrial conference and for filing the papers required for the pretrial conference.

I. Fix the date for the next case management/status conference.

XI. THE INITIAL CASE MANAGEMENT ORDER

No more than ten calendar days after the initial Case Management Conference, the judge will enter the initial Case Management Order which will address all of the matters covered in the initial Case Management Conference.

XII. SANCTIONS

The court has authority to impose sanctions for violation of any provisions of this General Order, including violations of the duties to disclose and/or supplement.

XIII. RECONSIDERATION BY DISTRICT JUDGES OF MAGISTRATE JUDGES' RULINGS ON DISCOVERY MATTERS

A party who seeks reconsideration by the assigned district judge of a magistrate judge's ruling on a discovery matter shall do so by filing a motion in conformity with Local Rule 410-2. Unless otherwise ordered by the assigned judge, no response need be filed and no hearing shall be held. The judge may deny the motion by written order at any time, but shall not grant the motion without giving the opposition an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is made within 15 calendar days of the filing of the motion, the motion shall be deemed denied.

XIV. TENTATIVE RULINGS; NOTICE RE ISSUES ON WHICH JUDGE WANTS ORAL ARGUMENT TO FOCUS

A. Any judge may elect to issue a tentative ruling with respect to any motion scheduled for hearing. Counsel shall ask at the initial Case Management Conference whether the judge will be issuing tentative rulings and, if so, how they will be communicated.

B. When a judge identifies, before a hearing on a motion, issues or other matters on which he or she wants oral argument to focus, or

about which he or she wants additional information or authority, the judge will endeavor to provide advance notice to counsel in writing, by telephone, or by such other means as the judge deems appropriate.

XV. RELATIONSHIP BETWEEN THE CASE MANAGEMENT PILOT RULES AND THE COURT'S ADR MULTI-OPTION PILOT, ARBITRATION AND EARLY NEUTRAL EVALUATION PROGRAMS

A. Cases Assigned to the ADR Multi-Option Pilot

Except as may be otherwise ordered in individual matters, counsel in cases that are subject to this General Order and that are assigned to the ADR Multi-Option Pilot under General Order No. 36 shall comply with the provisions of both General Order No. 36 and this General Order.

B. Cases Assigned to Arbitration

Except as may be otherwise ordered in individual matters, counsel in cases that are subject to this General Order and that are assigned to arbitration under Local Rule 500 shall comply with the provisions of both that Local Rule and this General Order. In such cases, the clerk shall set a date for the arbitration hearing not more than 135 days after the Case Management Conference, in order to allow parties to conduct discovery after the Case Management Conference. In addition, the assigned judge will hold a status and trial setting conference within 30 days of a timely filed demand for trial *de novo* after an arbitration hearing.

C. Cases Assigned to Early Neutral Evaluation (ENE)

Except as may be otherwise ordered in individual matters, counsel in cases that are subject to this General Order and that are assigned to the ENE program shall proceed simultaneously in compliance with both this General Order and General Order No. 26 (governing ENE).

XVI. PROHIBITION AGAINST MODIFYING PILOT REQUIREMENTS SIMPLY BY STIPULATION; REQUIREMENT OF COURT ORDER

Except as expressly provided in Section VI, provisions of this General Order may be modified or vacated only by written order of a judge of this court following a timely showing that the interests of justice clearly would be harmed if the provisions in question were not modified or vacated. Counsel may contact the chambers of the assigned judge to determine whether he or she will hear requests to modify provisions of this General Order by telephone conference.

XVII. REQUIREMENT OF CLIENT APPROVAL FOR CERTAIN CONTINUANCES

Any request to continue the trial shall be signed by both lead trial counsel and the client.

XVII. FILING MOTIONS DOES NOT RELIEVE PARTIES OF PILOT PROGRAM OBLIGATIONS

The filing of a motion of any kind does not relieve any party of the obligations imposed by this General Order.

XIX. QUESTIONS ABOUT CASE MANAGEMENT PILOT

Parties may direct general questions about the operation of the Case Management Pilot to the court's Case Management Coordinator, telephone number: (415) 556-2972.

ADOPTED: July 1, 1992
AMENDED: July 1, 1993
AMENDED: December 1, 1993
AMENDED: January 18, 1994

**APPENDIX A
PARTICIPATING JUDGES**

The following judges are participating in the Case Management Pilot:

Chief Judge Thelton E. Henderson
Judge William H. Orrick, Jr.
Judge Marilyn Hall Patel
Judge Eugene F. Lynch
Judge Charles A. Legge
Judge D. Lowell Jensen
Judge Fern M. Smith
Judge Vaughn R. Walker
Judge James Ware
Judge Sandra Brown Armstrong
Judge Barbara A. Caulfield
Judge Ronald M. Whyte
Judge Claudia Wilken

**APPENDIX B
CATEGORIES OF CASES
EXCLUDED FROM THE PILOT**

The following types of cases, based on information set forth on the Civil Cover Sheet, will be excluded from the Pilot: class actions, multidistrict litigation, transferred cases, cases filed by pro se plaintiffs, cases remanded from appellate court, reinstated and reopened cases, cases in which the plaintiff is proceeding in forma pauperis, government debt collection cases, and cases in the following nature of suit

categories indicated on the Civil Cover Sheet: Prisoner Petitions (510 - 550), Forfeiture/ Penalty (610 - 690), Bankruptcy (422 -423), Social Security (861 - 865), Contracts (only nos. 150 (Recovery of Overpayment and Enforcement of Judgment), 151 (Medicare Act), Civil Rights (only no. 441 (Voting)), and other Statutes (only nos. 400 (State Reapportionment), 460 (Deportation), 810 (Selective Service), 875 (Customer Challenge 12 USC 3410), 892 (Economic Stabilization Act), 894 (Energy Allocation Act), 895 (Freedom of Information Act) and 900 (Appeal of Fee Determination Under Equal Access to Justice)).

³ The date for the initial Case Management Conference will be set as close as feasible to the 120th day after the filing of the complaint.

**APPENDIX C
CASE MANAGEMENT PILOT
TIMELINE**

DAY¹ ACTIVITY

- 0** complaint filed, case assigned to pilot judge

- 40** last day to serve all defendants

- 45** last day to file proof(s) of service

- 46** court issues Order to Show Cause why the complaint should not be dismissed if plaintiff has not filed proof that at least one defendant has been served

- 90** last day to complete required disclosures

- 100** last day to complete meet and confer re case management

- 110**² last day to file and serve Case Management Statement and Proposed Order

- 120**³ judge conducts initial Case Management Conference

- 130** judge issues initial Case Management Order

¹ These deadlines represent the number of days after the filing of the complaint. All activities must occur no later than the listed date, unless the court orders otherwise.

² The last day to file and serve the Case Management Statement and Proposed Order will be 10 days before the scheduled initial Case Management Conference.

APPENDIX D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)
) CASE NO.
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) JOINT CASE MANAGEMENT STATEMENT
) AND PROPOSED ORDER
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)
) CASE MANAGEMENT CONFERENCE
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) DATE:
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) TIME:
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Pursuant to this Court's General Order No. 34, the court conducted a Case Management Conference on _____. Each party was represented by lead counsel responsible for trial of this matter and was given an opportunity to be heard as to all matters encompassed by this Case Management Statement and Proposed Order filed prior to the conference.

According to their written and oral submissions, the parties contend that the principal facts and events underlying the action are:

1 **FACTS AND EVENTS UNDERLYING THE ACTION**

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14 **A. PRINCIPAL ISSUES**

15 1. The principal factual issues that the parties dispute are:

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18 b.

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20 c.

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22 2. The principal legal issues that the parties dispute are:

23 a.

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25 b.

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27 c.

1 3. The following issues as to service of process, personal jurisdiction,
2 subject matter jurisdiction, or venue remain unresolved:

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5 4. The following parties have not yet been served:

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8 5. Any additional parties that a party intends to join are listed below:

9 Party Additional Parties Deadline

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13 6. Any additional claims that a party intends to add are listed below:

14 Party Additional Claims Deadline

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18 **B. ALTERNATIVE DISPUTE RESOLUTION (Choose one of the following three options.)**

19 This case already has been assigned or the parties have agreed to use the
20 following court sponsored or other ADR procedure (please list the provider
21 if other than the court):

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24 Date by which ADR session to be held:

25 The parties have been unable to agree on an ADR procedure. The party(ies)
26 listed below believes that the case is appropriate for the ADR procedure
27 indicated:
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All parties share the view that no ADR procedure should be used in this case.
The specific basis for that view is set forth below:

The parties make the following additional suggestions concerning settlement:

The Court hereby orders: _____

C. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE

Parties consent to a jury or court trial presided over by a magistrate judge

yes no

The Court hereby refers this case for the following purposes to a magistrate judge:

D. DISCLOSURES

The parties certify that they have made the following disclosures:

1. Persons disclosed pursuant to section VII.B.1. of General Order No. 34:

a. Disclosed by _____

- (1)
- (2)
- (3)
- (4)

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b. Disclosed by _____:

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c. Disclosed by _____:

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2. Categories of documents disclosed under section VII.B. of General Order No. 34 or produced through formal discovery:

a. Categories of documents disclosed by _____:

(1)

(2)

(3)

(4)

b. Categories of documents disclosed by _____:

(1)

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(4)

c. Categories of documents disclosed by _____:

(1)

(2)

(3)

(4)

1 3. Each party who claims an entitlement to damages or an offset sets
2 forth the following preliminary computation of the damages or of the
3 offset:

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7 4. The parties will disclose the following additional information by the
8 date listed:

9 Party Disclosure Deadline

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13 5. **Disclosures** will be supplemented at the following intervals:
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16 **E. EARLY FILING OF MOTIONS**

17 The following motions expected to have a significant effect either on the
18 scope of discovery or other aspects of the litigation shall be heard by the date
19 specified below:

20 Moving Party Nature of Motion Hearing Date

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24 **F. DISCOVERY**

25 1. The parties have conducted or have underway the following
26 discovery:
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2. The parties have negotiated the following discovery plan:

3. Limitations on discovery tools (specify number):

a. depositions (excluding experts) by:

plaintiff(s): _____ defendant(s): _____

b. interrogatories served by:

plaintiff(s): _____ defendant(s): _____

c. document production requests served by:

plaintiff(s): _____ defendant(s): _____

d. requests for admission served by:

plaintiff(s): _____ defendant(s): _____

4. The parties agree to the following limitations on the subject matter of discovery:

5. Discovery from experts. The parties plan to offer expert testimony as to the following subject matter(s):

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6. The Court orders the following additional limitations on the subject matter of discovery: _____

G. TRIAL

- 1. Trial date:
- 2. Anticipated length of trial (number of days):
- 3. Type of trial: jury court

H. ADDITIONAL SCHEDULING

- 1. Final pretrial conference date: _____
- 2. Date for filing papers required for the final pretrial conference: _____
- 3. Deadline to hear motions directed to the merits of all or part of the case:

- 4. Deadlines for completion of discovery:
 - a. all discovery except from experts: _____
 - b. disclosure of identities and resumes of expert witnesses:
plaintiff(s): _____
defendant(s): _____
 - c. discovery from experts: _____

I. Date of next case management/status conference: _____

J. OTHER MATTERS

K. IDENTIFICATION OF PARTIES

To facilitate survey research of the pilot program, please identify by name, title, work or home address and phone number of a client representative of each party:

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L. IDENTIFICATION AND SIGNATURE OF LEAD COUNSEL
Identify by name, address, and phone number lead counsel for each party.

IT IS HEREBY ORDERED:

Dated: _____

U.S. District Judge