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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff
CALIFORNIA ALLIANCE OF CHILD AND FAMILY
SERVICES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MHP

CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

Plaintiff,

v.

CLIFF ALLENBY, Interim Director of the
California Department of Social Services, in his
official capacity; MARY AULT, Deputy Director
of the Children and Family Services Division of
the California Department of Social Services, in
her official capacity,

Defendants.

C No. 06 4095

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(42 U.S.C. § 1983)

DEMAND FOR JURY TRIAL

Plaintiff California Alliance of Child and Family Services ("the Alliance") files this Complaint against Cliff Allenby ("Allenby"), in his official capacity as Interim Director of the California Department of Social Services ("DSS"), and Mary Ault ("Ault"), in her official capacity as Deputy Director of the Children and Family Services Division of DSS ("CFS"), for Declaratory Judgment and Injunctive Relief, and Demand for Jury Trial.

This case is brought on behalf of non-profit charitable organizations that care for children who have been removed from their homes and for whom the State of California has failed to provide adequate funding required by the federal Child Welfare Act. This action seeks

PA/52185384.1

1 to prevent further violation of law by the State of California and obtain proper payment to the
2 non-profit organizations sufficient to provide these children the appropriate care and shelter to
3 which they are entitled. Without the State compliance, the non-profit agencies will be forced to
4 choose between providing inadequate care or eliminating services and eventually ceasing
5 operations, to the great detriment of the affected children.

6 In support thereof, the Alliance alleges as follows:

7 **PARTIES**

8 1. The Alliance is a California corporation with its principal place of business at
9 2201 K Street, Sacramento, California 95816. The Alliance is a non-profit organization that,
10 among other pursuits, represents the interests of group homes that provide care and supervision
11 for foster children as described below.

12 a. The Alliance represents California non-profit agencies offering an array of
13 services to vulnerable children and their families. These services include group home programs.
14 Group homes provide care and supervision for foster children with significant emotional or
15 behavioral problems who cannot live safely in their own homes or in another family setting, and
16 who require more restrictive out-of-home placement environments. DSS licenses, audits, and
17 provides funding to these group homes through the Aid to Families with Dependent Children—
18 Foster Care (“AFDC-FC”) program.

19 b. The Alliance’s membership includes approximately 150 private, non-
20 profit agencies that provide adoption, foster care, group home, mental health treatment, family
21 preservation and support, wrap-around, educational, and other services.. Approximately 130 of
22 these agencies operate one or more group home programs, with a total licensed capacity for
23 approximately 5,700 children and youth.

24 c. The Alliance is committed to advocating on behalf of foster children and
25 the non-profit agencies that provide care and services for them. This advocacy includes fostering
26 and encouraging the continual improvement of services and outcomes for children and families.

27 d. The Alliance represents the interests of its members with respect to
28 matters relating to the State of California and DSS’ administration of the AFDC-FC program.

1 e. The Alliance is authorized to file this action on behalf of its accredited
2 members, who are and will continue to be affected adversely by the unlawful actions of
3 Defendants, and each of them, alleged herein. Through this Complaint, the Alliance seeks to
4 protect interests that are germane to its purpose and affiliation with member group homes. Each
5 group home that is a member of the Alliance has independent standing to bring an action.
6 Nevertheless, the Alliance asserts the claims alleged in this Complaint without the participation
7 of an individual member of the Alliance. Should it be deemed necessary for a group home to
8 participate in this action, the Alliance will seek leave to amend this Complaint to name specific
9 group homes as parties-in-interest.

10 2. Allenby is responsible in his official capacity for the administration of the Child
11 Welfare Act, 42 U.S.C. §§ 670-679b, and the programs related to that Act in California. Further,
12 Allenby is responsible for implementing the policies contained in the approved state plans and
13 assuring DSS' compliance with state and federal law. Allenby is sued only in his official
14 capacity.

15 3. Ault is responsible in her official capacity for implementing the policies contained
16 in the approved state plans. Ault is sued only in her official capacity.

17 JURISDICTION AND VENUE

18 4. The Alliance brings this civil action under 42 U.S.C. § 1983 and seeks a
19 declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Rate Classification Level ("RCL")
20 system implemented and applied by Defendants, and each of the them, which establishes the
21 rates of payment to group homes on behalf of foster children, violates Title IV-E of the Social
22 Security Act, 42 U.S.C. §§ 670-679b ("Child Welfare Act"), and its implementing regulations.
23 Further, the Alliance seeks provisional and permanent injunctive relief prohibiting Defendants,
24 and each of them, in their official capacities from using the RCL to establish payment rates. This
25 Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3).

26 5. The Alliance is informed and believes and on that basis alleges that Allenby in his
27 official capacity is a resident of California and works in California.

1 6. The Alliance is informed and believes and on that basis alleges that Ault in her
2 official capacity is a resident of California and works in California.

3 7. The Alliance is informed and believes and on that basis alleges that venue is
4 proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events
5 or omissions giving rise to the claims in this Complaint occurred in this district.

6 **INTRADISTRICT ASSIGNMENT**

7 8. This Complaint arises in the County of San Francisco, among other places.
8 Consequently, this action is assigned to either the San Francisco Division or the Oakland
9 Division. Civil Local Rule 3-2 (c)-(d).

10 **GENERAL ALLEGATIONS**

11 *The Child Welfare Act*

12 9. Congress enacted the Child Welfare Act in 1980 to address the need for providing
13 an appropriate setting for children who are dependents or wards of the state.

14 10. The Child Welfare Act establishes a cooperative federal-state program that assists
15 states in meeting the costs of providing foster care to children who are dependents and/or wards
16 of the state. Pursuant to this cooperative program, the federal government and the state
17 government share the cost of providing funds for licensed third parties (*e.g.*, group homes) that
18 care for these children.

19 11. The Child Welfare Act and related federal regulations require states receiving
20 federal aid to provide foster care and transitional independent living programs for a child when a
21 court has determined that it is necessary under applicable law that the child be removed from his
22 or her home and placed in out-of-home care.

23 12. To become eligible for federal funding, a state must submit a plan for financial
24 assistance to the Secretary of the U.S. Department of Health and Human Services (“DHHS”) for
25 approval. As a prerequisite for DHHS approval, the submitting state must agree, among other
26 conditions, to administer its foster care program pursuant to the Child Welfare Act, related
27 regulations, and policies promulgated by the Secretary of DHHS. 42 U.S.C. § 671(a), (b); 45
28 C.F.R. §§ 233.110, 1355.21, 1356.20, 1356.21.

1 13. Pursuant to the Child Welfare Act, a state must designate a state agency to
2 administer and/or supervise the administration of the approved state plan. 42 U.S.C. § 671(a)(2).

3 14. Pursuant to the Child Welfare Act, a state must amend its approved plan by
4 appropriate submission to the Secretary of DHHS whenever, among other instances, necessary to
5 comply with alterations to the Child Welfare Act and/or federal regulations or policies. 45
6 C.F.R. § 1356.20(e)(1).

7 15. The Child Welfare Act requires that states participating in the cooperative
8 program provide “foster care maintenance payments” on behalf of eligible children to child-care
9 institutions, including group homes. 42 U.S.C. §§ 671(a)(2), 672(b)(2); 675(4); 45 C.F.R. §
10 1356.21(a).

11 16. “The term ‘foster care maintenance payments’ means payments to cover the cost
12 of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s
13 personal incidentals, liability insurance with respect to a child, and reasonable travel to the
14 child’s home for visitation. In the case of institutional care, [foster care maintenance payments]
15 shall include the reasonable costs of administration and operation of such institution as are
16 necessarily required to provide the items described in the proceeding sentence.” 42 U.S.C. §
17 675(4)(A).

18 California’s Approved Child-Care Institution Program

19 17. For all periods relevant to this Complaint, DSS has been the state agency
20 responsible for submitting the California state plan to the Secretary of DHHS for approval and,
21 subsequent to receiving that approval, received federal funding that was intended to cover a
22 portion of the foster care maintenance payment made to group homes on behalf of eligible
23 children. Cal. Wel. & Inst. Code §§ 11229, 11460(a), 11462(a). DSS uses the RCL system to
24 establish payment rates for foster care group homes. See Cal. Wel. & Inst. Code § 11462. A
25 group home is assigned to one of fourteen levels (*i.e.*, RCLs) based on the group home’s number
26 of “points.” The number of points assigned to a group home is based largely on (1) the number
27 of “paid/awake” hours worked per child, per month, and (2) the qualifications of the staff. All of
28 the group homes in the same RCL receive the same AFDC-FC payment rate based on the

1 standardized schedule of rates in state law. *See* Cal. Wel. & Inst. Code § 11462(f). DSS
2 calculates a group home's number of points.

3 18. For all periods of time relevant to this Complaint, DSS, through CFS, has
4 established payment levels for foster care providers, including group homes. The payments
5 established under the RCL system are paid by the county that placed the child with the group
6 home or other foster care provider. Each group home that participates in California's foster care
7 program executes an agreement with the county placement agency to provide and be
8 compensated for care, supervision, and social work services.

9 *The RCL System Does Not Comply with*
10 *the Child Welfare Act*

11 19. The RCL system was implemented by state statute, 1989 Cal. Stat. Ch. 1294,
12 during the 1990-1991 state fiscal year. Since that time, foster care rates established under the
13 RCL system have increased by approximately 26%. Since the 1990-1991 fiscal year, however,
14 the increase in actual costs that group homes incur to care for and supervise children greatly
15 exceeds 26%. For example, the California Necessity Index ("CNI")¹ has increased by
16 approximately 53% through state fiscal year 2005-2006.²

17 20. The percentage of actual costs that group homes recoup through the RCL system
18 has diminished substantially over time due primarily to (1) an increase in the actual costs
19 associated with factors identified as compensable under the Child Welfare Act (*i.e.*, increases not
20 due solely to inflationary pressures), and (2) "new" costs that group homes must incur to satisfy
21 added state and county requirements.

23 ¹ The CNI is a weighted average of increases in various necessary costs of living for low-
24 income consumers, including food, clothing, fuel, utilities, rent, and transportation. *See, e.g.*,
Cal. Wel. & Inst. Code § 11453.

25 ² The Alliance believes that the CNI underestimates the actual increases in costs. The CNI
26 does not reflect substantial increases over the last few years in the cost of workers' compensation
27 insurance, liability insurance, medical insurance, and utilities. Further, the CNI does not reflect
new costs that group homes must incur to satisfy state and county requirements concerning staff
training, administrator certification, licensing fees, independent financial audits, record-keeping,
and other new requirements.

21. Several members of the Alliance have ceased operating group homes, or reduced the capacity of their group home programs, due, in substantial part, to the increasing costs that were not covered by payments established by the RCL system. The ever-decreasing percentage of actual costs of care provided under the RCL system jeopardizes the financial viability of group homes and their ability to provide care to foster children.

22. There is no administrative process or remedy available for the Alliance or its members to challenge the propriety of the RCL system.

COUNT I

Declaratory Relief

23. The Alliance incorporates Paragraphs 1-22 as though fully set forth herein.

24. There is currently an actual controversy between the Alliance and Defendants, and each of them, that is ripe for adjudication as to whether the RCL system fails to comply with federal law in setting rates for foster care maintenance payments.

25. The failure of Defendants, and each of them, to comply with the Child Welfare Act's mandated factors in setting rates for foster care maintenance payments deprives the Alliance's member group homes of their federal rights, privileges and immunities under color of state law in violation of 42 U.S.C. § 1983.

26. The Alliance is entitled to recover the full costs of this action and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT II

Permanent Injunctive Relief

27. The Alliance incorporates Paragraphs 1-26 as though fully set forth herein.

28. The Alliance is informed and believes and on that basis alleges that Defendants, and each of them, will continue to provide foster care maintenance payments that fail to comply with the Child Welfare Act.

29. The Alliance and its member group homes have suffered injury that is irreparable in nature as the proximate result of the failure of Defendants, and each of them, to establish properly foster care maintenance payments in a manner that complies with the Child Welfare

1 Act. The Alliance and its member group homes are without adequate remedy at law.

2 30. The Alliance is entitled to recover the full costs of this action and reasonable
3 attorneys' fees pursuant to 42 U.S.C. § 1988.

4 **PRAYER FOR RELIEF**

5 Wherefore, the Alliance requests relief as follows:

- 6 1. That the Court declare that Defendants, and each of them, violated, continue to
7 violate, and/or will violate the Child Welfare Act by failing to establish a payment
8 system adequate to cover the costs incurred by group homes that provide services
9 in accordance with federal and state laws and regulations;
- 10 2. That the Court declare that Defendants' current and continued use of the RCL
11 system violated, continues to violate, and/or will violate the group homes' federal
12 rights, privileges and immunities under color of state law;
- 13 3. That Defendants, and each of them, be temporarily and permanently enjoined
14 from currently and continually using the RCL system to establish foster care
15 maintenance payments to group homes;
- 16 4. That Defendants, and each of them, prepare and implement a payment system that
17 complies with the Child Welfare Act;
- 18 5. That Defendants be required to adjust payments made between the time that (1)
19 the Court grants provisional relief in favor of the Alliance, and (2) Defendants,
20 and each of them, prepare and implement a payment system that complies with
21 the Child Welfare Act;
- 22 6. That the Alliance be awarded its reasonable costs of suit and attorney's fees
23 included herein; and
- 24 7. That this Court award the Alliance such other relief as is warranted by the facts
25 and the law as is just under the circumstances.
- 26
27
28

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 3-6(a), the
3 Alliance hereby demands a trial by jury for all issues that are so triable.

4 DATED: June 30, 2006

5
6 Bingham McCutchen LLP

7
8 By: William F. Abrams
9 William F. Abrams
10 Attorneys for Plaintiff
11 CALIFORNIA ALLIANCE OF CHILD AND
12 FAMILY SERVICES
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File
MHP

U.S. District Court Northern California

ECF Registration Information Handout

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Local Rule 5-4 and General Order 45. This means that you must (check off the boxes ☒ when done):

- ☐ **1) Register** to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, **do not** register again, your registration is valid for life on all ECF cases in this district.
- ☐ **2) Serve this** ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. **DO NOT** serve the efiler application form, just this handout.
- ☐ **3) Email** (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- ☐ **4) PACER** (Public Access to Court Electronic Records) access is mandatory to access dockets and documents. If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

All subsequent papers in this case shall be filed electronically.

ECF registration forms, interactive tutorials and complete instructions for efilng may be found on the ECF website: <http://ecf.cand.uscourts.gov>

Submitting Initiating Documents

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, exhibits, etc.) must be **emailed (not efiled)** to the **PDF email box for the presiding judge** (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on [Judges].

U.S. District Court Northern California

Submitting Initiating Documents (continued)

You must include the case number and judge's initials in the subject line of all relevant emails to the court. You do not need to wait for your registration to email these documents.

These documents must be emailed instead of e-filed to prevent duplicate entries in the ECF system. All other documents must be e-filed from then on. You do not need to efile or email the Civil Cover Sheet, Summons, or any documents issued by the court at case opening; note that you do need to efile the Summons Returned.

Converting Documents to PDF

Conversion of a word processing document to a PDF file is required before any documents may be submitted to the Court's electronic filing system.

Instructions for creating PDF files can be found at the ECF web site: <http://ecf.cand.uscourts.gov>, and click on [FAQ].

Email Guidelines: When sending an email to the court, the subject line of the email **must** contain the **case number**, **judge's initials** and the **type of document(s)** you are sending, and/or the topic of the email.

Examples: The examples below assume your case number is 03-09999 before the Honorable Charles R. Breyer:

Type of Document	Email Subject Line Text
Complaint Only	03-09999 CRB Complaint
Complaint and Notice of Related Case	03-09999 CRB Complaint, Related Case
Complaint and Motion for Temporary Restraining Order	03-09999 CRB Complaint, TRO

Questions

Almost all questions can be answered in our **FAQs** at <http://ecf.cand.uscourts.gov>, please check them first.

You may also email the ECF Help Desk at ECFhelpdesk@cand.uscourts.gov or call the toll-free ECF Help Desk number at: (866) 638-7829.

The ECF Help Desk is staffed Mondays through Fridays from 9:00am to 4:00pm Pacific time, excluding court holidays.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA ALLIANCE OF CHILD,

Plaintiff (s),

v.

CLIFF ALLENBY,

Defendant(s).

No. C 06-04095 MHP 100 PM 12:57

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Marilyn H. Patel. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule set forth below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at www.adr.cand.uscourts.gov. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

CASE SCHEDULE -ADR MULTI-OPTION PROGRAM

Date	Event	Governing Rule
6/30/2006	Complaint filed	
21 days before CMC *	Last day to:	FRCivP 26(f) & ADR L.R.3-5
10/9/2006	<ul style="list-style-type: none">• meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan• file ADR Certification signed by Parties and Counsel (form available at www.adr.cand.uscourts.gov)• file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference (forms available at www.adr.cand.uscourts.gov)	Civil L.R. 16-8 (b) & ADR L.R. 3-5(b) Civil L.R. 16-8 (c) & ADR L.R. 3-5(b)& (c)
7 days before CMC *	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file Case Management Statement (form available at www.cand.uscourts.gov), and file Rule 26(f) Report	FRCivP 26(a) (1) & Civil L.R. 16-9
10/23/2006		
10/30/2006	INITIAL CASE MANAGEMENT CONFERENCE (CMC) in Ctrm 15, 18th Floor,SF at 4:00 PM	Civil L.R.16-10

* If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. _____

ORDER SETTING CONFERENCE

In accordance with Civ. L.R. 16-4, lead trial counsel who will try this case are directed to confer in advance of the Case Management/Status Conference with respect to all matters contained in the attached Proposed Joint Case Management Order and all other matters described in Rule 16(a), (b) and (c) and Civ. L.R. 16-8(b). Counsel shall complete the attached Order and file same not less than ten (10) days in advance of the Conference set for

_____ at 4:00 p.m. If additional space is needed, please attach a separate sheet. Plaintiff's counsel shall bear the responsibility for convening all counsel and completing and filing the Order.

Each party shall be represented at the Scheduling Conference by the lead counsel who will try the case and be prepared to discuss all matters referred to in the preceding paragraph.

Counsel shall have authority to enter stipulations and make admissions regarding all matters described herein.

PLAINTIFF IS DIRECTED TO SERVE COPIES OF THIS ORDER AT ONCE UPON ALL PARTIES IN THIS ACTION AND UPON THOSE SUBSEQUENTLY JOINED IN ACCORDANCE WITH THE PROVISIONS OF RULES 4 AND 5, FEDERAL RULES OF CIVIL PROCEDURE AND CIV. L.R. 4 AND 5, and to file with the Clerk of the Court a Certificate reflecting such service.

Revised 10/24/97

Counsels' appearance at the Scheduling Conference may be excused by leave of court (a phone request to the Courtroom Deputy is necessary) if this matter has been referred to Arbitration, in which case the attached order shall be filed and shall set forth the arbitration status of the case including the date scheduled for hearing, if any has been set, and the continuances which have been granted.

Case Management Conferences and other nondispositive matters may be heard by telephone, if all the parties agree and with approval of the court. Counsel should advise the Courtroom Deputy ten (10) days in advance of the scheduled hearing date of this preference.

MOTIONS TO DISMISS SHALL NOT BE FILED BEFORE THE INITIAL CASE MANAGEMENT CONFERENCE EXCEPT BY LEAVE OF COURT.

***FAILURE TO COMPLY WITH THIS ORDER or the provisions of Fed. R. Civ. P. 16 may be deemed sufficient grounds for dismissal of this cause, default or other appropriate sanctions. (See Rule 16(f)).



MARILYN HALL PATEL
United States District Judge

1 **A. JOINT STATEMENT OF FACTS AND EVENTS UNDERLYING THE ACTION**
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14 **B. PRINCIPAL ISSUES**

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

16 a.

17
18 b.

19
20 c.
21

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

23 a.

24
25 b.

26
27 c.
28

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

3
4
5 4. The following parties have not yet been served:

6
7
8 5. Any additional parties that a party intends to join are listed below:

9 Party Additional Parties Deadline

10
11
12
13 6. Any additional claims that a party intends to add are listed below:

14 Party Additional Claims Deadline

15
16
17
18 C. 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 following court
20 sponsored or other ADR procedure (please list the provider if other than the court):
21

22
23 Date by which ADR session to be commenced: _____

24 Date by which ADR session to be completed: _____

25 ☐ The parties have been unable to agree on an ADR procedure. The party[ies] listed below
26 believes that the case is appropriate for the ADR procedure indicated:
27
28

1 ☐ All parties share the view that no ADR procedure should be used in this case. The specific
2 basis for that view is set forth below:

3
4 The parties make the following additional suggestions concerning settlement:

5
6
7 The Court hereby orders: _____
8 _____
9 _____

10 **D. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE**

11 Parties consent to a jury or court trial presided over by a magistrate judge ☐ yes
12 ☐ no

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

14 _____
15 _____
16 _____

17 **E. DISCLOSURES**

18 The parties certify that they have made the following disclosures:

19 1. Persons disclosed pursuant to Civ. L.R. 16-5:

20 a. Disclosed by _____

21 (1)

22 (2)

23 (3)

24 (4)

25 b. Disclosed by _____:

26 (1)

27 (2)

28 (3)

- 1 4. All insurance policies as defined by Fed. R. Civ. P. 26(a)(1)(D) have been disclosed
2 as follows:

3 Party Type of Policy and Policy No. Policy Limits

- 4
5
6
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8 5. The parties will disclose the following additional information by the date listed:

9 Party Disclosure Deadline

- 10
11
12
13 6. Disclosures as required by Fed. R. Civ. P. 26(e) will be supplemented at the
14 following intervals:

15
16
17 F. EARLY FILING OF MOTIONS

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

20 Moving Party Nature of Motion Hearing Date

21
22
23
24 G. DISCOVERY

- 25 1. The parties have conducted or have underway the following discovery:
26
27
28

1 2. The parties have negotiated the following discovery plan:
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10 3. Limitations on discovery tools in accordance with Civ. L. R. 30-1, 33-1 (specify
11 number):

12 a. depositions (excluding experts) by:

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

14 b. interrogatories served by:

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

16 c. document production requests served by:

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

18 d. requests for admission served by:

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

20 4. The parties agree to the following limitations on the subject matter of discovery:
21
22
23
24

25 5. Discovery from experts. The parties plan to offer expert testimony as to the
26 following subject matter(s):
27
28

- 1 6. The Court orders the following additional limitations on the subject matter of
2 discovery: _____
3 _____
4 _____
5 _____
6
- 7 7. Deadlines for disclosure of witnesses and completion of discovery:
8 a. disclosure of identities of all witnesses to be called in each party's case-in-
9 chief:
10 plaintiff(s): _____
11 defendant(s): _____
12 b. completion of all discovery except from experts (see Civ. L.R. 26-5):
13 _____
14 c. disclosure of identities, resumes, final reports and all other matters required
15 by Fed. R. Civ. P. 26(a)(2):
16 plaintiff(s): _____
17 defendant(s): _____
18 d. completion of discovery from experts (see Civ. L.R. 26-5):
19 _____
20

20 **H. PRETRIAL AND TRIAL SCHEDULE**

- 21 1. Trial date: _____
22 2. Anticipated length of trial (number of days): _____
23 3. Type of trial: jury court
24 4. Final pretrial conference date: _____
25
26
27
28

- 1 5. Date required for filing the joint pretrial conference statement and proposed pretrial
2 order required by Civ. L.R. 16-9(b), complying with the provisions of Civ. L.R. 16-
3 8(b)(7)-(10) and such other materials as may be required by the assigned judge:

4 _____
5 _____

- 6 6. Date for filing objections under Civ. L.R. 16-8(b)(11) (objections to exhibits or
7 testimony): _____

- 8 7. Deadline to hear motions directed to the merits of all or part of the case:

9 _____
10

11 **NOTE:** Lead trial counsel who will try this case shall meet and confer at least 30 days prior to the
12 pretrial conference for the purposes of Civ. L.R. 16-9(a) which includes preparation of the joint
13 pretrial conference statement and all other materials required by § H.5 above. Lead trial counsel
14 shall also be present at the pretrial conference. (See Fed. R. Civ. P. 16(d).)

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

- 16 J. OTHER MATTERS
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- 20 K. IDENTIFICATION AND SIGNATURE OF LEAD TRIAL COUNSEL

21 Identify by name, address and phone number lead trial counsel for each party.
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1 The court finds that each party was represented by lead trial counsel responsible for trial of this
2 matter and was given an opportunity to be heard as to all matters encompassed by this Case
3 Management Statement and Proposed Order filed prior to this conference. The court adopts this
4 statement as modified and enters of this court pursuant to Civ. L.R. 16-8(b).

5 The foregoing joint statement as amended is adopted by this court as the Case Management
6 Order in this action in accordance with Civ. L.R. 16 and other applicable Local Rules, and shall govern
7 all further proceedings in this action.

8 IT IS SO ORDERED.

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11 Date:

12 Marilyn Hall Patel,
13 United States District Judge
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Addendum I

Motion Preparation:

These rules also apply to motions for summary judgment, preliminary injunction, or other motions requiring evidentiary submissions. The parties shall meet and confer to resolve all evidentiary issues. Those that cannot be resolved shall be handled in the following manner.

In connection with motions, the exhibits shall be submitted with a cover sheet listing all exhibits. Opposing counsel shall indicate on the list their objections, if any, by use of a keyed system. The keyed system referred to in these instructions may designate the objection by number or name, and shall include an index to the keys or codes, unless the number or name is self-evident. For example, a Rule 403, FRCP objection may be noted by R.403; an objection that a deposition question assumed facts not in evidence might be referred to as "AF" with the index identifying each such code.

Depositions used in connection with a motion shall be filed at the time the oppositions are filed and shall be marked as follows: The entire deposition shall be submitted (if deposition is in one volume; otherwise, only the volume containing designated portions shall be provided), one copy only, tabbed as necessary or otherwise marked. Objections shall be noted in the margin by use of a keyed system. This will provide the court with one deposition together with the objections of all parties appearing on the face of the designated extract.

Separate motions to strike shall not be filed.

Filing of Undisputed Statements of Fact:

The parties are hereby advised that in all proceedings where a statement of undisputed facts is to be filed, only one joint statement, signed by all parties, shall be filed. **Separate statements of undisputed facts are unacceptable, and failure to file one joint statement will result in the striking of pleadings or other appropriate sanctions.** If the parties are unable to agree that a fact is undisputed, then the fact is in dispute.