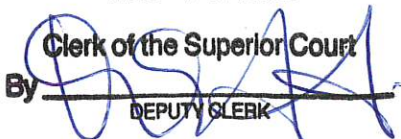


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SAN MATEO COUNTY

MAY 01 2020

Clerk of the Superior Court
By  DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

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**COVID 19 EMERGENCY ORDER
REGARDING DISCOVERY AND
INFORMAL DISCOVERY
CONFERENCES IN THE CIVIL
LAW & MOTION DEPARTMENT**

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Given the March 30, 2020 Order of the Chief Justice of California, which states in pertinent part:

“I find good cause to...support courts in making use of available technology, when possible, to conduct judicial proceedings and court operations remotely, suspend any rule in the California Rules of Court to the extent such rule would prevent a court from using technology to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This is consistent with the Governor’s order, which also provides for the suspension of related statutes that impose limitations on the subject of these emergency orders.”

Given the Order of the Presiding Judge, as authorized by the Chief Justice, entered March 17, 2020, stating that Court sessions may be held anywhere in the County.

Given Emergency Rule 3, adopted by the Judicial Council of California effective April 6, 2020, which states in pertinent part:

“Notwithstanding any other law, in order to protect the health and safety of the public, including court users, both in custody and out of custody defendants, witnesses, court personnel, judicial officers, and others, courts must conduct judicial proceedings and court operations as follows:

(1) Courts may require that judicial proceedings and court operations be conducted remotely.

(2) * * *

(3) Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.”

Given the Emergency Rule 11, adopted by the Judicial Council of California effective April 6, 2020, which states in pertinent part:

“Notwithstanding any other law, including Code of Civil Procedure section 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at their election or the election of the deposing party, is not required to be present with the deposition officer at the time of the deposition.”

Given that County health officials have deemed professional legal services “essential businesses” and the operation of the court an “essential service” to be conducted consistent with “social distancing protocols”;

IT IS HEREBY ORDERED as follows:

1. **Duration.** This Order and the procedures set forth herein shall apply and be followed until ten (10) calendar days after all COVID-19 restrictions ordered by the Governor of the State of California, the Chief Justice of California, the Judicial Council of California, the County Health Officer, and the Presiding Judge are no longer in effect, *or* until this order is expressly superseded by further order of this Court.

2. **Electronic Service.** Pursuant to Code of Civil Procedure Section 1010.6, California Rules of Court, Rule 2.253(c) and Rule 2.251(c), and Emergency Rule 12, counsel for all parties shall serve all documents electronically, and accept service of documents electronically from all other parties, in conformity with Code of Civil Procedure Section 1010.6 and the California Rules of Court, except when personal service is required by statute. Although self-represented parties are exempt from mandatory electronic service, they are encouraged to expressly consent to electronic service. Counsel for the parties shall meet and confer, agree upon, and keep updated, an e-service list for each civil action. The parties are reminded that electronic service of documents may extend time periods for response by two (2) court days, pursuant to Code of Civil Procedure Section 1010.6(a)(4)(B).

3. **Extensions Only for Filings not Service.** Pursuant to authority granted by the Chief Justice, the Presiding Judge issued an Order on March 17, 2020, and extended by subsequent orders, stating that dates from March 17, 2020 to May 14, 2020, are “holidays” for purposes of computing the time for *filing* papers with the Court under

Code of Civil Procedure Section 12 and 12a. As specifically stated in the Order, such emergency “holidays” only pertain to the deadlines for *filing* papers with the Court, and do not pertain to dates and deadlines regarding service of papers between the parties, such as discovery requests and discovery responses.

4. **Discovery.** All discovery methods (C.C.P. § 2019.010), including but not limited to notice of deposition, special interrogatories, form interrogatories, requests for production of documents, and requests for admissions, shall be served electronically upon counsel for the parties. All discovery responses by a party in response to a discovery method by another party shall be served electronically upon counsel for the parties. Although self-represented parties are exempt from mandatory electronic service, they are encouraged to expressly consent to electronic service. Production of documents shall be provided in electronic form, unless the parties agree otherwise in writing. If not previously established, counsel for the parties shall meet and confer regarding possible establishment of a joint electronic document depository for the uploading and downloading of electronic document productions.

5. **Depositions.** Code of Civil Procedure Section 2025.310 already provides that all persons, except the deponent and the court reporter, may attend a deposition remotely. Emergency Rule 11 authorizes depositions to be conducted remotely. Accordingly, in regard to depositions, notice of deposition, including by subpoena duces tecum, of any party or non-party, shall be served upon counsel for all parties electronically. Unless otherwise stipulated in writing by counsel for the parties, or unless technologically infeasible, oral depositions shall be conducted remotely, in that the deponent, the court reporter, each attorney for any party, and any party, shall “attend” the deposition remotely by appropriate audio-video conference method – which method shall

be selected and identified by the noticing party. If needed, any interpreter shall appear remotely. If the deposition is noticed for video recording, the video operator shall perform such services remotely. All communications with the deponent during the deposition shall be on the record, other than communications between the deponent and his/her attorney of record during breaks. During the deposition there shall not be direct or indirect electronic communications with the deponent, including but not limited to text, email, chat, instant message, etc. If the notice of deposition or subpoena includes a request for production of documents at any oral deposition, such documents shall be produced electronically by the deponent to counsel for all parties at least three (3) business days before the deposition date, unless otherwise agreed by counsel for the parties and for the deponent in writing. The deponent and his/her attorney may choose to be in the same location for the deposition, if they conduct themselves consistent with “social distancing protocols”, but not requiring the deponent to wear any mask while giving deposition testimony. As professional legal services have been deemed “essential businesses” and the operation of the court an “essential service”, it is the Court’s expectation that the deponent and his/her attorney can prepare for the deposition consistent with “social distancing protocols”.

6. Informal Discovery Conferences of Suspended Discovery Motions.

a. All Law & Motion matters set for hearing in the Civil Law & Motion Department were suspended effective March 16, 2020 to date. Pursuant to Code of Civil Procedure Section 2016.080(a), it is ordered by the Court that all discovery disputes that are the subject of *all previously-filed discovery motions*, i.e., all motions to compel or other motions brought pursuant to the Civil Discovery Act C.C.P. §2016.010 *et seq.*, which were previously set for hearing in the Civil Law & Motion Department for

a date between March 16, 2020 and May 29, 2020, shall be subject to an Informal Discovery Conference with the Court. Counsel for the parties and any self-represented parties who brought the pending discovery motion or are the subject of the discovery dispute shall participate in an Informal Discovery Conference, and the Court will contact the disputing parties by email at LawAndMotion@sanmateocourt.org to schedule the IDC session during May 2020. As the disputed matters were previously identified in the motion papers, no further briefing or supplemental correspondence regarding the discovery dispute shall be filed or submitted prior to the IDC, unless specifically and explicitly requested by the Court. As the dispute is already the subject of a filed motion, the parties shall *not* file any further declarations pursuant to C.C.P. Sections 2016.040 and 2016.080(b) prior to the Informal Discovery Conference.

b. Informal Discovery Conferences are not formal hearings, are not recorded by a court reporter, and no minutes are taken by a courtroom clerk. All Informal Discovery Conferences shall be conducted remotely, between the judge and counsel for the parties (or self-represented litigants), by a method or media selected by the Court. It is anticipated that the Court will be conducting Informal Discovery Conferences by conference call, i.e., audio only, unless the interested parties stipulate and undertake the burden of conducting the Informal Discovery Conference by audio-video media acceptable to the judge.

c. Only after the disputing parties have participated in good faith in an Informal Discovery Conference, and if the discovery dispute is not resolved after the Informal Discovery Conference, then the pending motion will be re-calendared for hearing (when Law & Motion Department hearings reopen).

7. **Informal Discovery Conferences of Pending Discovery Motions.**

a. Pursuant to Code of Civil Procedure Section 2016.080(a), it is ordered by the Court that all discovery disputes that are the subject of *previously-filed discovery motions*, i.e., all motions to compel or other motions brought pursuant to the Civil Discovery Act C.C.P. §2016.010 *et seq.*, which were previously set for hearing in the Civil Law & Motion Department for a date *on or after June 1, 2020*, shall be subject to an Informal Discovery Conference with the Court. Counsel for the parties and any self-represented parties who brought the pending discovery motion or are the subject of the discovery dispute shall participate in an Informal Discovery Conference, and the Court will contact the disputing parties by email at LawAndMotion@sanmateocourt.org to schedule the IDC session during May 2020. As the disputed matters were previously identified in the motion papers, no further briefing or supplemental correspondence regarding the discovery dispute shall be filed or submitted prior to the IDC, unless specifically and explicitly requested by the Court. As the dispute is already the subject of a filed motion, the parties shall *not* file any further declarations pursuant to C.C.P. Sections 2016.040 and 2016.080(b) prior to the Informal Discovery Conference.

b. Informal Discovery Conferences are not formal hearings, are not recorded by a court reporter, and no minutes are taken by a courtroom clerk. All Informal Discovery Conferences shall be conducted remotely, between the judge and counsel for the parties (or self-represented litigants), by a method or media selected by the Court. It is anticipated that the Court will be conducting Informal Discovery Conferences by conference call, i.e., audio only, unless the interested parties stipulate and undertake the burden of conducting the Informal Discovery Conference by audio-video media acceptable to the judge.

c. Only after the disputing parties have participated in good faith in an Informal Discovery Conference, and if the discovery dispute is not resolved after the Informal Discovery Conference, then the pending motion will be re-calendared for hearing by the Court.

d. The procedures outlined above apply to parties. With regard to discovery disputes with non-parties, the non-parties may elect to participate in this procedure, but are not required to do so.

8. Informal Discovery Conferences Required Prior to Filing Discovery Motions.

a. Pursuant to Code of Civil Procedure Section 2016.080, no party may move to compel discovery, or file any other discovery motion, including any motion for non-remote deposition, until the parties have had an Informal Discovery Conference with the Court. Counsel must have exhausted all meet and confer obligations before the Informal Discovery Conference. To request an Informal Discovery Conference, counsel should contact the Court by email at LawAndMotion@sanmateocourt.org, which email must be contemporaneously copied to counsel for all parties to the action and any self-represented parties. Pursuant to Code of Civil Procedure Section 2016.080(c)(2), the time for bringing any motion to compel is tolled starting on the date a party makes the email request for an Informal Discovery Conference to the Court. All requests for Informal Discovery Conference must be made well prior to the expiration of the statutory time to bring a motion to compel or other discovery motion.

b. Within five (5) calendar days of the initial email request to the Court for an Informal Discovery Request, the disputing parties shall, jointly or separately, email correspondence to the Court at LawAndMotion@sanmateocourt.org, and

contemporaneously to all parties, an electronic letter of no more than five (5) pages, without attachments, summarizing the discovery dispute(s).


c. All communications to the LawAndMotion@sanmateocourt.org email address MUST include in the header “subject line” the **Case Number and Name of Case** (e.g., 19CIV06543*Smith v. Jones*). Communications to this email address are *not* part of the official court files – just like a paper letter, they are not “filed” documents – and will be retained for at least 30 days and then be subject to deletion (destruction) thereafter.

d. Due to Court staffing limitations during this Covid 19 emergency time period, the parties involved in the discovery dispute **shall not** file any “meet and confer” declarations pursuant to Code of Civil Procedure Sections 2016.040 or 2016.080(b) prior to the Informal Discovery Conference. The dispute will be addressed by the e-correspondence method/procedure set forth above.

e. If the discovery dispute is not resolved following the discovery conference, any party may proceed to file a discovery motion *once the Law & Motion Department is permitted to hold hearings*.

f. The procedures outlined above apply to parties. With regard to discovery disputes with non-parties, the non-parties may elect to participate in this procedure, but are not required to do so.

DATED: May 1, 2020


HON. MARIE S. WEINER
CIVIL SUPERVISING JUDGE


HON. NANCY L. FINEMAN
CIVIL LAW & MOTION JUDGE