

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NO. 2:21-CV-02093-TLN-DB

ROXANNE MORALES , ET AL. ,

Plaintiff,

vs.

INITIAL PRETRIAL SCHEDULING
ORDER

CITY OF SACRAMENTO , ET AL. ,

Defendant(s).

This action has been assigned to the Honorable Troy L. Nunley. Pursuant to the provisions of Rule 16 of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED:

I. SERVICE OF PROCESS

Plaintiff(s) shall complete service of process on all parties within ninety (90) days of the date of the filing of the complaint. Concurrently with the service of process, or as soon thereafter as possible plaintiff(s) shall serve upon each of the parties named in the complaint, and upon all parties subsequently joined, a copy of this Order, and shall file with the Clerk of the Court a proof of service. Any party who impleads a third-party defendant shall serve upon that party a copy of this Order and shall file with Clerk of the Court a proof of service reflecting such service.

In the event this action was originally filed in a state court and was thereafter removed to this Court, the removing party shall, immediately following such removal, serve upon each of the other

////

1 parties named in the complaint and upon all parties subsequently joined a copy of this Order. The
2 removing party shall also file with the Clerk of the Court a proof of service reflecting such service.

3 In order to assist the Court in meeting its recusal responsibilities, any non-governmental
4 corporate party to this action shall file a statement identifying all its parent corporations and listing any
5 publicly-held company that owns ten percent (10%) or more of the party's stock. This statement shall
6 be filed no later than fourteen (14) days after the non-governmental corporate party is served with a
7 copy of this Order. Thereafter, if there is any change in the information, the party shall file and serve a
8 supplemental statement within a reasonable time after such change occurs.

9 **II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS**

10 Within sixty (60) days¹ of service of the complaint on the last party, or from the date of removal,
11 whichever is later, the parties shall amend the complaint or join any parties pursuant to the Federal
12 Rules of Civil Procedure. No other joinder of parties or amendments to pleadings is permitted without
13 leave of court, good cause having been shown.

14 **III. DISCOVERY**

15 Within sixty (60) days of service of the complaint on any party, or from the date of removal,
16 whichever is later, the parties shall confer as required by Federal Rule of Civil Procedure 26(f).

17 All discovery, with the exception of expert discovery, shall be completed no later than two
18 hundred forty (240) days from the date upon which the last answer may be filed with the Court
19 pursuant to the Federal Rules of Civil Procedure. In this context, "completed" means that all discovery
20 shall have been conducted so that all depositions have been taken and any disputes relative to discovery
21 shall have been resolved by appropriate order if necessary, and where discovery has been ordered,
22 the order has been obeyed. All motions to compel discovery must be noticed on the magistrate
23 judge's calendar in accordance with the Local Rules.²

24 ////

25 ////

26 ¹The parties shall refer to Federal Rule of Civil Procedure 6(a) in computing the time periods specified
27 in this Order.

28 ²A copy of the current Local Rules is available at
<http://www.caed.uscourts.gov/caednew/index.cfm/rules/local-rules/>

All counsel are to designate in writing, file with the Court, and serve upon all other parties the name, address, and area of expertise of each expert that they propose to tender at trial not later than sixty (60) days after the close of discovery. The designation shall be accompanied by a written report prepared and signed by the witness. The report shall comply with Federal Rule of Civil Procedure 26(a)(2)(B).

Within thirty (30) days after the designation of expert witnesses, any party may designate a supplemental list of expert witnesses who will express an opinion on a subject covered by an expert designated by an adverse party. The right to designate a supplemental expert for rebuttal purposes only shall apply to a party who has not previously disclosed an expert witness on the date set for expert disclosure by this Order.

Failure of a party to comply with the disclosure schedule as set forth above in all likelihood will preclude that party from calling the expert witness at the time of trial. An expert witness not appearing on the designation will not be permitted to testify unless the party offering the witness demonstrates:

- (a) good cause for the party's failure to designate the expert witness in accordance with this Order;
- (b) that the Court and opposing counsel were promptly notified upon discovery of the witness; and
- (c) that the witness was promptly made available for deposition.

For purposes of this Order, an "expert" is any person who may be used at trial to present evidence under Federal Rules of Evidence 702, 703, and 705, which include both "percipient experts" (persons who, because of their expertise, have rendered expert opinions in the normal course of their work duties or observations pertinent to the issues in the case) and "retained experts" (persons specifically designated by a party to be a testifying expert for the purposes of litigation).

Each party shall identify whether a disclosed expert is percipient, retained, or both. It will be assumed that a party designating a retained expert has acquired the express permission of the witness to be so listed. Parties designating percipient experts must state in the designation who is responsible for arranging the deposition of such persons.

All experts designated are to be fully prepared at the time of designation to render an informed opinion, and given their bases for their opinion, so that they will be able to give full and complete

1 testimony at any deposition taken by the opposing party. Experts will not be permitted to testify at
2 the trial as to any information gathered or evaluated, or opinion formed, after their deposition is taken
3 subsequent to designation.

4 Counsel are instructed to complete all discovery of expert witnesses in a timely manner in order
5 to comply with the Court's deadline for filing dispositive motions.

6 **V. SUPPLEMENTAL DISCOVERY**

7 Pursuant to Federal Rule of Civil Procedure 26(e), the parties shall exchange any supplemental
8 disclosures and responses (including expert supplemental materials) no later than thirty (30) days prior
9 to the dispositive motion hearing date. Any supplemental disclosures and responses necessary after said
10 date will require leave of Court good cause having been shown.

11 **VI. DISPOSITIVE MOTIONS**

12 The parties shall file dispositive motions no later than one hundred eighty (180) days after the
13 close of discovery. All papers should be filed in conformity with the Local Rules. Absent leave of
14 the Court, all issues the parties wish to resolve on summary judgment must be raised together in one (1)
15 motion or cross-motion. Should the parties wish to file additional motions for summary judgment,
16 they must seek leave of the Court.

17 All purely legal issues are to be resolved in timely pretrial motions. When appropriate, failure
18 to comply with Local Rules 230 and 260, as modified by this Order, may be deemed consent to the
19 motion and the Court may dispose of the motion summarily. With respect to motions for summary
20 judgment, failure to comply with Local Rules 230 and 260, as modified by this Order, may result in
21 dismissal for failure to prosecute (or failure to defend) pursuant to this Court's inherent authority to
22 control its docket and/or Federal Rule of Civil Procedure 41(b). Further, failure to timely oppose a
23 summary judgment motion³ may result in the granting of that motion if the movant shifts the burden
24 to the nonmovant to demonstrate that a genuine issue of material fact remains for trial.

25 ////

26 ////

27 _____
28 ³The Court urges any party that contemplates bringing a motion for summary judgment or who must
oppose a motion for summary judgment to review Local Rule 260.

1 The Court places a page limit for points and authorities (exclusive of exhibits and other
2 supporting documentation) of twenty (20) pages on all initial moving papers, twenty (20) pages on
3 oppositions, and ten (10) pages for replies. Sur-replies are viewed with disfavor and will only be
4 considered upon a showing of good cause. All requests for page limit increases must be made in
5 writing with a proposed order setting forth any and all reasons for any increase in page limit at least
6 fourteen (14) days prior to the filing of the motion. These page limits shall apply to any and all motions
7 filed with the Court.

8 The parties are directed to the Court's website for available hearing dates and Judge Nunley's
9 standard procedures. (www.caed.uscourts.gov – select "Judges" – select "Judge Nunley" – select
10 "Standard Information").

11 Citations to the Supreme Court Lexis database shall include parallel citations to the Westlaw
12 database.

13 The parties are reminded that a motion in limine is a pretrial procedural device designated to
14 address the admissibility of evidence. The Court will look with disfavor upon dispositional motions
15 presented at the Final Pretrial Conference or at trial in the guise of motions in limine.

16 The parties are cautioned that failure to raise a dispositive legal issue that could have been
17 tendered to the Court by proper pretrial motion prior to the dispositive motion cut-off date may
18 constitute waiver of such issue.

19 **VII. TRIAL SETTING**

20 The parties are ordered to file a Joint Notice of Trial Readiness not later than thirty (30) days
21 after receiving this Court's ruling(s) on the last filed dispositive motion(s). If the parties do not intend
22 to file dispositive motions, the parties are ordered to file a Joint Notice of Trial Readiness not later
23 than one hundred twenty (120) days after the close of discovery and the notice must include statements
24 of intent to forgo the filing of dispositive motions.

25 The parties are to set forth in their Notice of Trial Readiness, the appropriateness of special
26 procedures, their estimated trial length, any request for a jury, their availability for trial, and if the
27 parties are willing to attend a settlement conference. The parties' Notice of Trial Readiness Statement
28 shall also estimate how many court days each party will require to present its case, including opening

1 statements and closing arguments. The parties' estimate shall include time necessary for jury selection,
2 time necessary to finalize jury instructions and instruct the jury.

3 After review of the parties' Joint Notice of Trial Readiness, the Court will issue an order that
4 sets forth dates for a final pretrial conference and trial.

5 **VIII. SETTLEMENT CONFERENCE**

6 If the parties agree to a settlement conference, a magistrate judge will be randomly assigned to
7 the case to preside over the settlement conference. If the parties specifically request that the assigned
8 District Judge or Magistrate Judge conduct the settlement conference, the parties shall file the
9 appropriate waiver of disqualification in accordance with Local Rule 270(b). If the parties elect to
10 participate in the Voluntary Dispute Resolution Program (VDRP), a stipulation of election is required
11 pursuant to Local Rule 271. See, Attachments 2–1 and 2–2 of this Order.

12 In accordance with Local Rule 160, counsel are to immediately file a notice of settlement or
13 other disposition of this case.

14 **IX. MODIFICATION OF INITIAL PRETRIAL SCHEDULING ORDER**

15 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil Procedure,
16 the Initial Pretrial Scheduling Order shall not be modified except by leave of court upon a showing of
17 **good cause**. Agreement by the parties pursuant to stipulation alone to modify the Initial Pretrial
18 Scheduling Order does not constitute good cause. Except in extraordinary circumstances, unavailability
19 of witnesses or counsel will not constitute good cause.

20 **X. COURTESY COPIES**

21 No party shall submit paper courtesy copies of pleadings or exhibits to the Court unless
22 expressly ordered to do so.

23 **XI. SPECIAL CASES**

24 In any cases involving E.R.I.S.A, Class–Actions, or Administrative Appeals, the parties shall
25 file a short joint statement with the Court identifying the type of case within thirty (30) days of service
26 on all defendant(s). Based upon the provided information, the Court may issue a supplemental pretrial
27 scheduling order.

28 //

This Initial Pretrial Scheduling Order will become final without further order of the Court unless objections are filed within sixty (60) days of service on all defendant(s).

DATED: November 12, 2021



TROY L. NUNLEY
U.S. DISTRICT COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
501 I STREET, SUITE 15-220
SACRAMENTO, CA 95814

Chambers of
KIMBERLY J. MUELLER
Chief United States District Judge

(916) 930-4260

Magistrate Judge Consent in Civil Cases: Know Your Rights!

Delay, congestion, uncertainty, and expense are concerns often expressed by civil litigants. These concerns have reached a crisis level in the Eastern District of California.

Despite the population of our District nearly doubling since 1979 and a corresponding tremendous increase in case filings, for the past 40 years our court has only 6 authorized District Judgeship positions. The U.S. Judicial Conference, the policy-making arm of the federal courts, has recommended for decades that Congress authorize between 5 and 11 new judgeships for this court. While the court is doing what it can to ensure Congress is fully informed regarding our current proposed allocation of 5 new judgeships, we cannot at this point say there is a realistic hope of new District Judgeships in the foreseeable future.

To make matters worse, given recent events, only 4 of our 6 authorized judgeships are filled by active District Judges as of February 2020. The Sacramento Division has experienced a net loss of one District Judge's services, with Senior District Judge Garland E. Burrell's taking inactive senior status and District Judge Morrison C. England's taking active senior status and reducing his combined civil and criminal caseload by half. Our Fresno Division is even harder hit, with former Chief District Judge Lawrence J. O'Neill's taking inactive senior status at the end of January 2020, leaving the Fresno District Court with only one active Article III judge to handle all criminal cases and a heavy share of civil cases, and one senior Article III judge who assists the court by taking a half civil caseload. The Eastern District has been significantly congested for many years, consistently carrying average weighted caseloads equal or close to twice the national average for federal trial courts. Given our current more dire circumstances, civil litigants are having to vie for less and less District Judge time and attention. Civil litigants therefore may wish to consider consenting to Magistrate Judge jurisdiction, given that the court has a full complement of experienced Magistrate Judges available to preside to the full extent allowed by law.

The Magistrate Judge consent process can help bring about the "just, speedy, and inexpensive determination" of federal cases. Fed. R. Civ. P. 1. Although their title has changed periodically, Magistrate Judges, as they currently are known, have had a role in the federal courts since passage of the Judiciary Act of 1789. Over time, Congress has expanded and enhanced the position in the interests of maximizing judicial efficiency. Specifically, Magistrate Judges are authorized "to conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case" with the consent of the parties. 28 U.S.C. § 636(c). Consent can maximize access to the courts and ease court congestion through effective use of judicial resources. It can provide numerous benefits to litigants including the prospect of an early and firm trial date, when District Judges may not be available to try a civil case given the need to prioritize felony criminal cases.

In civil cases, the assigned Magistrate Judge already is responsible for resolving discovery disputes, deciding other non-dispositive motions and in some instances handling pre-trial proceedings; as a result that judge may be intimately familiar with the case history. Consenting in any civil case allows the Magistrate Judge to decide dispositive motions and preside over trial, and so can avoid the

uncertainty parties may face while waiting for the District Judge to identify time on his or her calendar for trial. Just as with a judgment issued by a District Judge, a judgment issued by a Magistrate Judge to whom the parties in a civil case have consented is appealable directly to the Ninth Circuit Court of Appeals.

As their professional biographies posted on our court's website show, our Magistrate Judges are well-qualified to preside over the cases assigned them. They are experienced, high-caliber judges with diverse experiences in civil and criminal litigation who have been selected on the merits, taking into account their education, experience, knowledge of the court system, personal attributes and other criteria. Our Magistrate Judges are well-qualified to preside over the civil cases brought in our court.

To consent to magistrate judge jurisdiction, a party simply signs and files a consent form. The form is available on the court's website, at this link:

<http://www.caed.uscourts.gov/caednew/index.cfm/forms/civil/>.

Parties may consent or withhold consent without any adverse consequences. Once all parties to a case consent, then the assigned District Judge is notified and considers whether to approve the consent. Once the District Judge accepts, then the Magistrate Judge determines whether to accept consent jurisdiction, taking the opportunity to consider any conflicts or bases for recusal.

All litigants before the federal courts deserve justice delivered in a fair, prompt, and efficient manner. Our Magistrate Judges play a critical role in providing essential access to justice, particularly in our overburdened court. Consenting to Magistrate Judge jurisdiction in civil cases may represent one of the best ways to secure "just, speedy, and inexpensive determination" of your case, which is why we want to be sure you are fully aware of your right and ability to consent, and the means of doing so.


CHIEF UNITED STATES DISTRICT JUDGE

**NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE
TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS**

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case–dispositive jurisdiction and to conduct any or all case–dispositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or non jury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case–dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent pursuant to 28 U.S.C. § 636(c), the assigned Magistrate Judge will hear all motions except those case–dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at www.caed.uscourts.gov for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk
501 I Street, Room 4–200
Sacramento, CA 95814

Office of the Clerk
2500 Tulare Street, Suite 1501
Fresno, CA 93721

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROXANNE MORALES , ET AL. ,
Plaintiff(s) / Petitioner(s),

CASE NO: 2:21-CV-02093-TLN-DB

vs.

CONSENT / DECLINE OF U.S.
MAGISTRATE JUDGE JURISDICTION

CITY OF SACRAMENTO , ET AL. ,
Defendant(s) / Respondent(s).

IMPORTANT

**IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF
A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE
SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.**

CONSENT TO JURISDICTION OF UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, U.S.C Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: _____

Signature: _____

Print Name: _____

() Plaintiff / Petitioner () Defendant / Respondent

Counsel for _____*

DECLINE OF JURISDICTION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: _____

Signature: _____

Print Name: _____

() Plaintiff / Petitioner () Defendant / Respondent

Counsel for _____*

**If representing more than one party, counsel must indicate the name of each party responding.*

NOTICE OF AVAILABILITY

VOLUNTARY DISPUTE RESOLUTION

Pursuant to the findings and directives of Congress in 28 U.S.C. §§ 651 *et seq.*, and in recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full formal litigation, Local Rule 271 governs the referral of certain actions to the Voluntary Dispute Resolution Program ("VDRP") at the election of parties. Plaintiff or removing party is to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than fourteen (14) days after receiving notice from the Court. After filing of the original complaint or removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

It is the Court's intention that the VDRP shall allow the participants to take advantage of a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be determined by the Neutral and the parties.

PLEASE TAKE NOTICE that pursuant to Local Rule 271, *this Local Rule applies to* all civil actions pending before any District Judge or Magistrate Judge in the District except that actions in the following categories are exempt from presumptive inclusion: (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing *pro se*, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances. The fact that a case falls in a category that is exempt from the presumptive applicability of this Local Rule neither (1) precludes the parties to such a case from agreeing to participate in an Alternative Dispute Resolution ("ADR") process, nor (2) deprives the Court of authority to compel participation in an appropriate ADR proceeding.

Parties may elect Voluntary Dispute Resolution with the Court indicating that all parties to the action agree to submit the action to VDRP pursuant to Local Rule 271. Actions may not be assigned to VDRP over the objection of a party. (Copy of sample stipulation attached hereto.) **At the time of filing, a copy of the stipulation shall be provided to the VDRP Administrator designated below:**

Sacramento Cases

Voluntary Dispute Resolution
Program Administrator
United States District Court
501 "I" Street, Suite 4-200
Sacramento, CA 95814
(916) 930-4278

Fresno Cases

Voluntary Dispute Resolution
Program Administrator
United States District Court
2500 Tulare Street, Suite 1501
Fresno, CA 93721
(559) 499-5600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROXANNE MORALES , ET AL.,

NO: 2:21-CV-02093-TLN-DB

Plaintiff(s)

v.

STIPULATION TO ELECT REFERRAL
OF ACTION TO VOLUNTARY DISPUTE
RESOLUTION PROGRAM (VDRP)
PURSUANT TO LOCAL RULE 271

CITY OF SACRAMENTO , ET AL.,

Defendant(s)

Pursuant to Local Rule 271, the parties hereby agree to submit the above-entitled action to
the Voluntary Dispute Resolution Program.

DATED: **NOVEMBER 12, 2021**

Name:
Attorney for Plaintiff(s)

Name:
Attorney for Defendant(s)