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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER J. HOFFMAN, et al.,

Plaintiffs,

v.

ROB BONTA, *in his official capacity as
Attorney General of California*,

Defendant.

Case No.: 24-cv-0664-CAB-MMP

SCHEDULING ORDER

Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on **July 31, 2024**. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Counsel¹ shall refer to the Judge Bencivengo’s Chambers Rules for Civil Cases, which is accessible via the Court’s website at www.casd.uscourts.gov. For ease of reference, Judge Bencivengo’s rules concerning the procedure for seeking permission to file documents under seal is attached hereto.

¹ As used herein, references to “counsel” include any party representing himself or herself.

1 2. All fact discovery shall be completed by all parties by **December 20, 2024**.
2 “Completed” means that all discovery under Rules 30-36 of the Federal Rules of Civil
3 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
4 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
5 into account the times for service, notice and response as set forth in the Federal Rules of
6 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with regard**
7 **to all discovery disputes in compliance with Local Rule 26.1(a)**. The Court expects
8 counsel to make every effort to resolve all disputes without court intervention through the
9 meet and confer process. If the parties reach an impasse on any discovery issue, counsel
10 shall file an appropriate motion within the time limit and procedures outlined in the
11 undersigned magistrate judge’s chambers rules. **A failure to comply in this regard will**
12 **result in a waiver of a party’s discovery issue. Absent an order of the court, no**
13 **stipulation continuing or altering this requirement will be recognized by the court.**

14 3. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall be served on
15 all parties on or before **December 20, 2024**. Any contradictory or rebuttal information shall
16 be disclosed on or before **January 10, 2025**. Unless otherwise stipulated by the parties, the
17 required expert disclosures shall include an expert report as required by Rule 26(a)(2)(B).
18 If a written report is not required, the disclosure must provide the information required
19 under Rule 26(a)(2)(c).

20 4. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty on the parties to
21 supplement the expert disclosures made pursuant to Fed. R. Civ. P. 26(a)(2)(B) by the time
22 that pretrial disclosures are due under Fed. R. Civ. P. 26(a)(3). This disclosure requirement
23 applies to all persons retained or specially employed to provide expert testimony, or whose
24 duties as an employee of the party regularly involve the giving of expert testimony.

25 **Please be advised that failure to comply with this section or any other discovery**
26 **order of the Court may result in the sanctions provided for in Fed. R. Civ. P. 37,**
27 **including a prohibition on the introduction of experts or other designated matters in**
28 **evidence.**

Protective Orders and Requests to File under Seal in Civil Cases

Although the Court acknowledges the parties' desire to maintain the confidentiality of documents produced in discovery, "[w]hen discovery material is filed with the court [] its status changes." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). The public policy reasons behind a presumption of access to judicial documents apply. *Id.* The common law and the Constitution afford the public a qualified right of access to judicial records and proceedings. *Times Mirror Co. v. U.S.*, 873 F.2d 1210, 1211 n.1 (9th Cir. 1989); *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010).

In the Ninth Circuit there is a strong presumption in favor of access to court records and a party must show **compelling reasons** to file materials under seal as part of a non-discovery motion, even if they were produced subject to a discovery protective order. *See Foltz*, 331 F.3d at 1135-36. Once the protected discovery documents are made part of a dispositive [or non-discovery] motion, "they lose their status of being raw fruits of discovery" and no longer enjoy protected status without some overriding interests in favor of keeping the material confidential. *See id.*, at 1136.

Court records should be sealed to keep confidential only what must be kept secret, temporarily or permanently, as the situation requires. The party seeking to file under seal must provide articulable facts showing a compelling reason to limit public access to court filings. That a litigant might be embarrassed or exposed to additional liability or litigation, without more, is not sufficient. *Foltz*, 331 F.3d at 1136. A court's decision to seal material must be based on a compelling reason and the order allowing a filing under seal must articulate the factual basis for its ruling without relying on hypothesis or conjecture. *Pintos*, 605 F.3d at 679. "A 'good cause' showing will not suffice to fulfill the 'compelling reasons' standard that a party must meet to rebut the presumption of access to dispositive pleadings and attachments." *Id.* (citing *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)).

Because the party that designated material as confidential should have the burden (and expense) of moving to file such documents under seal, the following procedures shall apply when a party intends to file a non-discovery motion before Judge Bencivengo that cites to or attaches documents designated confidential.

1. If the party filing the motion (or opposition thereto) intends to cite or attach documents or information that it believes should be filed under seal, the moving party must file a motion for permission to file under seal at least

seven calendar days prior to the date on which it intends to file the motion. A courtesy copy of the motion for permission to file under seal, along with a courtesy copy of the unredacted materials that the party wants to file under seal, shall be delivered to Judge Bencivengo's Chambers within 24 hours of filing. After receiving a ruling from the Court on the motion for permission to file under seal, the party may file its substantive motion (or opposition) consistent with the Court's order.

2. If the party filing the motion (or opposition thereto) intends to cite or attach documents or information that another party has designated as confidential pursuant to a protective order entered in the case, it shall serve notice to the designating party by email, no later than **eight business days** prior to the date it intends to file the motion, specifically identifying the documents and information it is contemplating using in connection with the motion. The designating party shall then have **four business days** from the date of the notice to file a motion seeking permission for the documents and information to be filed under seal. A courtesy copy of the motion for permission to file under seal, along with a courtesy copy of the unredacted materials that the party wants to file under seal, shall be delivered to Judge Bencivengo's Chambers within 24 hours of filing. After receiving a ruling from the Court on the motion for permission to file under seal, the party may file its substantive motion (or opposition) consistent with the Court's order. If the designating party does not timely file a motion for permission to file under seal, the confidential designation will be deemed waived, and the party seeking to use the documents or information shall file it publicly in connection with its motion or opposition.