

FILED LODGED
 RECEIVED COPY

OCTOBER 13, 2017

CLERK US DISTRICT COURT
DISTRICT OF ARIZONA

BY s/M. Everette DEPUTY

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

In the matter of

MANDATORY INITIAL DISCOVERY
PILOT PROJECT IN THE DISTRICT OF
ARIZONA

(AS AMENDED OCTOBER 13, 2017)

GENERAL ORDER 17-08

IT IS HEREBY ORDERED: Effective May 1, 2017, the United States District Court for the District of Arizona will begin participation in a Mandatory Initial Discovery Pilot Project approved by the Judicial Conference of the United States.

The Mandatory Initial Discovery Pilot Project applies to all civil cases filed on or after May 1, 2017, other than cases listed in Rule 26(a)(1)(B), actions under the Private Securities Litigation Reform Act (“PSLRA”), cases transferred for consolidated administration in the District by the Judicial Panel on Multidistrict Litigation, and cases under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The discovery obligations addressed in this General Order supersede the disclosures required by Rule 26(a)(1) and are framed as court-ordered mandatory initial discovery pursuant to the Court’s inherent authority to manage cases, Rule 16(b)(3)(B)(ii), (iii), and (vi), and Rule 26(b)(2)(C). Unlike initial disclosures required by current Rule 26(a)(1)(A) & (C), this General Order does not allow the parties to opt out.

A. Instructions to Parties.

1. Any party seeking affirmative relief must serve a copy of the Notice to the Parties of Mandatory Initial Discovery Pilot Project, including this General Order and the

1 MIDP Checklist, on each new party when the Complaint, Counterclaim, Crossclaim, or
2 Third-Party Complaint is served.

3 2. The parties to this litigation are ordered to provide mandatory initial
4 discovery responses before initiating any further discovery in this case. The responses
5 are called for by the Court, not by discovery requests actually served by an opposing
6 party. Part B of this order sets forth the categories of information that must be provided
7 in each party's mandatory initial discovery responses. After the mandatory initial
8 discovery responses have been provided, additional discovery may proceed under the
9 Federal Rules of Civil Procedure and as set forth in a case management order to be
10 entered by the Court.

11 3. Each party's response must be based on the information then reasonably
12 available to it. A party is not excused from providing its response because it has not fully
13 investigated the case, it challenges the sufficiency of another party's response, or another
14 party has not provided a response. Responses must be signed under oath by the party,
15 certifying that it is complete and correct as of the time it was made based on the party's
16 knowledge, information, and belief formed after a reasonable inquiry, and signed under
17 Rule 26(g) by the attorney.

18 4. Parties must provide the requested information as to facts that are relevant
19 to the claims and defenses in the case, whether favorable or unfavorable, and regardless
20 of whether they intend to use the information in presenting their claims or defenses. The
21 parties also must provide relevant legal theories in response to paragraph B.4 below. If a
22 party limits the scope of its response on the basis of privilege or work product, the party
23 must produce a privilege log as required by Rule 26(b)(5) unless the parties agree or the
24 Court orders otherwise. If a party limits its response on the basis of any other objection,
25 including an objection that providing the required information would involve
26 disproportionate expense or burden, it must explain with particularity the nature of the
27 objection and its legal basis, and provide a fair description of the information being
28 withheld.

1 5. Parties must file answers, counterclaims, crossclaims, and replies within the
2 time set forth in Rule 12(a)(1)-(3) even if they have filed or intend to file a motion to
3 dismiss or other preliminary motion, with the following exceptions:

4 a. Such pleadings need not be filed when a motion to dismiss is based
5 on lack of subject-matter jurisdiction, lack of personal jurisdiction, sovereign immunity,
6 or absolute or qualified immunity of a public official. When such jurisdiction or
7 immunity motions have been filed, the time for the moving party to answer,
8 counterclaim, crossclaim, or reply shall be set by the Court in its order deciding the
9 motion. If the Court fails to set a time in its order, the time to respond to the complaint
10 shall be established by Rule 12(a)(4). In cases with multiple defendants, this exception
11 for jurisdiction and immunity motions applies only to the moving party.

12 b. Upon a showing that a defendant cannot reasonably respond to a
13 complaint within the time set forth in Rule 12(a)(1)-(3), the court may, with or without
14 awaiting a response from the opposing party, grant a one-time extension of up to 30 days
15 to respond to the complaint.

16 6. A party seeking affirmative relief must serve its responses to the mandatory
17 initial discovery no later than 30 days after the first pleading filed in response to its
18 complaint, counterclaim, crossclaim, or third-party complaint. A party filing a
19 responsive pleading, whether or not it also seeks affirmative relief, must serve its initial
20 discovery responses no later than 30 days after it files its responsive pleading. In cases
21 removed from state court, the responses must be filed within 30 days of removal if a
22 responsive pleading was filed in state court before removal, and within 30 days of the
23 response date set in Rule 81(c)(2) if a responsive pleading was not filed in state court
24 before removal. In all cases, (a) no initial discovery responses need be served if the
25 Court approves a written stipulation by the parties that no discovery will be conducted in
26 the case; or (b) initial discovery responses may be deferred, one time, for 30 days if the
27 parties jointly certify to the Court that they are seeking to settle the case and have a good
28

1 faith belief that it will be resolved within 30 days of the due date for their responses, and
2 the Court approves the deferral.

3 7. Unless the Court orders otherwise, initial responses and later supplements
4 shall not be filed with the Court, but Parties shall file a notice of service of their initial
5 responses and later supplements.

6 8. The duty to provide mandatory initial discovery responses set forth in this
7 order is a continuing duty, and each party must serve supplemental responses when new
8 or additional information is discovered or revealed. A party must serve such
9 supplemental responses in a timely manner, but in any event no later than 30 days after
10 the information is discovered by or revealed to the party. The Court normally will set a
11 deadline in its Rule 16(b) case management order for final supplementation of responses,
12 and full and complete supplementation must occur by the deadline. If the Court fails to
13 set a deadline, final supplementation must occur by the fact discovery deadline set by the
14 Court in its case management order. If new information is revealed in a written discovery
15 response or a deposition in a manner that reasonably informs all parties of the
16 information, the information need not be presented in a supplemental response.

17 9. Parties should include in the Rule 26(f) report to the Court a concise
18 description of their discussions of the mandatory initial discovery responses. The report
19 should also include a concise description of the resolution of any limitations invoked by
20 any party in its response, as well as any existing disagreements requiring resolution by
21 the court. The parties shall attach the initial and supplemental responses and any other
22 discovery requests, objections, and responses involved in any existing disagreements.
23 During the Rule 26(f) conference, parties should discuss the mandatory initial discovery
24 responses and seek to resolve any limitations they have made or intend to make.

25 10. Production of information under this General Order does not constitute an
26 admission that information is relevant, authentic, or admissible.

27 11. Rule 37(b)(2) shall apply to mandatory discovery responses required by this
28 order.

1 **B. Mandatory Initial Discovery Requests.**

2 The parties must respond to the following Court-issued discovery requests without
3 awaiting discovery requests from the opposing parties, and at the times set forth above.

4 1. State the names and, if known, the addresses and telephone numbers of all
5 persons who you believe are likely to have discoverable information relevant to any
6 party's claims or defenses, and provide a fair description of the nature of the information
7 each such person is believed to possess.

8 2. State the names and, if known, the addresses and telephone numbers of all
9 persons who you believe have given written or recorded statements relevant to any
10 party's claims or defenses. Unless you assert a privilege or work product protection
11 against disclosure under applicable law, attach a copy of each such statement if it is in
12 your possession, custody, or control. If not in your possession, custody, or control, state
13 the name and, if known, the address and telephone number of each person who you
14 believe has custody of a copy.

15 3. List the documents, electronically stored information ("ESI"), tangible
16 things, land, or other property known by you to exist, whether or not in your possession,
17 custody or control, that you believe may be relevant to any party's claims or defenses.
18 To the extent the volume of any such materials makes listing them individually
19 impracticable, you may group similar documents or ESI into categories and describe the
20 specific categories with particularity. Include in your response the names and, if known,
21 the addresses and telephone numbers of the custodians of the documents, ESI, or tangible
22 things, land, or other property that are not in your possession, custody, or control. For
23 documents and tangible things in your possession, custody, or control, you may produce
24 them with your response, or make them available for inspection on the date of the
25 response, instead of listing them. Production of ESI will occur in accordance with
26 paragraph C.2 below.

27 4. For each of your claims or defenses, state the facts relevant to it and the
28 legal theories upon which it is based.

1 5. Provide a computation of each category of damages claimed by you, and a
2 description of the documents or other evidentiary material on which it is based, including
3 materials bearing on the nature and extent of the injuries suffered. You may produce the
4 documents or other evidentiary materials with your response instead of describing them.

5 6. Specifically identify and describe any insurance or other agreement under
6 which an insurance business or other person or entity may be liable to satisfy all or part
7 of a possible judgment in the action or to indemnify or reimburse a party for payments
8 made by the party to satisfy the judgment. You may produce a copy of the agreement
9 with your response instead of describing it.

10 7. A party receiving the list described in Paragraph 3, the description of
11 materials identified in Paragraph 5, or a description of agreements referred to in
12 Paragraph 6 may request more detailed or thorough responses to these mandatory
13 discovery requests if it believes the responses are deficient. A party may also serve
14 requests pursuant to Rule 34 to inspect, copy, test, or sample any or all of the listed or
15 described items, to the extent not already produced in response to these mandatory
16 discovery requests, or to enter onto designated land or other property identified or
17 described.

18 **C. Disclosure of Hard-Copy Documents and ESI.**

19 1. *Hard-Copy Documents.* Hard-copy documents must be produced as they
20 are kept in the usual course of business.

21 2. *Electronically Stored Information (ESI).*

22 a. *Duty to Confer.* When the existence of ESI is disclosed or
23 discovered, the parties must promptly confer and attempt to agree on
24 matters relating to its disclosure and production, including:

25 i. requirements and limits on the preservation, disclosure, and
26 production of ESI;

27 ii. appropriate ESI searches, including custodians and search
28 terms, or other use of technology assisted review; and

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


iii. the form in which the ESI will be produced.

b. *Resolution of Disputes.* If the parties are unable to resolve any dispute regarding ESI and seek resolution from the Court, they must present the dispute in a single joint motion or, if the Court directs, in a conference call with the Court. Any joint motion must include the parties' positions and the separate certification of counsel required under Rule 26(g).

c. *Production of ESI.* Unless the Court orders otherwise, a party must produce the ESI identified under paragraph B.3 within 40 days after serving its initial response. Absent good cause, no party need produce ESI in more than one form.

d. *Presumptive Form of Production.* Unless the parties agree or the Court orders otherwise, a party must produce ESI in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the ESI in any reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the ESI as the producing party.

DATED this 13th day of October, 2017.



Raner C. Collins
Chief United States District Judge