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JULY 29, 2020

CLERK US DISTRICT COURT
DISTRICT OF ARIZONA

BY s/ M. Everette DEPUTY

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 In the matter of

10 MANDATORY INITIAL DISCOVERY
11 PILOT PROJECT IN THE DISTRICT OF
12 ARIZONA

13 **(AS AMENDED JULY 29, 2020)**

GENERAL ORDER 17-08

14 **IT IS HEREBY ORDERED:** For cases filed between May 1, 2017 to May 1,
15 2020, the United States District Court for the District of Arizona will participate in a
16 Mandatory Initial Discovery Pilot Project approved by the Judicial Conference of the
17 United States.

18 The Mandatory Initial Discovery Pilot Project applies to all civil cases filed on or
19 after May 1, 2017 and before May 1, 2020, other than cases listed in Rule 26(a)(1)(B),
20 actions under the Private Securities Litigation Reform Act (“PSLRA”), cases transferred
21 for consolidated administration in the District by the Judicial Panel on Multidistrict
22 Litigation, and cases under the 1980 Hague Convention on the Civil Aspects of
23 International Child Abduction. The discovery obligations addressed in this General Order
24 supersede the disclosures required by Rule 26(a)(1) and are framed as court-ordered
25 mandatory initial discovery pursuant to the Court’s inherent authority to manage cases,
26 Rule 16(b)(3)(B)(ii), (iii), and (vi), and Rule 26(b)(2)(C). Unlike initial disclosures
27 required by current Rule 26(a)(1)(A) & (C), this General Order does not allow the parties
28 to opt out.

1 **A. Instructions to Parties.**

2 1. Any party seeking affirmative relief must serve a copy of the Notice to the
3 Parties of Mandatory Initial Discovery Pilot Project, including this General Order and the
4 MIDP Checklist, on each new party when the Complaint, Counterclaim, Crossclaim, or
5 Third-Party Complaint is served.

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

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

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

1 objection and its legal basis, and provide a fair description of the information being
2 withheld.

3 5. Parties must file answers, counterclaims, crossclaims, and replies within the
4 time set forth in Rule 12(a). Upon a showing that a defendant cannot reasonably respond
5 to a complaint within the time set forth in Rule 12(a), the court may, with or without
6 awaiting a response from the opposing party, grant a one-time extension of up to 30 days
7 to respond to the complaint.

8 6. A party seeking affirmative relief must serve its responses to the mandatory
9 initial discovery no later than 30 days after the first pleading filed under Rule 12(a) in
10 response to its complaint, counterclaim, crossclaim, or third-party complaint. A party
11 filing a responsive pleading, whether or not it also seeks affirmative relief, must serve its
12 initial discovery responses no later than 30 days after it files its responsive pleading under
13 Rule 12(a). In cases removed from state court, the responses must be filed within 30 days
14 of removal if a responsive pleading was filed in state court before removal, and within 30
15 days of the response date set in Rule 81(c)(2) if a responsive pleading was not filed in state
16 court before removal. In all cases, (a) no initial discovery responses need be served if the
17 Court approves a written stipulation by the parties that no discovery will be conducted in
18 the case; or (b) initial discovery responses may be deferred, one time, for 30 days if the
19 parties jointly certify to the Court that they are seeking to settle the case and have a good
20 faith belief that it will be resolved within 30 days of the due date for their responses, and
21 the Court approves the deferral.

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

25 8. The duty to provide mandatory initial discovery responses set forth in this
26 order is a continuing duty, and each party must serve supplemental responses when new or
27 additional information is discovered or revealed. A party must serve such supplemental
28 responses in a timely manner, but in any event no later than 30 days after the information

1 is discovered by or revealed to the party. The Court normally will set a deadline in its Rule
2 16(b) case management order for final supplementation of responses, and full and complete
3 supplementation must occur by the deadline. If the Court fails to set a deadline, final
4 supplementation must occur by the fact discovery deadline set by the Court in its case
5 management order. If new information is revealed in a written discovery response or a
6 deposition in a manner that reasonably informs all parties of the information, the
7 information need not be presented in a supplemental response.

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

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

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

20 **B. Mandatory Initial Discovery Requests.**

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

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

27 2. State the names and, if known, the addresses and telephone numbers of all
28 persons who you believe have given written or recorded statements relevant to any party's

1 claims or defenses. Unless you assert a privilege or work product protection against
2 disclosure under applicable law, attach a copy of each such statement if it is in your
3 possession, custody, or control. If not in your possession, custody, or control, state the
4 name and, if known, the address and telephone number of each person who you believe
5 has custody of a copy.

6 3. List the documents, electronically stored information (“ESI”), tangible
7 things, land, or other property known by you to exist, whether or not in your possession,
8 custody or control, that you believe may be relevant to any party’s claims or defenses. To
9 the extent the volume of any such materials makes listing them individually impracticable,
10 you may group similar documents or ESI into categories and describe the specific
11 categories with particularity. Include in your response the names and, if known, the
12 addresses and telephone numbers of the custodians of the documents, ESI, or tangible
13 things, land, or other property that are not in your possession, custody, or control. For
14 documents and tangible things in your possession, custody, or control, you may produce
15 them with your response, or make them available for inspection on the date of the response,
16 instead of listing them. Production of ESI will occur in accordance with paragraph C.2
17 below.

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

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

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

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

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

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

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

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

15 i. requirements and limits on the preservation, disclosure, and
16 production of ESI;

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

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

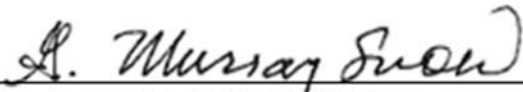
20 b. *Resolution of Disputes.* If the parties are unable to resolve any dispute
21 regarding ESI and seek resolution from the Court, they must present the
22 dispute in a single joint motion or, if the Court directs, in a conference call
23 with the Court. Any joint motion must include the parties'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

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

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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 29th day of July, 2020.



G. Murray Snow
Chief United States District Judge