DISCOVERY PROCEDURES
FOR MAGISTRATE JUDGE JACQUELINE BECERRA

These Discovery Procedures shall constitute an order of the Court in any case where matters have been referred to Judge Becerra by the District Court, or in any case in which Judge Becerra is presiding upon consent of the parties.

I. DISCOVERY DISPUTES

A. **Pre-Hearing Communication:** If a discovery dispute arises, counsel must confer (in person, by videoconference, or by telephone) and engage in a genuine effort to resolve the discovery dispute before seeking Court intervention. Conferring by e-mail is not sufficient. The Court expects all parties to engage in reasonable compromise to facilitate the resolution of discovery disputes.

B. **Timeliness:** Discovery disputes must be timely raised as required by Local Rule 26.1(g)(1). The Court strictly enforces Local Rule 26.1(g)(1), and interprets the thirty-day window as the opportunity during which good faith resolution efforts must be made (subject to the seven-day extension permitted by the Rule).

Unapproved extensions of the discovery cutoff agreed to by the parties shall not be recognized.

The Court also enforces Local Rule 26.1(d) requiring that all discovery, including resolution of discovery disputes, be fully completed prior to the expiration of the discovery cutoff. Under Local Rule 26.1(d), no Court intervention or remedy will be available to either party after the cutoff date.

II. DISCOVERY HEARING PROCEDURES

A. **No Written Motions:** Except as provided below, discovery disputes shall **not** be raised by filing motions under Federal Rule of Civil Procedure 37. No written discovery motions, including motions to compel and motions for protective order, shall be filed unless permitted by Judge Becerra or the District Court. Any motion filed in contravention of these procedures will be stricken.

B. **Setting A Discovery Hearing:** After a good faith conferral as outlined above, the party seeking to enforce a discovery obligation or obtain protection from such an obligation ("the moving party") shall set the matter for hearing as follows. The moving party shall send an e-mail to the Chambers of Judge Becerra (chambers_becerra@flsd.uscourts.gov), copying opposing counsel and within the time frame provided by Local Rule 26.1(g)(1), providing at least three mornings or afternoons when both counsel are available for a hearing on the discovery issue. The e-mail subject line shall be "Request for Discovery Hearing on [Case Name and Case Number]." Dates provided to the Court shall

be **within seven (7) business days from the date of the e-mail** to Chambers, as the Court endeavors to set the hearing as expeditiously as possible.

Ordinarily, the Court allows thirty minutes for a discovery hearing. If the matter requires additional time, counsel should note that in the e-mail to Chambers requesting a hearing.

No argument or background about the dispute is permitted by e-mail.

All discovery hearings are in-person hearings.

This restriction on filing motions does not apply to motions to stay discovery or to motions seeking additional time or changes to the deadlines to respond to discovery. Those motions are to be filed on the docket for the District Judge's consideration.

Counsel should be mindful that Discovery Hearing are not informal hearings and counsel should be fully prepared to address the Court on the issues raised.

C. **Notice of Hearing:** Within one business day of the Court confirming the date and time for the hearing, the moving party shall file a Notice of Hearing that notes the discovery matters to be heard (i.e., "the parties dispute the appropriate time frame for Plaintiff's Interrogatory Nos. 1, 4–7 and 10"). The Notice should not include any argument.

The Notice of Hearing shall include a certificate of conferral that fully complies with Local Rule 7.1(a)(3).

If more than one party is seeking to enforce a discovery obligation during the same hearing, separate Notices (i.e., Plaintiff's Notice of Hearing and Defendant's Notice of Hearing") should be filed on behalf of each party.

As **Exhibit A** to the Notice of Hearing, the moving party shall attach a short, Proposed Order on the issues raised setting forth the specific relief requested by the moving party. The Proposed Order should not contain legal argument or analysis.

As **Exhibit B** to the Notice of Hearing, the moving party shall attach a copy of all source materials relevant to the discovery dispute (for example, if the dispute concerns interrogatories, the interrogatories at issue and the responses thereto should be provided).

Any materials upon which the non-moving party intends to rely on must be attached as **Exhibit C** to the moving party's Notice of Hearing.

In the event that the parties intend to rely (for non-routine issues) on authorities during the hearing, a list of citations for those authorities as well as a copy of the authorities must be submitted as **Exhibit D** to the Notice of Hearing. The Notice of Authorities may not contain legal argument, but the cases may be highlighted, and the listing with citations may include parentheticals.

No additional materials may be filed or otherwise submitted after the Notice has been filed. If the parties need to amend the Notice for any reason, they must e-mail Chambers and request to amend the Notice.

The parties are **not** to file copies of e-mail communication between counsel. The Court does not consider e-mail communication as evidence of conferral, nor are counsel's communications evidence for the Court's consideration. Any communication between counsel that is relevant can be addressed orally during the hearing.

D. Modification of Issues to Be Heard and Cancellation of Hearing: The parties shall notify Chambers by e-mail at chambers_becerra@flsd.uscourts.gov as soon as practicable if they resolve some or all of the issues in dispute. If all the issues cited in the Notice of Hearing have been resolved, the parties must contact Chambers by e-mail and must file a Notice of Cancellation.

If only some of the issues have been resolved, the parties should contact Chambers by e-mail and advise the Court of which issues will no longer require the Court's attention.

E. Agreed Orders: If the parties have agreed to the entry of an order, the parties shall not file a motion for entry of the order. Instead, counsel shall e-mail to Chambers a copy of the proposed order in Word format, with a statement that the parties have agreed to entry of the proposed order. If the Court enters an order that differs from the proposed order and the parties have an objection to the order as entered, they must follow the procedures for setting a Discovery Hearing so that objections may be heard by the Court without the need for the filing of a motion.

The Court does not enter agreed orders extending the due date for discovery responses, nor does the Court enter orders memorializing discovery agreements between the parties that were not otherwise litigated before the Court.

F. Imposition of Sanctions: The Court may impose sanctions, monetary or otherwise, if the Court determines discovery is being improperly sought or is being withheld in bad faith or without substantial justification. *See* Fed. R. Civ. P. 37.

Attorneys' Fees and Costs: If a party is seeking attorneys' fees and costs in connection with the discovery dispute that is set for hearing, it should be prepared to argue the basis for entitlement, as well as the amount of attorneys' fees and costs, at the hearing. *See* Fed. R. Civ. P. 37.

III. DISCOVERY OBJECTIONS

A. **Vague, Overly Broad, and Unduly Burdensome:** Blanket, unsupported objections that a discovery request is "vague, overly broad, or unduly burdensome" are, by themselves, meaningless, and will be disregarded by the Court. A party objecting on these bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome. *See* Fed. R. Civ. P. 33(b)(4). If a party believes that the request is vague, the party shall attempt to obtain clarification prior to objection on this ground. Sworn testimony or evidence may be necessary to show that a particular request is in fact burdensome. If the objection is to be heard by the Court during the Hearing, counsel must be prepared to address with specificity why the production would be burdensome.

B. **Objections Based on Scope:** If there is an objection based upon an unduly broad scope, such as timeframe or geographic location, discovery should be provided as to those matters within the scope that is not disputed. For example, if discovery is sought nationwide for a ten-year period and the responding party objects on the grounds that only a five-year period limited to activities in Florida is appropriate, the responding party shall provide responsive discovery falling within the five-year period of activity in Florida.

C. **Irrelevant and Not Reasonably Calculated to Lead to Admissible Evidence:** An objection that a discovery request is irrelevant or not reasonably calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance, and why the information sought will not reasonably lead to admissible evidence.

D. **Formulaic Objections Followed by an Answer:** Parties should avoid reciting a formulaic objection followed by an answer to the request. It has become common practice for a party to object and then state that "notwithstanding the above," the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserve nothing and constitute only a waste of effort and the resources of both the parties and the Court. Further, such practice leaves the requesting party uncertain as to whether the question has been fully answered, or only a portion of it has been answered. Federal Rule of Civil Procedure 34(b)(2)(c) specifically requires an objection to state whether any responsive materials are being withheld. As such, counsel shall include in its answer a clear statement that all responsive

documents/information identified have in fact been produced/provided, or otherwise describe the category of documents/information that have been withheld based on the objection.

E. Objections Based on Privilege: Generalized objections asserting attorney-client privilege or work product doctrine do not comply with the Local Rules. *See* S.D. Fla. L.R. 26.1(e)(2)(B). The party with the burden of persuasion on a privilege claim has the obligation to present to the Court, no later than at the time the Notice of Hearing is filed, sworn evidence, if necessary, to satisfy that burden. The failure to present that sworn evidence as an Exhibit to the Notice of Hearing may be deemed by the Court as a waiver of the privilege absent a showing of good cause.

F. Objections to Scope of 30(b)(6) Notices for Depositions: Corporations are not entitled to review anticipatory relevance objections prior to the taking of a corporate representative deposition. Objections to the scope of a deposition notice shall be timely served (not filed) in advance of the deposition. *See King v. Pratt & Whitney*, 161 F.R.D. 475, 475–76 (S.D. Fla. 1995); *New World Network Ltd. v. M/V Norwegian Sea*, No. 05-22916-CIV, 2007 WL 1068124, at *2–3 (S.D. Fla. Apr. 6, 2007). Accordingly, any objections to the scope of a Federal Rule of Civil Procedure 30(b)(6) deposition notice shall only be adjudicated *after* the taking of the deposition.

G. Written Objections to the Timing of Depositions: If a motion for protective order is required for a particular dispute under Federal Rule of Civil Procedure 26(c), Federal Rule of Civil Procedure 30(d)(3), or Local Rule 26.1(g)(3), a notice of objection must be served (not filed) on the opposing party no later than five (5) days after receipt of the deposition notice at issue. Such a notice may not be submitted on the eve of the event. The failure to timely preserve an objection may be deemed a waiver. But if a good faith scheduling dispute arises prior to a deposition, the service of the written notice of objections, followed by a good faith conference to resolve the dispute, will be sufficient to preserve the issues involved without fear of waiver prior to the Court resolving the dispute at a discovery hearing. *See* S.D. Fla. L.R. 26.1(h). If the parties do not thereafter reach an agreement to resolve the dispute, the objecting party shall schedule the matter pursuant to the procedures outlined above. Federal Rule of Civil Procedure 37, however, continues to apply to such objections; thus, if the Court finds that the objections were not substantially justified, the failure to comply with a timely served Federal Rule of Civil Procedure 30 deposition notice may be sanctioned appropriately.