



Attachments

**BREAKING THROUGH
PRETRIAL LOGJAMS**

**ADRSM
SERVICES, INC.**

**THE POWER
OF REFEREES**

 11 Feb, 2025
12 - 1 p.m.

 Webinar
1 hr CLE

Speakers :

HON. JAMES LAMBDEN (RET.)
HON. VICTORIA WOOD (RE.T)

Contents

1. CRC Rule 3.922
2. ADR 110 Stipulation & Appointment Order
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4. Sample Motion procedure
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7. Example Report Limits Delay in Decision

CRC

Rule 3.922



Rule 3.922. Form and contents of order appointing referee

(a) Written order required

An order appointing a referee under Code of Civil Procedure section 639, on the motion of a party or on the court's own motion, must be in writing and must address the matters set forth in (b) through (g).

(Subd (a) amended effective January 1, 2010.)

(b) Referee information

The order must state the name, business address, and telephone number of the referee and, if he or she is a member of the State Bar, the referee's State Bar number.

(c) Basis for reference

The order must specify whether the referee is appointed under paragraph (1), (2), (3), (4), or (5) of subdivision (a) of section 639 and:

- (1) If the referee is appointed under section 639(a)(1)-(a)(4), the order must state the reason the referee is being appointed.
- (2) If the referee is appointed under section 639(a)(5) to hear and determine discovery motions and disputes relevant to discovery, the order must state the exceptional circumstances of the particular case that require the reference.

(d) Subject matter and scope of reference

- (1) The order must specify the subject matter or matters included in the reference.
- (2) If the referee is appointed under section 639(a)(5) to hear and determine discovery motions and disputes relevant to discovery, the order must state whether the discovery referee is appointed for all purposes or only for limited purposes.

(e) Authority of discovery referee

If the referee is appointed under section 639(a)(5) to hear and determine discovery motions and disputes relevant to discovery, the order must state that the referee is authorized to set the date, time, and place for all hearings determined by the referee to be necessary; direct the issuance of subpoenas; preside over hearings; take evidence; and rule on objections, motions, and other requests made during the course of the hearing.

(f) Referee fees; apportionment

If the referee will be appointed at a cost to the parties, the order must:

- (1) Specify the maximum hourly rate the referee may charge and, if any party so requests, the maximum number of hours for which the referee may charge;
- (2) Include a finding that either:
 - (A) No party has established an economic inability to pay a pro rata share of the referee's fee; or
 - (B) One or more parties has established an economic inability to pay a pro rata share of the referee's fees and another party has agreed voluntarily to pay that additional share of the referee's fees.
- (3) When the issue of economic hardship is raised before the referee begins performing services, the court must determine a fair and reasonable apportionment of reference costs. The court may modify its apportionment order and may consider a recommendation by the referee as a factor in determining any modification.

(g) Use of court facilities and court personnel

The order must specify the extent, if any, to which court facilities and court personnel may be used in connection with the reference.

Rule 3.922 amended effective January 1, 2010; adopted effective January 1, 2007.

ADR 110
Stipulation &
Appointment
Order

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	
ORDER APPOINTING REFEREE	CASE NUMBER: _____

THE COURT FINDS:

1. **Section 638 appointment.** A referee is properly appointed under Code of Civil Procedure section 638 because *(check one)*:
 - a. all parties to the action have agreed to the appointment of a referee under section 638.
 - b. the parties entered into a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee.

2. **Section 639 appointment.** A referee is properly appointed under Code of Civil Procedure section 639 because *(check and complete a or b)*:
 - a. **Discovery reference.** It is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation. *(Code Civ. Proc., § 639(a)(5). State the exceptional circumstances specific to the particular case that require the discovery reference, below or in Attachment 2a.)*

 - b. **Other reference.** *(Check one or more of the following statutory grounds and state the reason for the appointment below or in Attachment 2b.)*
 - (1) The trial of an issue of fact requires the examination of a long account. *(Code Civ. Proc., § 639(a)(1).)*
 - (2) The taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. *(Code Civ. Proc., § 639(a)(2).)*
 - (3) A question of fact, other than on the pleadings, has arisen by motion or otherwise. *(Code Civ. Proc., § 639(a)(3).)*
 - (4) It is necessary for the information of the court in a special proceeding. *(Code Civ. Proc., § 639(a)(4).)*
 - c. **Economic inability to pay.** *(Check one.)*
 - (1) No party has established an economic inability to pay a pro rata share of the referee's fees.
 - (2) One or more parties has established an economic inability to pay a pro rata share of the referee's fees and another party has agreed voluntarily to pay that additional share of the referee's fees. *(Complete item 5c(3)(b).)*
 - (a) The following party has established an economic inability to pay a pro rata share of the referee's fee *(name each)*:
 - (b) The following party has agreed voluntarily to pay an additional share of the referee's fee *(name each)*:
 - (3) The referee is being appointed at no cost to the parties.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:
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THE COURT ORDERS:

3. **Referee.** The following person is appointed as referee. *(The referee's signature indicating consent to serve and certification that he or she is aware of and will comply with the applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court must be included in the proposed order appointing a referee under Code of Civil Procedure section 638 or attached to the order appointing a referee under section 639. See item 9.)*
- a. Name:
 - b. Business address:
 - c. Telephone number:
 - d. The referee is a member of the State Bar of California. *(Rules 3.903 and 3.923 of the California Rules of Court provide that a referee who is a former judicial officer must be an active or inactive member of the State Bar.)*
 - (1) The referee's State Bar number is:
 - (2) The referee's State Bar membership status is *(check one)*:
 - (a) Active
 - (b) Inactive
 - (c) Other *(specify)*:
4. **Scope and subject matter of reference.** The referee is appointed as follows *(check and complete a or b)*:
- a. **Section 638 appointment.** The referee is appointed under Code of Civil Procedure section 638 *(check and complete one)*:
 - (1) to hear and determine any or all of the issues in the action or proceeding, whether of fact or of law, and to report a statement of decision.
 - (2) to ascertain the following facts necessary to enable the court to determine the action or proceeding *(state facts to be ascertained by referee below or in Attachment 4a)*:
 - b. **Section 639 appointment.**
 - (1) The following subject matter or matters are included in the reference *(describe the matter or matters the referee is ordered to consider below or in Attachment 4b)*:
- (2) **Section 639 discovery reference.**
- (a) The discovery referee is appointed for *(check one)*:
 - (i) The discovery matters identified in (1) above.
 - (ii) All discovery purposes in the action.
 - (b) The referee is authorized to set the date, time, and place for all hearings determined by the referee to be necessary; direct the issuance of subpoenas; preside over hearings; take evidence; and rule on objections, motions, and other requests made during the course of the hearing.
5. **Referee's compensation.** *(Check and complete one of the following.)*
- a. **Uncompensated referee.** The referee will not be privately compensated by the parties.
 - b. **Compensation of section 638 referee.**
 - (1) The referee's fees will be paid as agreed by the parties.
 - (2) The parties have not agreed on the payment of the referee's fees and have requested that the matter be resolved by the court. The court orders that the referee's fees be paid as follows *(state the manner of payment determined by the court to be fair and reasonable below or in Attachment 5b)*:

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT:	CASE NUMBER:
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5. c. **Compensation of section 639 referee.**
- (1) The maximum hourly rate that the referee may charge is (*specify*):
- (2) The maximum number of hours for which the referee may charge is (*at the request of any party, state the maximum number of hours for which referee may charge*):
- (3) The court orders that the referee's fees be paid or apportioned as follows and reserves jurisdiction to modify this order (*state fair and reasonable apportionment of reference costs below or in Attachment 5c*):
- (a) All parties shall pay equal shares of the referee's fees.
- (b) The parties shall pay equal shares of the referee's fees except that, based on the finding of economic inability set forth in item 2c(2):
- (i) The following party is not required to pay any portion of the referee's fees (*name of each party excused from paying referee's fees*):
- (ii) The following party shall pay the pro rata share of the referee's of the party identified in (i), in addition to his or her own share of the referee's fees (*name of each party who has agreed to pay an additional share of the referee's fees*):
- (c) The referee's fees shall be paid as set forth in Attachment 5c.
- (4) The court will subsequently determine how the referee's fees will be paid, under Code of Civil Procedure section 645.1(b). (*If the issue of economic hardship is raised before the services of a referee appointed under section 639 begin, the court must make a fair and reasonable apportionment of reference costs.*)
6. **Use of court facilities and court personnel.** Court facilities and court personnel (*check and complete one*):
- a. may not be used without an order of the presiding judge. (*Court facilities and personnel may be used in proceedings before a privately compensated section 638 referee only upon a finding of the presiding judge that the use would further the interest of justice.*)
- b. may be used as follows (*describe any authorized use of court facilities or court personnel if referee will not be privately compensated or is appointed under section 639*):
7. **The reference will be conducted in a private facility.** The clerk must post notice that the following person may be contacted to arrange attendance at any proceeding that is open to the public (*complete all of the following*):
- a. Name:
- b. Address:
- c. Telephone:
8. **Referee's report.**
- a. **Time of report.** The referee must report (*check and complete one*):
- (1) in writing to the court within 20 days after the hearing, if any, has been concluded and the matter submitted.
- (2) as follows (*specify other time and manner of reporting directed by the court*):
- b. **Manner and contents of report.**
- (1) **Section 638 referees.** The referee must report in the following manner agreed to by the parties and approved by the court (*describe*):
- (2) **Section 639 referees.** The referee must file with the court a report that includes a recommendation on the merits of any disputed issue, a statement of the hours spent and the total fees charged by the referee, and the referee's recommended allocation of payment. The referee must serve the report on all parties.
9. **Certification of referee.** The undersigned consents to serve as referee as provided above and certifies that he or she is aware of and will comply with the applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court.

 (TYPE OR PRINT NAME OF PROPOSED REFEREE)



 (SIGNATURE OF PROPOSED REFEREE)

Date:

 JUDICIAL OFFICER

Sample
Stipulation &
Appointment
Order §638

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____

)	CASE NO.
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Plaintiff(s),)	[Assigned to Hon. , Dept.]
vs.)	
)	STIPULATION AND [PROPOSED]
)	ORDER OF GENERAL REFERENCE;
Defendant(s).	)	CERTIFICATION OF DISCOVERY
	)	REFEREE; STATEMENT REGARDING:
	)	(i) PROCEEDINGS BEFORE REFEREE
	)	PURSUANT TO CRC RULE 3.931(b);
)	
	)	(ii) ACCESS TO DOCUMENTS AND
	)	EXHIBITS SUBMITTED TO THE
	)	REFEREE PURSUANT TO CRC RULE
	)	2.400(d)
)	
)	

1. Pursuant to the provisions of Code of Civil Procedure § 638(a), the parties to this action, through their undersigned attorneys of record, stipulate that jury trial in this matter be waived and that this action be referred to
[Neutral Name] (Ret./Esq.)

STIPULATION AND [PROPOSED] ORDER OF GENERAL REFERENCE
CERTIFICATION OF DISCOVERY REFEREE
STATEMENT REGARDING: (i) PROCEEDINGS BEFORE REFEREE PURSUANT TO CRC RULE
3.931(b); (ii) ACCESS TO DOCUMENTS AND EXHIBITS SUBMITTED TO THE REFEREE PURSUANT
TO CRC RULE 2.400(d)

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1 a. Business Address: **ADR Services, Inc. 1900 Avenue of the Stars, Suite 200,**
2 **Los Angeles, California 90067**

3 b. Telephone Number: **(310) 201-0010**

4 c. State Bar Membership Status: Active

5 d. State Bar Number:

6 as Referee to hear and determine the entire case, including any and all issues of fact
7 and/or law, and to report a statement of decision thereon in writing to the Court
8 within 20 days after the hearing, if any, has been concluded and the matter has been
9 submitted. The statement of decision shall be filed with the Court and judgment
10 entered thereon in the same manner as if the action had been tried by the Court.

11 2. It is also agreed between the parties that the Referee shall hear and determine any and
12 all post-trial motions in this matter, including, but not limited to, motions for new trial
13 pursuant to CCP § 657 et seq.

14 3. The compensation of the Referee shall be at the rate of **\$XXX** per hour for all of the
15 time spent on the case, including travel time (if hearings, meetings or trials are heard
16 at a location other than the immediately local ADR Services, Inc. offices), preparation
17 time, actual trial time, and time spent on necessary research and preparation of
18 written rulings and statements of decision, together with time used for all post-trial
19 proceedings. The Referee shall be reimbursed for necessary out-of-pocket expenses,
20 including but not limited to filing, parking, and travel costs. Additionally, ADR
21 Services, Inc. charges a non-refundable one-time \$950 Administrative fee per party
22 and \$100 Administrative fee for continuances as defined in the Fee Schedule,
23 attached hereto as incorporated herein by this Referee. It is further agreed that the
24 fees of the Referee will be shared equally by the parties, as follows:

25 _____ shall pay ____ %. _____ shall pay ____ %.

26 Fees are subject to reallocation by the Referee. Any dispute with respect to allocation
27 shall be submitted to the Court. The Court shall retain jurisdiction after dismissal of

29 **STIPULATION AND [PROPOSED] ORDER OF GENERAL REFERENCE
CERTIFICATION OF DISCOVERY REFEREE**

**STATEMENT REGARDING: (i) PROCEEDINGS BEFORE REFEREE PURSUANT TO CRC RULE
3.931(b); (ii) ACCESS TO DOCUMENTS AND EXHIBITS SUBMITTED TO THE REFEREE PURSUANT
TO CRC RULE 2.400(d)**

1 the action to hear any motion related to apportionment or nonpayment of the fees and
2 costs of the Referee.

- 3 4. The use of court facilities and court personnel is not authorized.
- 4 5. The reference will be conducted in a private facility or by telephone conference or
5 Zoom (or similar videoconferencing technology), as ordered by the Referee. The
6 clerk must post notice that the following person may be contacted to arrange
7 attendance at any proceeding that is open to the public:
- 8 a. Name: [Case Manager], Case Manager
 - 9 b. Address: 1900 Avenue of the Stars, Suite 200, Los Angeles, California 90067
 - 10 c. Telephone: (310) 201-0010
 - 11 d. Email Address: [Case Manager]teamemail@adrservices.com

12
13 **CERTIFICATION OF GENERAL REFEREE**

14 I consent to serve as Referee and certify that I am aware of and will comply with
15 applicable provisions of Canon 6 of the Code of Judicial Ethics and the California Rules of
16 Court.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19
20
21 Dated: _____

22 _____
23 Hon.

(Ret.)

29 **STIPULATION AND [PROPOSED] ORDER OF GENERAL REFERENCE
CERTIFICATION OF DISCOVERY REFEREE**

STATEMENT REGARDING: (i) PROCEEDINGS BEFORE REFEREE PURSUANT TO CRC RULE 3.931(b); (ii) ACCESS TO DOCUMENTS AND EXHIBITS SUBMITTED TO THE REFEREE PURSUANT TO CRC RULE 2.400(d)

SO STIPULATED:

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Dated: _____

By: _____

Attorneys for _____

Dated: _____

By: _____

Attorneys for _____

IT IS SO ORDERED.

DATED: _____

Hon.
Judge of the Superior Court

[NEUTRAL NAME]'S FEE SCHEDULE (ATTACHED)

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**STIPULATION AND [PROPOSED] ORDER OF GENERAL REFERENCE
CERTIFICATION OF DISCOVERY REFEREE
STATEMENT REGARDING: (i) PROCEEDINGS BEFORE REFEREE PURSUANT TO CRC RULE
3.931(b); (ii) ACCESS TO DOCUMENTS AND EXHIBITS SUBMITTED TO THE REFEREE PURSUANT
TO CRC RULE 2.400(d)**

Sample
Stipulation &
Appointment
Order §639

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____

)	CASE NO.
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	Plaintiff(s),)	
vs.)	[Assigned to Hon. , Dept.]
)	
)	[PROPOSED] ORDER APPOINTING
	Defendant(s).)	DISCOVERY REFEREE;
		)	CERTIFICATION OF DISCOVERY
		)	REFEREE; STATEMENT REGARDING:
		)	(i) PROCEEDINGS BEFORE REFEREE
		)	PURSUANT TO CRC RULE 3.931(b);
)	
)	(ii) ACCESS TO DOCUMENTS AND
)	EXHIBITS SUBMITTED TO THE
)	REFEREE PURSUANT TO CRC RULE
)	2.400(d)
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)	Complaint Filed:
)	Trial:
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THE COURT FINDS:

1. A Referee is properly appointed pursuant to Code of Civil Procedure section 639, subdivision, (a)(5), because it is necessary for the Court to appoint a Referee to

1 hear and determine any and all discovery motions and disputes relevant to
2 discovery in the action and to report findings and make recommendations.

3 2. The exceptional circumstances that require the appointment of a Discovery
4 Referee are that [insert exceptional circumstances such as multiple issues to be
5 resolved; multiple motions to be heard simultaneously; present motion is only one
6 in a “continuum” of many; number of documents to be reviewed (especially in
7 connection with issues based on assertion of a privilege) make the inquiry
8 “inordinately time consuming”].

9 3. Plaintiffs and Defendants have agreed to [Neutral Name] (Ret./Esq.) as Discovery
10 Referee.

11 4. The compensation of the Referee shall be at the rate of \$XXX per hour for all of
12 the time spent on the case, including travel time (if hearings or meetings are heard
13 at a location other than the immediately local ADR Services, Inc. offices),
14 preparation time, actual hearing time, and time spent on necessary research and
15 preparation of written reports and recommended orders, together with time used
16 for all post-hearing proceedings. The Referee shall be reimbursed for necessary
17 out-of-pocket expenses, including but not limited to filing, parking, and travel
18 costs.

19 5. Additionally, ADR Services, Inc. charges a non-refundable one-time \$950
20 Administrative fee per party and \$100 Administrative fee for continuances as
21 defined in the Fee Schedule, attached hereto as incorporated herein by this
22 Referee. Fees are subject to reallocation by the Referee.

23 6. No party has established an economic inability to pay a pro rata share of the
24 Referee’s fee. OR It is further agreed that the fees of the Referee will be shared
25 equally by the parties, as follows:

26 _____ shall pay ____ %. _____ shall pay ____%.

27 OR {Plaintiff/Defendant/Cross-Defendant} argues that they have limited financial

29 [PROPOSED] ORDER APPOINTING DISCOVERY REFEREE
CERTIFICATION OF DISCOVERY REFEREE

STATEMENT REGARDING: (i) PROCEEDINGS BEFORE REFEREE PURSUANT TO CRC RULE
3.931(b); (ii) ACCESS TO DOCUMENTS AND EXHIBITS SUBMITTED TO THE REFEREE PURSUANT
TO CRC RULE 2.400(d)

1 ability to pay for the Referee’s fees and has provided the court with *{state*
2 *information that was provided, how it was provided}*. Upon reviewing the
3 information, the court has determined that *{Plaintiff/Defendant/Cross-Defendant}*
4 has established their inability to pay a pro rata share of the Referee’s fees and
5 splits the fees as follows: *{state percentages}*.

6 7. The fees shall be allocated as set forth above, unless ordered otherwise by the
7 Referee. Any dispute with respect to allocation shall be submitted to the Court.
8 The Court shall retain jurisdiction after dismissal of the action to hear any motion
9 related to apportionment or nonpayment of the fees and costs of the Referee.

10
11 **THE COURT ORDERS:**

12 8. Pursuant to the agreement of the parties, *[Neutral Name] (Ret./Esq.)* is appointed
13 as Discovery Referee. *[Neutral Name] (Ret./Esq.)*’s contact and state bar
14 number/status are as follows:

- 15 a. Business Address: *ADR Services, Inc. 1900 Avenue of the Stars, Suite 200,*
16 *Los Angeles, California 90067*
- 17 b. Telephone Number: *(310) 201-0010*
- 18 c. State Bar Membership Status: Active
- 19 d. State Bar Number:

20 9. The subject matters included in the reference are set forth in Attachment A hereto
21 and incorporated herein by reference (*Describe matter or matters the Referee is*
22 *ordered to consider in Attachment A*).

23 10. The Discovery Referee is appointed for all discovery purposes in this action.

24 11. The Referee is authorized to set the date, time, and place for all hearings
25 determined by the Referee to be necessary; direct the issuance of subpoenas;
26 preside over hearings; take evidence; and rule on objections, motions, and other
27 requests made during the course of the hearing.

1 12. Court facilities and court personnel may not be used without an order of the
2 presiding judge.

3 13. The reference will be conducted in a private facility or by telephone conference or
4 Zoom (or similar videoconferencing technology), as ordered by the Referee. The
5 clerk must post notice that the following person may be contacted to arrange
6 attendance at any proceeding that is open to the public:

7 a. Name: [Case Manager], Case Manager

8 b. Address: 1900 Avenue of the Stars, Suite 200, Los Angeles, California 90067

9 c. Telephone: (310) 201-0010

10 d. Email Address: [Case Manager]teamemail@adrservices.com

11 14. The Referee must report in writing to the Court within 20 days after the hearing, if
12 any, has been concluded and the matter submitted.

13 15. The Referee must file with the Court a report that includes a recommendation on
14 the merits of any disputed issue, a statement of the hours spent and the total fees
15 charged by the Referee, and the Referee's recommended allocation of payment.

16 The Referee must serve the report on all parties.

17
18 **IT IS SO ORDERED.**

19
20 DATED: _____

21 Hon.
22 Judge of the Superior Court

CERTIFICATION OF DISCOVERY REFEREE

I consent to serve as Referee and certify that I am aware of and will comply with applicable provisions of Canon 6 of the Code of Judicial Ethics and the California Rules of Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Hon. (Ret.)

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ATTACHMENT A AND [NEUTRAL NAME]'S FEE SCHEDULE (ATTACHED)

Sample Motion Procedure

DISCOVERY MOTION PROCEDURES

Hon. James Lambden

1. **Reference Order**: A copy of the Court's reference order shall be sent to ADR Services. Objections to the Discovery Referee's recommendations and orders are governed by CCP §643.
2. **All motion documents to be produced in binders**:
 - Each motion shall be assembled and sent to the Discovery Referee in a single binder. If there are multiple parties, the party making a motion shall take charge of assembling the motion binder including opposition documents and all supporting documents. Reply documents served within five (5) calendar days of oral argument may be served by email attachment to be included in the motion binder.
 - If the briefing for any motion was *completed prior to the Court's reference* to the Discovery Referee, the moving party shall submit a document binder regarding that motion, including the moving papers, opposing papers, reply, exhibits, declarations, etc. The motion binder shall contain all documents served regarding the motion in question *regardless of which party* may have filed the documents.
 - Arrangements may be made for digital service of large/compressed and/or encrypted files by contacting the Discovery Referee's Case Manager with email notice copied to the Referee.
 - All documents shall be served by email with attachments to the Discovery Referee's Case manager to be uploaded to the ADR Services AMS record. Requests and motions shall be stated in attached letter or pleading format rather than stated in emails to facilitate preparation of the record.
 - Documents shall also be filed with the Court and the Discovery Referee's Case Manager may ask for the parties' assistance in filing documents with the Court
 - In addition to being served by email, hard copies of all motion binders and other documents exceeding 50 pages shall be delivered to: Justice James Lambden (Ret.) 350 Saint Catherine's Square Benicia, CA 94510-2736 justicelambden@adrservices.com
3. **Discovery Management Conferences**: May be requested by the parties and ordered by the Discovery Referee. Written DMC statements by the parties are helpful and may be required by the Discovery Referee.
5. **Oral argument**: Attorneys are encouraged to agree in advance upon schedules for briefing and argument, subject to approval by the Referee. Hearings shall be held by online/telephonic appearance or in-person with prior approval by the Discovery Referee at the offices of ADR Services. Parties requesting transcription shall make those arrangements. **Appearances by Zoom will be the default method for hearings.** Contact ADR Services at (415) 772-0900 (Katy Jones) or at katy@adrservices.com to obtain dates for hearings.

Sample hybrid deposition protocol

1 Hon. James Lambden (Ret.)
2 ADR SERVICES, INC.
3 100 First Street, 27th Floor
4 San Francisco, California 94105
5 (415) 772-0900 PH
6 (415) 772-0960 FAX
7 justicelambden@adrservices.com

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF

10 ,
11 Plaintiffs,
12 vs.
13 ,
14 ,
15 Defendant.

Case No.:

**REMOTE (HYBRID) DEPOSITION
PROTOCOL**

- 16
- 17 1. At the outset of the deposition, the deponent and counsel must identify everyone attending the
18 deposition (including any authorized party representative and/or employee, support, or technical staff
19 in the room with the deponent and/or counsel). If any person enters the location where the deponent
20 is located during the deposition, the deponent and/or the deponent’s counsel shall immediately notify
21 all other attendees. The parties reserve the right to request any unauthorized person to be excluded
22 from attending the deposition.
 - 23 2. The microphones for certain attendees (such as the witness, the attorney taking the deposition,
24 and the attorney defending the deposition) must remain on when the deposition is on the record. Other
25 remote attendees should mute microphones when not speaking.
 - 26 3. The video feeds for all attendees (other than court reporter and videographer and video/exhibit
27 technician appearing remotely) must remain on when the deposition is on record. If a deponent is
28 represented in-person by counsel, counsel for the deponent shall separately log in to the remote
29 deposition so that counsel can be seen and heard. If during the deposition, technical difficulties with

1 the video feed of any attendee arise, then counsel (attendee) shall identify on the record such
2 difficulties and appear by audio only until the video is available. In the alternative, the parties may
3 elect to suspend the deposition until the technical difficulties are resolved.

4 4. During the deposition examination, no counsel or party is permitted to communicate with the
5 deponent (verbally, in writing, or by conduct) by any means not recorded in the same manner as the
6 deposition itself (e.g., stenographically by a certified deposition reporter). This includes that no
7 counsel shall initiate a private conference, including through text message, electronic email, or the
8 chat and/or instant message feature on the videoconferencing system. No counsel shall further attempt
9 to communicate with the deponent by any method not observable through the videoconference
10 technology, including by way of hand gestures, signals or writings not visible on camera. All private
11 chat features on the remote platform should be disabled for the duration of the deposition, and all
12 applications on the deponent's device other than the applications being utilized to conduct the
13 deposition shall be closed. No witness shall communicate with any counsel or party (verbally, in
14 writing, or by conduct) while on the record at the deposition in a manner that the examining attorney
15 cannot personally observe through the videoconference technology, including by way of private
16 conference and other methods not observable on camera discussed herein. However, the deponent's
17 counsel may communicate with the witness in-person, telephonically, or by other electronic means
18 (including, but not limited to, the use of the remote connection software) during breaks in the
19 deposition.

20 5. The Discovery Referee and/or noticing attorney shall admonish the deponent to look either at
21 the screen/monitor or at the exhibit (if the deponent is being examined about an exhibit) when on
22 record.

23 6. The Discovery Referee and/or noticing attorney shall admonish the deponent to answer all
24 questions by himself/herself.

25 7. The Discovery Referee and/or noticing attorney shall admonish the deponent not to look to
26 anyone or anything else in answering questions on the record.

27 8. The Discovery Referee and/or noticing attorney shall admonish the deponent to communicate
28 with only the examining counsel while on the record. This includes checking text messages, emails,
29

1 instant messages or any other forms of communication, including by way of hand gestures, signals or
2 writings not visible on camera.

3 9. The discovery referee and/or noticing attorney shall admonish the deponent to close all
4 applications on the deponent's device other than the applications being utilized to conduct the
5 deposition.

6 10. The discovery referee and/or noticing attorney shall admonish the deponent to show on
7 camera that all devices not being used for the remote deposition are off and/or otherwise identify
8 where they are located.

9 11. Other than through the official videographer and court reporter, no party may record (either
10 video or audio) any portion of the deposition without advising all counsel.

11 12. A party may request that a camera be placed in the room where the deponent is located so that
12 entire room is visible for the duration of the deposition. The party making such a request shall be
13 responsible for all costs associated with the request.

14
15
16 DATE: _____

_____ Hon.

Sample DMC
order with fee
allocation

1 Justice James Lambden (Ret.)
2 ADR SERVICES, INC.
3 100 First Street, 27th Floor
4 San Francisco, CA 94105
5 (415) 772-0900
6 (415) 772-0960 (FAX)
7 justicelambden@adrservices.com

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF [REDACTED]
10 UNLIMITED JURISDICTION

11 [REDACTED]
12 Plaintiff

13 vs.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Defendants.

Case No. [REDACTED]

Hon. James Lambden (Ret.), Referee
[REDACTED]
[REDACTED]
[REDACTED]

DISCOVERY REFEREE'S
RECOMMENDATION #3 AND
[PROPOSED] ORDER

[REDACTED]

1 The Discovery Referee's Recommendation #1 proposed dividing the payment of the
2 discovery reference expenses between: first, general discovery management (e.g., discovery
3 management conferences ("DMC") and review of reports); and second, the apportionment of expense
4 of motion practice between the parties participating in each motion.

5 The current service list available to ADR Services, Inc. (ADRS") includes some parties who
6 have appeared but not yet responded. Thus, the final list of participating parties remains unsettled as
7 to those who have not filed responsive pleadings, although they have been served. Some alleged
8 parties have not been served or responded to a request for acknowledgment of notice. ADRS's current
9 service list is attached here to as Exhibit A.

10 Also, the list of party participants subject to the expense of general discovery management
11 remains unsettled since initial motions remain to be decided by the Court following the initial DMC
12 on [REDACTED] and before the DMC scheduled for [REDACTED]. During this one-month period,
13 orders may be issued to affect the list of parties and describe the level of their involvement.

14 At this time, the Defendant parties (like [REDACTED] are divided into three parts according
15 to the Court's initial the apportionment of the expense of discovery management. During the first
16 DMC, the parties discussed these divisions without controversy in an effort to agree upon a fair
17 apportionment among the defendants. The defendants may be roughly divided between the
18 "[REDACTED] individuals and entities, the "Successor Entities"¹ and the "Others."

19 Therefore, in this initial phase and only as to general management expenses, the Discovery
20 Referee proposes to allocate charges in four shares as follows:

- 21 (1) The Plaintiff, [REDACTED] represented by the [REDACTED]
- 22 (2) The "[REDACTED]" related group, includes individual family members, and the related
23 [REDACTED] companies including [REDACTED]. This group is represented by [REDACTED]
24 [REDACTED] together with [REDACTED]
25 [REDACTED] appeared at the first DMC for both [REDACTED]
- 26 (3) The "Successor Entities" group includes [REDACTED] represented by [REDACTED]
27 [REDACTED] and [REDACTED] and [REDACTED]
28 [REDACTED] represented by [REDACTED]. [REDACTED] is

¹ Referred to as the "Competitors" in the [REDACTED] Discovery Management Conference.

1 represented by [REDACTED] and [REDACTED] is represented by [REDACTED]
2 [REDACTED] of [REDACTED] and
3 [REDACTED] which has not yet appeared. The individual [REDACTED]
4 [REDACTED] and [REDACTED] is represented by [REDACTED] and has
5 not yet appeared. [REDACTED] previously defaulted but has been re-served with Amended
6 Complaint.

7 (4) The "Others" party group include [REDACTED] represented
8 by [REDACTED] and it is unclear who represents [REDACTED]
9 [REDACTED] [REDACTED] is represented by
10 [REDACTED] of [REDACTED] [REDACTED] is represented by
11 [REDACTED] of [REDACTED] Two additional parties who have not yet
12 appeared may be named and join the litigation: [REDACTED]

13 The Discovery Referee's first report recommended an initial deposit retainer of 30 hours
14 together with an administrative fee of \$500 from each participating party. The administrative fees
15 have been invoiced to the parties who have appeared, and the Referee recommends an additional
16 invoice of \$500 administrative fee be invoiced to each added party as they appear.

17 As to the general discovery management expenses (distinguished from anticipated individual
18 motions by parties) the Discovery Referee recommends the division of invoices and payment as
19 follows:

- 20 • Plaintiff: 20% as recommended by the Court in its appointing order;
- 21 • The "[REDACTED]" related parties, including individual family members and related
22 [REDACTED] corporations: 30% jointly and severally among the "[REDACTED]" parties;
- 23 • The "Successor Entities": 30% jointly and severally among the six named entities; and
- 24 • The "Others": 20% jointly and severally among the presently appearing parties and any
25 added "Other" parties.

26 The discovery referee recommends apportionment and invoicing of the parties according to the
27 above percentage ratios, subject to any further adjustment approved by the Court. RECOMMENDED

28 Date: [REDACTED]

[REDACTED]

Hon. James Lambden, (Ret.) Discovery Referee

[REDACTED]
DISCOVERY REFEREE'S RECOMMENDATION AND ORDER

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ORDER

The Court having reviewed the above Recommendation (number 3) proposed by the Discovery Referee, hereby approves the recommended apportionment of general discovery management expenses, and orders the parties to comply with its terms.

Date: _____

[REDACTED]

JUDGE OF THE SUPERIOR COURT

Example
Report Limits
Delay in
Decision

EXAMPLE REPORT LIMITS DELAY IN DECISION

DISCOVERY REFEREE'S REPORT

During the second session of the deposition of non-party witness and retired employee, MR. WITNESS, the attorney for DEFENDANT ONE, (also representing the witness) invoked the seven-hour time limit imposed by CCP §2025.290 and ended the deposition at 1:00 p.m. The other attorneys stated their estimations that 2-3 hours of examination were necessary to finish the deposition. The reported transcript of the discussion will be available to the Court.

In pertinent part, the exception to the time limit imposed by CCP §2025.290(a) provides, “The court shall allow additional time, beyond any limits imposed by this section, if needed, to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.”

After the Discovery Referee indicated that the deposition should be extended, DEFENDANT ONE argued that the Discovery Referee does not have the jurisdiction under the appointing order to allow the Referee to rule as to the exception provided by the statute.

After reviewing the appointing order and hearing the arguments of counsel, the Discovery Referee concluded that discovery references, whether by the court or by stipulation, are an exception to the general prohibition that courts cannot delegate all motions to a referee. (See *Taggares v Superior Court* (1998) 52 Cal. App.4th 94, 98). The Referee also cited Rule of Court 3.922(e) which provides that the Discovery Referee is authorized to “set the time, date, and place for all hearings determined by the referee to be necessary; direct the issuance of subpoenas; preside over hearings; take evidence; and rule on objections, motions, and other requests made during the course of the hearing.”

DEFENDANT ONE also argued that a formal motion and fully briefed argument before the Superior Court is required to resolve this issue. The Referee suggested that the review process permitted by CCP §643(c) is a more efficacious approach to obtaining a ruling by the Court since it will allow the Court to decide whether to accept the Referee's ruling or to set a schedule for briefing and argument.

The Referee rejected DEFENDANT ONE's argument that the exception providing for an extension of time to take the deposition provided by § 2025.290 (a) is a matter outside the ambit of the Referee's jurisdiction. The Discovery Referee indicated he would order the deposition

extended to 4:00 p.m. DEFENDANT ONE responded that he and his client would end the deposition without further discussion with the other attorneys. The Referee indicated that he would issue his order in the form of a recommendation to the Court to be reviewed by the trial judge (with or without a formal motion) pursuant to CCP §643(c).

FINDINGS and RECOMMENDATION

The Discovery Referee finds that the extension of time to complete the deposition of MR. WITNESS is necessary and recommends that Court confirm his order as follows:

- The Referee finds that a fair examination of deponent MR. WITNESS shall require more time than the limited time provided by CCP § 2025.290.
- The Referee also finds that the deponent has been required to review numerous documents produced in discovery (estimated to be 1500) which were prepared years ago, and that MR. WITNESS is a singular witness as to certain critical evidence due to the supervisory position he occupied before his retirement.
- The Referee also finds that the deposition has been prolonged by an extraordinary number of objections by DEFENDANT ONE to the form of questions (typically “lacks foundation” and “vague and ambiguous”).
- Therefore, the Referee found and ruled that the interrupted deposition should be extended by approximately three hours to conclude at 4:00 p.m. This was within the time estimate provided by the attorney for plaintiffs, and was accompanied by the statement of the attorney for DEFENDANT TWO, who suggested the time limit of 4:00 p.m. might not be sufficient to for him to complete his examination of MR. WITNESS.

The Referee recommends that the Court approve an order to extend the time limit of the deposition to provide a full and fair examination of this deponent and recommends an additional four (4) hours to conclude the deposition.

Date:,

Hon. James Lambden (Ret.)

[PROPOSED] ORDER

The Court has reviewed and approves the recommendations of the Discovery Referee and

orders that the deposition time of MR. WITNESS shall be extended by an additional ____ hours.

Date: _____

Hon.

JUDGE OF THE SUPERIOR COURT