

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California



GTE MOBILNET OF CALIFORNIA LIMITED
PARTNERSHIP, a California limited partnership d/b/a
VERIZON WIRELESS

Plaintiff(s)

v.

CARMEL-BY-THE-SEA

Defendant(s)

Civil Action No. 5:22-cv-00347-NC

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Carmel-By-The-Sea
c/o City Clerk
P.O. Box CC
Carmel-by-the-Sea, CA 93921

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark L. Mosely
Melanie Sengupta
Mackenzie & Albritton LLP
155 Sansome Street, Suite 800
San Francisco, CA 94104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Mark B. Busby

Gina Augustine

Signature of Clerk or Deputy Clerk

Date: 01/20/2022



Civil Action No. 5:22-cv-00347-NC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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10
11 Attorneys for Plaintiff GTE MOBILNET OF
12 CALIFORNIA Limited Partnership,
13 a California limited partnership d/b/a
14 VERIZON WIRELESS

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13
14 SAN JOSE DIVISION

15 GTE MOBILNET OF CALIFORNIA
16 LIMITED PARTNERSHIP, a California limited
17 partnership d/b/a VERIZON WIRELESS,

18 Plaintiff,

19 vs.

20 CARMEL-BY-THE-SEA,

21 Defendant.

Case No. 5:22-cv-347

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTION;
REQUEST FOR EXPEDITED REVIEW
UNDER 47 U.S.C. § 332(c)(7)(B)(v)**

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23 Plaintiff GTE Mobilnet of California Limited Partnership, doing business as Verizon
24 Wireless (“Verizon Wireless”), brings this complaint against defendant Carmel-by-the-Sea
25 (“Carmel” or the “City”) and alleges as follows:

26 **I. INTRODUCTION**

27 1. The City violated the Telecommunications Act of 1996 (the “TCA”) by failing to
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1 act, within a reasonable period of time, on Verizon Wireless’s application to place, modify, or
2 construct a personal wireless service facility within the City. Under 47 U.S.C. section
3 332(c)(7)(B)(ii), the City must “act on any request for authorization to place, construct, or modify
4 personal wireless service facilities within a reasonable period of time.” The Federal
5 Communications Commission (“FCC”) issued an order establishing specific, presumptively
6 reasonable timeframes under which a municipality must act on such requests to comply with
7 Section 332(c)(7)(B)(ii). *In re Petition for Declaratory Ruling*, 24 FCC Rcd. 13994, 14004-
8 14005, ¶ 32 (Nov. 18, 2009) (the “*Shot Clock Ruling*”). In this case, the applicable “shot clock”
9 deadline expired on December 17, 2021. The City has failed to act on Verizon Wireless’s
10 application, and has thus violated the TCA.

11 2. The TCA also requires that any denial of an application to install or modify a
12 wireless facility “*shall be in writing* and supported by substantial evidence contained in a written
13 record.” 47 U.S.C. § 332(c)(7)(B)(iii) (emphasis added).

14 3. Verizon Wireless filed an application with the City (the “Carmelo Application”)
15 seeking approval to replace an existing 39-foot, 10-inch wood utility pole with a new wood pole
16 and a small cell personal wireless service facility on Carmelo Street between Eighth and Ninth
17 Avenues in Carmel-by-the-Sea, California (the “Proposed Facility”). Verizon Wireless needs the
18 Proposed Facility to fill a gap in wireless service in the south Carmel area, to meet the increased
19 customer demand for voice and data usage, and to avoid compromising network accessibility and
20 reliability.

21 4. The City reviewed the Carmelo Application at three public hearings, but has never
22 taken final action on the Carmelo Application. The Planning Commission held two hearings on
23 the Carmelo Application, and then City Council held a third on December 7, 2021. While the City
24 Council voted to deny the Carmelo Application on December 7, 2021, it has never issued a written
25 decision to Verizon Wireless.

26 5. The City’s failure to act also constitutes a breach of a settlement agreement with
27 Verizon Wireless. Under the settlement agreement, the City had a duty to take final action “in
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1 strict compliance with FCC shot clock periods.” The agreement provides that the remedy for this
2 breach is that the Carmelo Application “shall be deemed approved by operation of law.”

3 6. To redress these violations, Verizon Wireless seeks declaratory and injunctive
4 relief deeming the Carmelo Application approved and directing the City to issue all necessary
5 approvals for Verizon Wireless to build the Proposed Facility.

6 7. Verizon Wireless also respectfully requests expedited judicial review of these
7 claims, including an expedited schedule for briefing and argument of a motion for summary
8 judgment. 47 U.S.C. § 332(c)(7)(B)(v).

9 **II. JURISDICTION AND VENUE**

10 8. This case arises under the Constitution and laws of the United States, including the
11 Supremacy Clause, U.S. Const. Article VI, Clause 2, and the TCA.

12 9. The Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331
13 and 1337. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.
14 The Court also has the authority to grant injunctive relief. *See, e.g., Brehmer v. Planning Bd. of*
15 *Town of Wellfleet*, 238 F.3d 117, 121 (1st Cir. 2001) [“award of injunctive relief, rather than a
16 remand for further proceedings, best fulfills this statutory goal”]; *Preferred Sites, LLC v. Troup*
17 *County*, 296 F.3d 1210, 1222 (11th Cir. 2002) [holding that “an injunction ordering issuance of a
18 permit is an appropriate remedy for a violation” of the TCA].

19 10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the City is located
20 in this District and the acts or omissions giving rise to this action occurred in this District.

21 11. The court has supplemental jurisdiction over claims arising under California state
22 law pursuant to 28 U.S.C. § 1367, in that the state law claims are so related to the claims over
23 which the Court has original jurisdiction that they are part of the same case or controversy under
24 Article III of the United States Constitution.

25 **III. INTRADISTRICT ASSIGNMENT**

26 12. Assignment to the San Jose Division of this Court is appropriate pursuant to Local
27 Rule 3-2(e) because all or a substantial part of the events or omissions which give rise to the claims
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1 asserted herein occurred in the County of Monterey.

2 **IV. THE PARTIES**

3 13. Plaintiff GTE Mobilnet of California Limited Partnership, a California limited
4 partnership doing business as Verizon Wireless, is the local affiliate of a nation-wide provider of
5 wireless telecommunications services and is referred to herein as “Verizon Wireless.”

6 14. Verizon Wireless is a “communications common carrier” and a
7 “telecommunications carrier” that provides “personal wireless services,” and “interstate and
8 intrastate telecommunications services” as those terms are defined and used in the TCA and the
9 rules, regulations and orders promulgated by the FCC pursuant to this statutory scheme.

10 15. Verizon Wireless is licensed by the FCC to provide interstate and intrastate
11 telecommunications services and personal wireless services via radio communication nationwide,
12 including within the City.

13 16. Defendant Carmel-by-the-Sea is a general law city, duly constituted under the
14 Constitution and laws of the State of California.

15 **V. EVOLVING CELLULAR TECHNOLOGY AND NEED FOR WIRELESS**
16 **FACILITIES**

17 17. Modern wireless communications require networks of antennas and supporting radio
18 equipment to provide reliable service throughout a geographic area. Demand for wireless services
19 is growing exponentially. Wireless carriers must install new cell sites and upgrade existing ones to
20 provide adequate network capacity to meet that demand and to provide newer, more advanced
21 wireless services. One key solution is “small cells.” In contrast to traditional cell towers
22 (sometimes referred to as “macro” facilities), small cells are a series of relatively small, low-
23 powered facilities that attach to infrastructure like streetlight poles to provide additional signal
24 coverage or capacity. The Proposed Facility is a small cell.

25 **VI. REGULATORY FRAMEWORK**

26 **A. Federal Preemption of Local Roadblocks to Competition**

27 18. With the passage of the TCA, Congress “created a new telecommunications regime
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1 designed to foster competition in local telephone markets.” *Verizon Maryland, Inc. v. Pub. Service*
2 *Comm’n of Md.*, 535 U.S. 635, 638 (2002). To ensure that its pro-competitive national policy
3 would not be frustrated, Congress imposed certain limitations on the traditional zoning authority of
4 state and local governments to regulate the location, construction, and modification of such
5 facilities. *City of Arlington v. Federal Communications Commission*, 569 U.S. 290 (2013).

6 19. Two of those provisions are relevant here. First, the TCA requires that a state or
7 local government must “act on any request for authorization to place, construct, or modify personal
8 wireless service facilities *within a reasonable period of time* after the request is duly filed” (47
9 U.S.C. § 332(c)(7)(B)(ii)) (emphasis added). Second, it requires that any denial of an application
10 to install or modify a wireless facility “*shall be in writing* and supported by substantial evidence
11 contained in a written record.” 47 U.S.C. § 332(c)(7)(B)(iii) (emphasis added).

12 20. The TCA’s “reasonable period of time” provision addressed the fact that wireless
13 providers often faced lengthy and unreasonable delays on siting applications, which impeded the
14 deployment of advanced wireless services and capacity, including the provision of emergency
15 services dependent on such capacity. To clarify the meaning of a “reasonable period of time,” the
16 FCC issued the *Shot Clock Ruling*, which established a rebuttable presumption that a “reasonable
17 period of time” is 90 days to process a “collocation” application and 150 days to process all other
18 applications. *Shot Clock Ruling*, ¶¶ 32, 45.

19 21. In *City of Arlington v. Federal Communications Commission*, 569 U.S. 290 (2013),
20 the United States Supreme Court upheld both the statutory authority of the FCC to interpret the
21 “reasonable period of time” provision, and the reasonableness of the presumptive 90-day and 150-
22 day deadlines. The FCC later codified these deadlines, along with shorter “shot clocks” for small
23 wireless facilities and certain types of modifications, at 47 C.F.R. Section 1.6003(c).

24 22. One of the *Shot Clock Ruling*’s purposes was to “clarify when an adversely affected
25 service provider may take a dilatory State or local government to court,” i.e., to clarify when the
26 30-day limitations period under the TCA for a “failure to act” begins to run. The FCC “expect[s]
27 that this certainty will enable personal wireless service providers more vigorously to enforce the
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1 statutory mandate against unreasonable delay that impedes the deployment of services that benefit
2 the public.” *Shot Clock Ruling*, ¶ 37.

3 23. Under the *Shot Clock Ruling*, the presumptive deadlines of 90 days (for collocation
4 facilities) and 150 days (for new towers) will control unless the State or local government rebuts
5 the presumption that such deadlines are reasonable. *Shot Clock Ruling*, ¶ 32.

6 24. Otherwise, the presumptive 90-day or 150-day deadline may be extended or tolled
7 under only two circumstances. First, if the State or local government makes a request for
8 additional information within 30 days after the application is filed, the time spent by the project
9 applicant responding to the request does not count toward the 90 or 150-day period. *Shot Clock*
10 *Ruling*, ¶ 53; 47 C.F.R. § 1.6003(d)(2). So if the state or local government entity makes a timely
11 and appropriate request for additional information (within 30 days of the date of filing), the “shot
12 clock” stops running on the date of such request and does not start running again until the requested
13 additional information has been submitted. *Shot Clock Ruling*, ¶ 52; 47 C.F.R. § 1.6003(d)(2).

14 25. Second, the *Shot Clock Ruling* provides that the deadlines may be extended by
15 “mutual consent of the personal wireless service provider and the State or local government, and
16 that in such instances, the commencement of the 30-day period for filing of suit will be tolled.”
17 *Shot Clock Ruling*, ¶ 49.

18 26. The *Shot Clock Ruling* was intended to “ensure timely State and local government
19 action and . . . [that municipalities] will have a strong incentive to resolve each application within
20 the timeframe defined as reasonable, or they will risk issuance of an injunction granting the
21 application.” *Shot Clock Ruling*, ¶ 38; *see also New Cingular Wireless PCS, LLC v. Town of*
22 *Stoddard*, 853 F.Supp.2d 198, 203-204 (D.N.H. 2012) (finding that “the *Shot Clock Ruling*’s 150–
23 day deadline for the processing of wireless communications facility siting applications
24 encompasses not only the time it takes a local government to reach an initial decision on an
25 application, but the time it takes to complete the rehearing process. . . . as well”).

26 27. Consequently, if a city fails to act within a reasonable period of time on an
27 application by a carrier to place, modify or construct personal wireless service facilities, it violates
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1 47 U.S.C. Section 332(c)(7)(B)(ii). This failure to act is not cured, or the Shot Clock tolled, by an
2 interim decision from the City that is still appealable to another City department. The City must
3 conclude *all* of its review processes and appeals by these deadlines so that there is a final decision.
4 *New Cingular Wireless PCS, LLC, supra*, 853 F.Supp.2d at 203-204.

5 **VII. THE CITY VIOLATED THE FCC'S SHOT CLOCK**

6 28. Verizon Wireless started working with the City in 2017 to deploy small cell
7 facilities. Verizon Wireless initially applied for five small cell wireless facilities in the residential
8 area of Carmel (the "Original Applications"). The City denied all five of the Original Applications,
9 based primarily on their location within residential areas.

10 29. To accommodate the City's concerns, Verizon Wireless worked with the City to
11 redesign the network and submit new applications for alternative sites through an agreement dated
12 November 2, 2020 (the "Settlement Agreement").

13 30. One such alternative site was the Proposed Facility described in the Carmelo
14 Application.

15 31. On April 7, 2021, Verizon Wireless submitted the Carmelo Application, which
16 proposed to replace an existing 39-foot, 10-inch wood utility pole with a new wood pole and
17 wireless facility. The proposal also included ground cabinets to enclose batteries that provide
18 continued service during emergencies, pursuant to the City's request in the Settlement Agreement.
19 The Carmelo Application constituted a "request for authorization to place, construct or modify
20 personal wireless service facilities" within the meaning of 47 U.S.C. § 332(c)(7)(B)(ii).

21 32. After two Planning Commission hearings on August 11, 2021, and September 29,
22 2021, the Planning Commission denied the Carmelo Application. The denial was not based on
23 substantial evidence.

24 33. Verizon Wireless appealed the Planning Commission's decision to the City Council
25 and agreed with the City to toll the FCC's shot clock deadline on the Carmelo Application to
26 December 17, 2021.

27 34. Prior to the City Council appeal hearing, in an effort to make the Carmelo
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1 Application more palatable to the City, Verizon Wireless decreased the size of the proposed
2 Carmelo facility by substituting a shorter antenna and eliminating the ground cabinet options for
3 batteries requested by the City Council in the Settlement Agreement.

4 35. At the conclusion of the public hearing, the City Council voted to deny the Carmelo
5 Application. The City has yet to issue a written denial, as required by the TCA.

6 **VIII. GROUNDS FOR INJUNCTIVE RELIEF**

7 36. As a result of the City's actions (or lack thereof), Verizon Wireless has been, and
8 will continue to be, damaged and irreparably harmed absent the relief requested herein. The harm
9 caused by the City's unlawful actions includes, but is not limited to, impairment of Verizon
10 Wireless's (a) ability to provide its customers in the City with the high-quality, reliable wireless
11 service they desire and rightfully expect; (b) ability to compete with other providers of
12 telecommunications services; (c) full use of its existing licenses and business investments; and
13 (d) good will and business reputation.

14 37. The harm that the City's actions have caused Verizon Wireless is not reasonably
15 susceptible to accurate calculation and cannot be fully and adequately addressed through an award
16 of damages.

17 38. Moreover, the public interest in promoting competition, lower prices, and rapid
18 deployment of new technology in the telecommunications arena – the express goals of the TCA –
19 has been irreparably harmed and will continue to be irreparably harmed by the City's unlawful
20 actions. Verizon Wireless's present and future customers, as well as the public at large, are
21 significantly prejudiced by the City's unlawful conduct.

22 39. In addition, wireless telecommunications are an important component of emergency
23 response systems and provide a vital alternative to traditional landlines during fires, earthquakes,
24 and other natural and man-made disasters. By preventing Verizon Wireless from installing
25 equipment needed to provide improved and more reliable service, the City's unlawful actions are
26 causing irreparable harm to the public interest in reliable emergency communications.

27 40. In contrast to the immediate and irreparable injury being suffered by Verizon
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1 Wireless, its customers, and the public interest, the City will suffer no injury if the Court issues the
2 requested declaratory and injunctive relief. The placement of small wireless facilities on existing
3 utility poles will have no significant visual or other impacts.

4 **IX. GROUNDS FOR DECLARATORY RELIEF**

5 41. A present, actual controversy has arisen and now exists between the parties
6 regarding their respective legal rights and duties. Verizon Wireless contends that the City's failure
7 to act violates both the TCA and the Settlement Agreement. On information and belief, the City
8 denies these allegations.

9 42. Accordingly, declaratory relief is appropriate and necessary to adjudicate the extent
10 of Verizon Wireless's rights and the City's duties and authority.

11 **COUNT ONE**

12 **(Violation of 47 U.S.C. Sections 332(c)(7)(B)(ii))**
13 **Shot Clock Violation on Carmelo Application**

14 43. Verizon Wireless re-alleges and incorporates by reference all preceding paragraphs
15 as if fully restated herein.

16 44. The Carmelo Application, as originally submitted, was subject to the *Shot Clock*
17 *Ruling* 150-day clock.

18 45. The Carmelo Application was tolled because the City requested additional
19 information. Verizon Wireless submitted its application on April 7, 2021, the City requested
20 additional information on April 30, 2021, and when Verizon Wireless provided that information in
21 mid-July 2021, the shot clock was extended to November 18, 2021.

22 46. To provide the City additional time for review and to avoid any ambiguity regarding
23 the shot clock deadline, the parties agreed in writing to extend the shot clock through December 17,
24 2021. This became the outside deadline for the City to take "final action" on the Carmelo
25 Application, i.e., a *written decision, communicated to the applicant*. 47 U.S.C. § 332(c)(7)(B)(iii);
26 *T-Mobile South, LLC v. City of Roswell*, 574 U.S. 293, 305 n. 4 (2015) ("The relevant 'final action'
27 is the issuance of the written notice of denial . . ."); *T Mobile Northeast LLC v. City of*
28 *Wilmington, Del.*, 913 F.3d 311, 323 (3rd Cir. 2019) ("If the locality fails to meet that deadline by

1 not issuing a written decision before the shot clock expires, the wireless provider can bring a claim
2 for a ‘failure to act.’”).

3 47. While the City voted to deny the application on December 7, 2021, it did not issue
4 its decision in writing before the shot clock deadline expired on December 17, 2021. Indeed, it has
5 still not issued a written denial as of the date of this complaint.

6 48. There are no unusual, extraordinary, or extenuating circumstances related to the
7 Carmelo Application that would justify delay beyond the presumptive 150-day deadline for action,
8 as extended by the circumstances described above.

9 49. The City failed to act within a reasonable period of time on Verizon Wireless’s
10 application to place, modify or construct personal wireless service facilities. The City’s
11 unreasonable delay violates Verizon Wireless’s rights under 47 U.S.C. section 332(c)(7)(B)(ii), the
12 *Shot Clock Ruling*, and the FCC’s implementing regulations.

13 **COUNT TWO**

14 **(Breach of Settlement Agreement)**
15 **Carmelo Application**

16 50. Verizon Wireless re-alleges and incorporates by reference all preceding paragraphs
17 as if fully restated herein.

18 51. The Settlement Agreement specifies that the City will take final action “in strict
19 compliance with FCC shot clock periods unless Verizon Wireless agrees to toll the shot clock.” If
20 the City “fails to take final action on the applications within the timeline specified,” then the
21 application “shall be deemed approved by operation of law.” Settlement Agreement, § 3.

22 52. As established in Count One, the City failed to take timely final action.
23 Consequently, the City has breached the Settlement Agreement, and Verizon Wireless is entitled to
24 the necessary approvals to construct the Carmelo Site. Settlement Agreement, § 3.

25 53. The Settlement Agreement provides that in any lawsuit to enforce its provisions, the
26 prevailing party shall be entitled to recover their attorneys’ fees. § 13.

1 **X. REQUEST FOR EXPEDITED REVIEW**

2 54. Verizon Wireless re-alleges and incorporates by reference all preceding paragraphs
3 as if fully restated herein.

4 55. The TCA, 47 U.S.C. § 332(c)(7)(B)(v), provides that:

5 Any person adversely affected by any final action or failure to act by a
6 State or local government or any instrumentality thereof that is
7 inconsistent with this subparagraph may, within 30 days after such
8 action or failure to act, commence an action in any court of competent
9 jurisdiction. The court shall hear and decide such action on an
10 expedited basis.

11 56. Verizon Wireless has been adversely affected by the City's failure to take final
12 action on the Proposed Facility. Verizon Wireless respectfully requests a hearing and decision by
13 the Court on an expedited basis as provided by the TCA.

14 **XI. PRAYER FOR RELIEF**

15 **WHEREFORE**, Verizon Wireless respectfully requests that this Court enter judgment
16 against the City as follows:

17 (i) For an Order and Judgment finding and declaring that the City failed to take final
18 action on the Carmelo Application "within a reasonable period of time";

19 (ii) For an Order and Judgment finding and declaring that the City breached the
20 Settlement Agreement by failing to act on the Carmelo Application within the FCC shot clock
21 deadline, and therefore the Carmelo Application has been approved by operation of law;

22 (iii) For preliminary and permanent injunctive relief on all Counts directing the City to
23 grant Verizon Wireless any and all authorizations or approvals necessary to construct the Carmelo
24 Application;

25 (iv) For expedited review of the matters set forth in this complaint;

26 (v) For an order awarding Verizon Wireless the costs and disbursements incurred in
27 connection with this action pursuant to 28 U.S.C. § 1920, in addition to attorney's fees incurred to
28 enforce the Settlement Agreement as specified in Count Two; and

(vi) Granting such other relief as this Court considers just and proper.

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Dated: January 18, 2022

MACKENZIE & ALBRITTON LLP

/s/ Melanie Sengupta
Mark L. Mosley
Melanie Sengupta
Attorneys for GTE Mobilnet of California, L.P.,
d/b/a Verizon Wireless

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: GTE Mobilnet of California, L.P., dba Verizon Wireless. (b) County of Residence of First Listed Plaintiff: (EXCEPT IN U.S. PLAINTIFF CASES). (c) Attorneys: Mark Mosely, Melanie Sengupta, Mackenzie & Albritton LLP, 155 Sansome St., Suite 800, San Francisco, CA 94104, (415) 288-4000. DEFENDANTS: Carmel-By-The-Sea. County of Residence of First Listed Defendant: (IN U.S. PLAINTIFF CASES ONLY). NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known):

II. BASIS OF JURISDICTION (Place an "X" in One Box Only): 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party); 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III). III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant): Citizen of This State PTF 1 DEF 1; Citizen of Another State PTF 2 DEF 2; Citizen or Subject of a Foreign Country PTF 3 DEF 3; Incorporated or Principal Place of Business In This State PTF 4 DEF 4; Incorporated and Principal Place of Business In Another State PTF 5 DEF 5; Foreign Nation PTF 6 DEF 6.

IV. NATURE OF SUIT (Place an "X" in One Box Only): CONTRACT (110-196), REAL PROPERTY (210-290), TORTS (310-362), CIVIL RIGHTS (440-448), PERSONAL INJURY (365-385), PRISONER PETITIONS (463-560), HABEAS CORPUS (463-560), OTHER (540-560), FORFEITURE/PENALTY (625-690), LABOR (710-791), IMMIGRATION (462-465), BANKRUPTCY (422-423), SOCIAL SECURITY (861-865), FEDERAL TAX SUITS (870-871), OTHER STATUTES (375-950).

V. ORIGIN (Place an "X" in One Box Only): 1 Original Proceeding; 2 Removed from State Court; 3 Remanded from Appellate Court; 4 Reinstated or Reopened; 5 Transferred from Another District (specify); 6 Multidistrict Litigation-Transfer; 8 Multidistrict Litigation-Direct File.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. Section 332 and Breach of Contract. Brief description of cause: Violations of Telecommunications Act; unlawful failure to act on wireless application.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$: CHECK YES only if demanded in complaint. JURY DEMAND: Yes No.

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE: DOCKET NUMBER:

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only): SAN FRANCISCO/OAKLAND; X SAN JOSE; EUREKA-MCKINLEYVILLE.

DATE: 01/18/2022 SIGNATURE OF ATTORNEY OF RECORD: /s/Melanie Sengupta

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.

1 MACKENZIE & ALBRITTON LLP
2 MARK L. MOSLEY, State Bar No. 136449
3 MELANIE SENGUPTA, State Bar No. 244615
4 Email: mmosleyesq@gmail.com
5 m.sengupta@mallp.com
6 155 Sansome Street, Suite 800
7 San Francisco, CA 94104
8 Telephone: (415) 288-4000
9 Facsimile: (415) 288-4010

10
11 Attorneys for Plaintiff GTE MOBILNET OF
12 CALIFORNIA Limited Partnership,
13 a California limited partnership d/b/a
14 VERIZON WIRELESS

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13
14 SAN JOSE DIVISION

15 GTE MOBILNET OF CALIFORNIA
16 LIMITED PARTNERSHIP, a California limited
17 partnership d/b/a VERIZON WIRELESS,

18 Plaintiff,

19 vs.

20 CARMEL-BY-THE-SEA,

21 Defendant.

Case No. 5:22-cv-347

**CERTIFICATION OF INTERESTED
ENTITIES OR PERSONS**

22
23 Pursuant to Civil L.R. 3-15, the undersigned certifies that the following listed persons,
24 associations of persons, firms, partnerships, corporations (including parent corporations) or other
25 entities (i) have a financial interest in the subject matter in controversy or in a party to the
26 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
27 substantially affected by the outcome of this proceeding:

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PARTY

CONNECTION OR INTEREST

Cellco Partnership, a Delaware general partnership	General Partner in and partial owner of Plaintiff GTE Mobilnet of California Limited Partnership
Southwestco Wireless, Inc., a Delaware corporation	Limited Partner in and partial owner of Plaintiff GTE Mobilnet of California Limited Partnership
Verizon Communications, Inc. (traded on the New York Stock Exchange as VZ)	Indirect sole owner of Cellco Partnership
Bell Atlantic Mobile Systems, LLC	Sole owner of Southwestco Wireless, Inc.
MCI Communications Services, Inc., a Delaware corporation	Sole owner of Bell Atlantic Mobile Systems, LLC
PG&E Corporation (traded on the New York Stock Exchange as PCG)	Licensor of any pole-top attachment of Verizon Wireless equipment

Dated: January 18, 2022

MACKENZIE & ALBRITTON LLP

/s/ Melanie Sengupta
 Mark L. Mosley
 Melanie Sengupta
 Attorneys for GTE Mobilnet of California, L.P.,
 d/b/a Verizon Wireless

From: ECF-CAND@cand.uscourts.gov
Subject: Activity in Case 5:22-cv-00347-NC GTE Mobilnet of California Limited Partnership v. Carmel by-the-Sea, City of Case Assigned by Intake
Date: January 19, 2022 at 12:02 PM
To: efilng@cand.uscourts.gov



This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court
California Northern District**

Notice of Electronic Filing

The following transaction was entered on 1/19/2022 at 12:01 PM PST and filed on 1/19/2022

Case Name: GTE Mobilnet of California Limited Partnership v. Carmel by-the-Sea, City of

Case Number: 5:22-cv-00347-NC

Filer:

Document Number: 4(No document attached)

Docket Text:

Case assigned to Magistrate Judge Nathanael M. Cousins.

Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit *E-Filing A New Civil Case* at <http://cand.uscourts.gov/ecf/caseopening>.

Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 2/2/2022. (jlg, COURT STAFF) (Filed on 1/19/2022)

5:22-cv-00347-NC Notice has been electronically mailed to:

Melanie Sengupta m.sengupta@mallp.com

5:22-cv-00347-NC Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GTE MOBILNET OF CALIFORNIA
LIMITED PARTNERSHIP,

Plaintiff,

v.

CARMEL BY-THE-SEA, CITY OF,

Defendant.

Case No. 22-cv-00347-NC

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

United States District Court
Northern District of California

IT IS HEREBY ORDERED that this action is assigned to the Honorable Nathanael M. Cousins . When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties

1 the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District
 2 Of California", additional copies of which can be downloaded from the court's Internet website:
 3 <http://www.cand.uscourts.gov>.

4
 5 **CASE SCHEDULE – ADR MULTI-OPTION PROGRAM**

Date	Event	Governing Rule
1/18/2022	Complaint Filed	
3/30/2022	*Last day to: • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR L.R. 3-5
	• file ADR Certification signed by Parties and Counsel (form available at http://www.cand.uscourts.gov)	Civil L.R. 16-8(b) & ADR L.R. 3-5(b)
4/13/2022	**Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov)	FRCivP 26(a) (1) Civil L.R. 16-9
4/20/2022	INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 10:00 AM in: 4th Floor, Courtroom 5 Robert F. Peckham Federal Building 280 South 1st Street San Jose, CA 95113	Civil L.R. 16-10

22 * If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 21
 23 days in advance of the Initial Case Management Conference.

24 ** If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 7
 25 days in advance of the Initial Case Management Conference.

United States District Court
 Northern District of California



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT OF CASE
TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL

Pursuant to General Order 44, the Assignment Plan of the United States District Court for the Northern District of California, this case has been randomly assigned to a Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including all pretrial and trial proceedings, entry of judgment and post-trial motions. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit.

Attached is a form to complete to indicate whether you consent to proceed before the assigned magistrate judge or decline to proceed before the assigned magistrate judge. This form is also available from the Court's website: cand.uscourts.gov/civilforms. You are free to withhold consent without adverse consequences. If any party declines, the case will be reassigned to a district judge.

If you are the plaintiff or removing party in this case, you must file your consent/declination form within 14 days of receipt of this notice. Each other party must file its consent/declination form within 14 days of appearing in the case.

The plaintiff or removing party must serve a copy of this notice upon all other parties to this action.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GTE Mobilnet of California LP d/b/a
Verizon Wireless

Plaintiff(s)

v.

Carmel-by-the-Sea

Defendant(s).

Case No. C 5:22-cv-347

CONSENT OR DECLINATION
TO MAGISTRATE JUDGE
JURISDICTION

INSTRUCTIONS: Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

Consent to Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

OR

Decline Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: January 21, 2022

NAME: Melanie Sengupta

COUNSEL FOR
(OR "PRO SE"): Plaintiff GTE Mobilnet of California LP

Melanie Sengupta
Digitally signed by Melanie Sengupta
Date: 2022.01.21 08:11:26 -08'00'

Signature

United States District Court
Northern District of California

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**STANDING ORDER FOR ALL JUDGES
OF THE NORTHERN DISTRICT OF CALIFORNIA**

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

All judges of the Northern District of California require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. **Jurisdiction and Service:** The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. **Facts:** A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. **Legal Issues:** A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. **Motions:** All prior and pending motions, their current status, and any anticipated motions.
5. **Amendment of Pleadings:** The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. **Evidence Preservation:** A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*
7. **Disclosures:** Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. **Discovery:** Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. **Class Actions:** If a class action, a proposal for how and when the class will be certified, and whether all attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.
10. **Related Cases:** Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. **Relief:** All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether **all** parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ___ Yes ___ No
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.
20. Professional Conduct: Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.
21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

CIVIL STANDING ORDER
MAGISTRATE JUDGE NATHANAEL M. COUSINS

LOCATION

All matters will be heard in Courtroom 5, 4th Floor, San Jose Federal Courthouse.

SCHEDULING

EVENT	DAY	TIME
Case Management Conferences	Wednesdays	10:00 a.m.
Motions	Wednesdays	1:00 p.m.
Pretrial Conferences	Wednesdays	2:00 p.m.
Trials	Monday through Friday	9:00 a.m. to 4:00 p.m.

Parties are not required to reserve a hearing date but should confirm the Court's availability at www.cand.uscourts.gov. For questions regarding scheduling, please contact courtroom deputy Lili Harrell at 408.535.5343 or Lili_Harrell@cand.uscourts.gov.

CONSENT TO MAGISTRATE JURISDICTION

In civil cases initially assigned to this Court for all purposes, each party must file written consent or declination to the jurisdiction of a magistrate judge as soon as possible but no later than the deadlines specified in Civil Local Rule 73-1(a).

PROPOSED ORDERS

In all cases subject to e-filing, the parties must email all stipulations and proposed orders in Word format to ncpo@cand.uscourts.gov on the same day they e-file these documents.

CHAMBERS COPIES NOT REQUIRED

No chambers copies of motions or discovery-related filings are required unless requested.

DISCOVERY


For all discovery disputes, the parties must meet and confer, in person or by telephone, to attempt to resolve their dispute. A mere exchange of letters, emails, or messages does not satisfy the requirement.

If the parties are unable to reach a resolution, they must file a joint statement of 5 pages or less that: (1) describes each unresolved issue; and (2) states each party's proposed compromise with respect to each unresolved issue. The parties may not attach declarations, exhibits, proposed orders, etc. to the statement absent leave of Court. If the parties are unable to file a joint statement, each party may file a statement of 2 pages or less.

The statement(s) must be filed in ECF under the Civil Events category of Motions and Related Filings > Motions: General > Discovery Letter Brief. Upon review of the statement(s), the Court will advise the parties regarding the need for more briefing, a hearing, or a telephonic conference.

IT IS SO ORDERED.

Updated: March 15, 2019



Nathanael M. Cousins
U.S. Magistrate Judge

**SETTLEMENT CONFERENCE STANDING ORDER
MAGISTRATE JUDGE NATHANAEL M. COUSINS**

SCHEDULING

To coordinate scheduling, please contact courtroom deputy Lili Harrell at Lili_Harrell@cand.uscourts.gov or 408.535.5343. Settlement conferences typically are held on Tuesdays and Thursdays at 9:30 a.m or 1:00 p.m.

Due to the Covid public health emergency, settlement conferences will be held by Zoom or telephone and not in person. The Court will provide additional access information before the settlement conference.

A party seeking to continue a settlement conference must file a request in ECF as soon as possible after meeting and conferring with opposing counsel. The request must demonstrate a compelling reason for the continuance and state whether the opposing parties object to the continuance. Any party that objects to the continuance must file an opposition in ECF within two days of the filing date of the request.

Contact courtroom deputy Lili Harrell immediately if the case settles before the settlement conference.

PERSONS REQUIRED TO ATTEND SETTLEMENT CONFERENCE

All parties and their counsel are required to attend the settlement conference in person, not by telephone. Non-natural persons must be represented by a person with unlimited authority to negotiate a settlement. An insured party must appear with a representative of the carrier with full authority to negotiate up to the limits of coverage. A person who must call another person not present at the conference before agreeing to a settlement does not have unlimited authority.

SETTLEMENT CONFERENCE STATEMENT

No later than seven days prior to the conference, each party must submit a settlement conference statement via email in PDF format to ncpo@cand.uscourts.gov. Each party must also serve its statement on opposing counsel. The statement must not be filed in ECF. The statement must include:

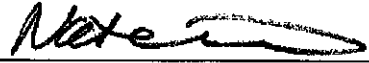
- (a) the identity of the attorney(s) and clients attending the settlement conference;
- (b) a brief statement of the facts of the case;
- (c) a brief statement of the claims and defenses raised, including statutory or other grounds upon which the claims are founded;
- (d) a candid evaluation of the parties' likelihood of prevailing on the claims and defenses;

- (e) a description of the major issues in dispute and any discrete issue that, if resolved, would facilitate the resolution of the case;
- (f) a summary of the proceedings to date;
- (g) a listing of all pending motions;
- (h) the relief sought;
- (i) the party's position on settlement, including present demands, offers, and a history of past settlement discussions.

No further materials should be submitted to the Court unless requested.

IT IS SO ORDERED.

Updated: August 20, 2020



Nathanael M. Cousins
U.S. Magistrate Judge

United States District Court Northern District of California

ECF Registration Information

Electronic Case Filing (ECF or "e-filing") is mandatory for all civil cases in this court. Please refer to Civil Local Rule 5-1 for the Court's rules pertaining to electronic filing. Effective August 19, 2013, e-filing of initiating documents (complaints; notices of removal) is allowed, but is not mandatory; all other documents must be e-filed in civil cases.

Parties who are representing themselves *pro se* (without attorney representation) are not required to e-file and, in fact, may e-file only with the permission of the assigned judge.

Please review and attend to the following important notes and tasks:

- Serve this ECF Registration Information Handout on all parties in the case along with the complaint or removal notice and the other documents generated by the court upon filing.
- If not already registered, each attorney in the case must register to become an e-filer at cand.uscourts.gov/ECF. Your ECF registration is valid for life in this district; please do not register more than once.

IMPORTANT NOTICE: by signing and submitting to the court a request for an ECF user id and password, you consent to entry of your email address into the court's electronic service registry for electronic service on you of all e-filed papers, pursuant to rules 77 and 5(b)(2)(d) of the Federal Rules of Civil Procedure.

- If you are a party and do not have an attorney and would like to e-file in the case, please visit cand.uscourts.gov/ECF/proseregistration for instructions and information. Unless and until the assigned judge has given you permission to e-file, you are required to file and serve papers in hard copy (paper) form.
- Access dockets and documents using your PACER (Public Access to Court Electronic Records) account. If your firm already has a PACER account, please use that account. It is not necessary to have individual PACER accounts for each user in your office. To set up an account, visit: pacer.gov or call (800) 676-6856.

ECF interactive tutorials, instructions for e-filing and other information are available at: cand.uscourts.gov/ECF.



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT OF CASE
TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL

Pursuant to General Order 44, the Assignment Plan of the United States District Court for the Northern District of California, this case has been randomly assigned to a Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including all pretrial and trial proceedings, entry of judgment and post-trial motions. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit.

Attached is a form to complete to indicate whether you consent to proceed before the assigned magistrate judge or decline to proceed before the assigned magistrate judge. This form is also available from the Court's website: cand.uscourts.gov/civilforms. You are free to withhold consent without adverse consequences. If any party declines, the case will be reassigned to a district judge.

If you are the plaintiff or removing party in this case, you must file your consent/declination form within 14 days of receipt of this notice. Each other party must file its consent/declination form within 14 days of appearing in the case.

The plaintiff or removing party must serve a copy of this notice upon all other parties to this action.

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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

6 Case No. C

7 CONSENT OR DECLINATION
8 TO MAGISTRATE JUDGE
9 JURISDICTION

7 Plaintiff(s)

8 v.

10 Defendant(s).

11 **INSTRUCTIONS:** Please indicate below by checking **one** of the two boxes whether you (if you are the party)
12 or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge
13 jurisdiction in this matter. Sign this form below your selection.

13 **Consent to Magistrate Judge Jurisdiction**

14 In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a
15 United States magistrate judge conduct all further proceedings in this case, including trial and
16 entry of final judgment. I understand that appeal from the judgment shall be taken directly to the
17 United States Court of Appeals for the Ninth Circuit.

17 **OR**

18 **Decline Magistrate Judge Jurisdiction**

19 In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States
20 magistrate judge conduct all further proceedings in this case and I hereby request that this case
21 be reassigned to a United States district judge.

22
23 DATE: _____

NAME: _____

24 COUNSEL FOR
(OR "PRO SE"): _____

25
26 _____
Signature