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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Navajo Nation, et al.,		No. CV-18-08329-PCT-DWL
Plaintiffs,		PRELIMINARY ORDER
vs.		
Michele Reagan, et al.,		
Defendants.		

The parties are advised of the following preliminary policies and procedures that will govern these proceedings.

Governing Rules

Both counsel and *pro se* litigants must abide by the [Rules of Practice of the U.S. District Court for the District of Arizona](#) (“Local Rules”) and the [Federal Rules of Civil Procedure](#).

Service Deadline

Service of the summons and complaint on each defendant must occur within 90 days of filing the complaint. *See* Fed. R. Civ. P. 4(m). If service cannot occur within 90 days, a request for an extension may be filed *before* expiration of the 90-day period. Any such request must set forth the reason why service has not been accomplished and request a specific short additional period of time. If the Court believes your reason constitutes “good cause,” it will authorize a brief additional period to accomplish service.

Proof of service must be filed with the Clerk of Court, in the form of an affidavit,

1 promptly after service has been made. *See* Fed. R. Civ. P. 4(l). It is important to comply
2 with this requirement—absent proof of service, the Court will have no way of knowing
3 that the complaint has been served.

4 This order serves as an express warning that the Court will dismiss this action,
5 without further notice to Plaintiff(s), with respect to any Defendant that is not timely
6 served. *See* Fed. R. Civ. P. 4(m).

7 **Case Management Conference**

8 The Court will schedule a Rule 16 case management conference after Defendant(s)
9 have been served or appeared. As will be directed in the order setting the conference, the
10 parties will be required to engage in a Rule 26(f) meeting and submit a joint Rule 26(f)
11 case management report. Outstanding motions or requests to continue the conference will
12 not excuse the requirement to hold a Rule 26(f) meeting or submit the joint filing.

13 The Court will issue a case management order following the conference. The order
14 will reflect the parties' input and the Court's considered assessment of the time necessary
15 to complete discovery and all pretrial submissions, and will set forth additional policies
16 and procedures that will apply in this case. The parties should keep in mind that civil trials
17 ordinarily should occur within 18 months of the filing of the complaint. *See* 28U.S.C. §
18 473(a)(2)(B).

19 **Mandatory Initial Discovery Pilot Project (“MIDP”)**

20 This case is subject to the MIDP, which was approved by the Judicial Conference
21 of the United States, has been implemented in the District of Arizona by General Order 17-
22 08, and is adopted by this Court.¹ The MIDP seeks to evaluate whether the use of
23 streamlined preliminary discovery will reduce costs and delays in civil litigation. The
24 following materials are attached to this Order:

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26 ¹ The MIDP applies to all civil cases filed on or after May 1, 2017, except to those
27 categories of cases exempted by the General Order, which include: cases listed in Rule
28 26(a)(1)(B), actions under the Private Securities Litigation Reform Act, cases transferred
for consolidated administration by the Judicial Panel on Multidistrict Litigation, and cases
under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

- 1 • Notice to Parties - Mandatory Initial Discovery Pilot Project
- 2 • General Order 17-08 (Nov. 1, 2018)
- 3 • Mandatory Initial Discovery Pilot Project Checklist
- 4 • Mandatory Initial Discovery Users' Manual for the District of Arizona

5 It is the responsibility of the parties to carefully read the materials attached to this Order to
6 ensure familiarity and full compliance with the requirements of the MIDP.

7 **Initial Discovery**

8 The MIDP requires the parties to exchange certain categories of preliminary court-
9 ordered discovery referred to as “Mandatory Initial Discovery Responses” (hereinafter
10 “MIDP Responses”). This requirement supersedes the initial disclosures required by
11 Federal Rule of Civil Procedure 26(a)(1) and is designed to accelerate the exchange of
12 relevant information that would otherwise be produced later in the litigation through
13 traditional discovery requests.²

14 **Rule 12 Motions Are Discouraged**

15 Any motion under Federal Rule of Civil Procedure 12 is discouraged if the
16 challenged defect in the pleading can be cured by filing an amended pleading. The Court
17 therefore requires that: (1) before filing a Rule 12(b)(6) motion to dismiss or a Rule 12(c)
18 motion for judgment, the movant must confer with the opposing party to determine whether
19 such motion can be avoided; and (2) the movant must attach a certificate of conferral,
20 certifying that it notified the opposing party of the issues asserted in its motion and that the
21 parties conferred but were unable to agree that the pleading was curable in any part by a
22 permissible amendment offered by the pleading party. *See also* Local Rule 12(c). The
23 requirement to meet and confer and attach a certificate of conferral applies in equal force
24 to motions to dismiss amended complaints, notwithstanding earlier conferrals and
25 certificates before the complaint was amended. Any motion lacking the required

26 _____
27 ² The MIDP sets forth two circumstances in which MIDP Responses may be excused
28 or deferred. However, unlike initial disclosures required by the federal rules, *see* Fed. R.
Civ. P. 26(a)(1)(A)-(C), the parties may not opt out of the requirement to provide MIDP
Responses, or the MIDP itself.

1 certification may be summarily stricken.

2 **Protective Orders**

3 As a general practice, this Court does not approve or adopt blanket protective orders
4 or confidentiality agreements, even when stipulated to by the parties. Further, the mere
5 fact the parties have designated certain materials or information as confidential pursuant to
6 an agreement or stipulation does not mean the Court will automatically order that filings
7 containing such information be placed under seal. *See Ctr. for Auto Safety v. Chrysler*
8 *Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). In the event that discovery requires
9 disclosure of specific, harmful, confidential material, the Court will entertain a request for
10 a protective order at that time if it is tailored to protect the particular interests at hand in
11 accordance with Rule 26(c) of the Federal Rules of Civil Procedure. An exemplar is
12 available on the [Judges' Orders, Forms & Procedures page](#) on the Court's intranet site.

13 **Emergencies and Expedited Consideration**

14 Any party desiring expedited consideration of a motion or other matter pending
15 before the Court may make such a request by filing a separate *Notice for Expedited*
16 *Consideration*. This notice should set forth the grounds warranting accelerated resolution
17 and identify the dates of the imminent events pertinent to the request. A request for
18 expedited consideration that is simply mentioned in the caption/title of the related filing
19 will not be considered—a separate notice must be filed.

20 **Noncompliance**

21 The parties are specifically advised that failure to prosecute, to comply with court
22 orders, or to comply with the Local and Federal Rules may result in dismissal of all or part
23 of this case, default, imposition of sanctions, or summary disposition of matters pending
24 before the Court. *See also* Local Rule 7.2(i) (“If a motion does not conform in all substantial
25 respects with the requirements of [the Local Rules], or if the [opposing party] does not
26 serve and file the required answering memoranda, . . . such noncompliance may be deemed
27 a consent to the denial or granting of the motion and the Court may dispose of the motion
28 summarily.”).

1 **IT IS THEREFORE ORDERED:**

2 1. That Plaintiff(s) must promptly serve a copy of this Order and its
3 Attachments on Defendant(s) and file notice of service with the Clerk of Court;

4 2. That, unless the Court orders otherwise, on **February 20, 2019**, the Clerk of
5 Court shall **terminate** without further notice any Defendant in this action that has not been
6 served pursuant to Rule 4(m) of the Federal Rules of Civil Procedure;

7 3. That, unless the Court orders otherwise, the parties shall file with the Clerk
8 of Court a notice of service of MIDP Responses, supplemental MIDP Responses, and
9 production of ESI, rather than copies of the actual disclosures.

10 Dated this 26th day of November, 2018.

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Dominic W. Lanza
United States District Judge