Thomas A Packer
TPacker@gordonrees com
Direct Dial (415) 875-3110

GORDON & REES LLP

ATTORNEYS AT LAW
EMBARCADERO CENTER WEST
275 BATTERY STREET, SUITE 2000
SAN FRANCISCO, CA 94111
PHONE (415) 986-5900
FAX: (415) 986-8054
WWW GORDONREES COM

January 28, 2009

08-CV-148

Via E-mail. john_rabiej@ao uscourts.gov

John K Rabiej
Chief, Rules Committee Support Office
Administrative Office of the United States Courts

Dear Mr Rabiej

Please accept this summary of my testimony to be given at the Civil Rules Hearing in San Francisco on February 2, 2009 My views do not necessarily represent those of others in my firm

I am a partner with Gordon & Rees LLP, a law firm with 16 offices in 10 states and am a member of the California and Oregon bars. My practice focuses on the defense of product and professional liability litigation.

Proposed Rule 26 Amendments

Common sense, efficiency and predictability are the attributes that come to mind upon reviewing the proposed changes to Rule 26 Attorneys who represent businesses not infrequently are faced with the decision of whether to risk not submitting an expert report from a client's employee whose testimony will be based on the employee's expertise Moreover, allowing discovery into the preparation of these detailed reports creates an unwarranted intrusion into the attorney-client privilege. Providing work-product protection to the preparation of these reports is essential to preservation of the attorney-client relationship and avoids possible unfair consequences to a business litigant just because it happens to employ someone with relevant expertise The proposed Rule 26(a)(2)(C), which substitutes an attorney summary disclosure of the expected testimony provides a clear and uniform procedure which will benefit all litigants and their counsel

The proposed rules allowing work-product protection for drafts of reports by expert witnesses pursuant to Rule 26(a)(2)(B) will significantly and materially enhance the efficiency of the

deposition process, while preserving the litigants' rights to effective cross-examination and discovery These new rules will do away with artificial and inefficient forms of communication between counsel and experts. They reflect the modern day forms of communications such as e-mail and texting, as well as electronic document creation, and will no longer punish the attorney who diligently prepares the expert to focus on the most relevant issues, nor the expert who creates multiple drafts in order to produce and disclose the best possible report, all to the benefit of litigants, courts and juries.

Proposed Rule 56 Amendments

My comments will focus on the proposed amendments to Rule 56(c)(2), and in particular the setting forth of a list of undisputed material facts The reality faced by the courts and litigants is that undisputed material facts must be set forth in some fashion in any event. Having them set forth in an orderly, clear manner benefits all. While some have suggested that this will result in extraordinarily lengthy lists, as a practical matter, one bringing a motion for summary judgment tends to err on the side of a smaller, rather than larger, list so that there are fewer facts for the opposition to contest. As the Committee likely is aware, California state courts long have used this statutorily required method of setting out undisputed facts, and with generally positive support from counsel and judges

Thank you for your consideration of these issues.

Respectfully submitted,

Thomas A Packer

TAP omt