

# The Law Office of Laraine Pacheco

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## MEMORANDUM

To: All Counsel in the NYCAL  
From: Laraine Pacheco, Special Master  
Date: February 7, 2009  
Re: NOSJM Procedures Revisited (again)

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Judge Heitler has asked me to reiterate some basic principles regarding the NOSJM procedures that have not been uniformly followed.

The NOSJM procedure was designed to save litigation costs by eliminating unnecessary motion practice and to avoid clogging the motion part and the Court's calendar with motions that will be unopposed. Accordingly, there should be no unopposed summary judgment motions in NYCAL.

1. Defense counsel who believe that an NOSJM is appropriate should not request plaintiff sign the NOSJM until the plaintiff's deposition has been completed and there has been no testimony or other identification that implicates their client. Completion of the required NYCAL discovery (with limited exceptions) is a condition precedent to requesting an NOSJM. The NOSJM must be submitted with the appropriate service rider.
2. Plaintiffs MUST respond PROMPTLY to every NOSJM received, either to agree to execute the NOSJM or to specify the identification that makes execution of the NOSJM inappropriate. If the NOSJM was served improperly (without a service rider, without completion of defense discovery) please respond to opposing counsel so stating with a copy to me. If counsel for plaintiff believes an NOSJM should not be executed, counsel's response must specifically indicate the nature of the product identification evidence against that defendant and supply the evidence if necessary. An open-ended response of "discovery is ongoing" is unacceptable. The discovery period for an expedited docket is not endless. If counsel for plaintiff believes it will have product identification against that defendant in the near future, it must indicate where it expects to obtain that identification (ship documents, deposition of a co-worker, discovery to be produced by a co-defendant). The failure to respond to an

NOSJM may be deemed a waiver. I strongly suggest that each plaintiff's firm establish a procedure for tracking and responding to NOSJMs in a timely fashion.

3. If, after two weeks have elapsed, counsel for defendant receives no response from counsel for plaintiff, counsel for defendant should send me an email (not a letter or a fax) with a copy to plaintiff's counsel, specifying when the NOSJM was sent and the attempts made to get a response.
4. If the NOSJM is fully executed, defense counsel should deliver a copy to Tom Schiel within 30 days of execution for the judge to So Order.

I trust that all of you will adhere to these well-established procedures.