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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

STANDING ORDER RE PRETRIAL
PREPARATION

Good cause therefor appearing, IT IS HEREBY ORDERED that the following requirements and procedures shall apply in all cases scheduled for trial before the undersigned judge.

Requirements Prior to the Pretrial Conference

Prior to the Pretrial Conference, counsel (or parties appearing pro se) shall comply in all respects with the following requirements:

(1) Required Meeting and Disclosure Prior to Pretrial Conference. At least 30 days before the final pretrial conference, lead counsel who will try the case shall meet and confer with respect to:

- (A) Preparation and content of the joint pretrial conference statement;

1 (B) Preparation, exchange and lodgment of pretrial materials included in this
2 Pretrial order;

3 (C) Settlement of the action.

4 **(2) Pretrial Conference Statement.** Unless otherwise ordered, not less than 10 days
5 prior to the pretrial conference, the parties shall file a joint pretrial conference statement
6 containing the following information:

7 (A) The Action.

8 (1) Substance of the Action. A brief description of the substance of
9 the issues which remain to be decided.

10 (2) Relief Prayed. For civil actions, a detailed statement of all the relief
11 claimed, particularly itemizing all elements of damages claimed as well as
12 witnesses, documents or other evidentiary material to be presented
13 concerning the amount of those damages.

14 (B) The Factual Basis of the Action.

15 (1) Undisputed Facts. A plain and concise statement of all relevant facts
16 not reasonably disputable, as well as facts to which parties will stipulate
17 for incorporation into the trial record without the necessity of supporting
18 testimony or exhibits.

19 (2) Disputed Factual Issues. A plain and concise statement of all disputed
20 factual issues which remain to be decided.

21 (3) Agreed Statement. A statement assessing whether all or part of the
22 action may be presented upon an agreed statement of facts.

23 (4) Stipulations. A statement of stipulations requested or proposed for
24 pretrial or trial purposes.

25 (C) Disputed Legal Issues.

26 (1) Points of Law. Without extended legal argument, a concise statement
27 of each disputed point of law concerning liability or relief, citing
28 supporting statutes and decisions. Unless otherwise ordered, parties

1 should cite to briefs served and lodged with the Court setting forth briefly
2 the nature of each party's contentions concerning each disputed point of
3 law, including procedural and evidentiary issues.

4 (2) Proposed Conclusions of Law. If the case is to be tried without jury,
5 unless otherwise ordered, parties should briefly indicate objections to
6 proposed conclusions of law.

7 **(3) Trial Preparation.**

8 (1) Witnesses to be Called. A list of all witnesses likely to be called at
9 trial, other than solely for impeachment or rebuttal, together with a brief
10 statement following each name describing the substance of the testimony
11 to be given.

12 (2) Exhibits, Schedules and Summaries. A list of all documents and other
13 items to be offered as exhibits at the trial, other than solely for
14 impeachment or rebuttal, with a brief statement following each, describing
15 its substance or purpose and the identity of the sponsoring witness. Unless
16 otherwise ordered, parties will indicate their objections to the receipt in
17 evidence of exhibits and materials lodged with the Court and that counsel
18 have conferred respecting such objections. Three sets of premarked, joint
19 exhibits, numbered consecutively starting with number one (1), shall be
20 delivered to the Courtroom Deputy Clerk on or before the date of the
21 Pretrial Conference. (In cases involving a large number of exhibits,
22 exhibits should be placed in binders);

23 (3) Unless otherwise ordered, if the trial is to be a jury, proposed jury
24 instructions, and proposed content of jury questionnaire and proposed voir
25 dire questions should be submitted to the Court no later than seven (7)
26 days prior to trial. Parties will indicate objections to use of materials.
27 (proposed voir dire questions, jury instructions and verdict forms) and that
28 counsel have conferred respecting such objections.

1 (4) Estimate of Trial Time. The parties shall provide an estimate of the
2 number of court days (in hours or fractions thereof) for the direct
3 examination and cross-examination of each witness identified in the
4 witness list submitted.

5 (5) Use of Discovery Responses. Cite possible presentation at trial of
6 evidence, other than solely for impeachment or rebuttal, through use of
7 excerpts from depositions, from interrogatory answers, or from responses
8 to requests for admission. Counsel shall indicate any objections to use of
9 these materials and that counsel has conferred respecting such objections.

10 (6) Further Discovery and Motions in Limine A statement of all
11 remaining discovery or motions. Not later than seven (7) days prior to the
12 Pretrial Conference, file and serve any motions in limine.

13 (E) Trial Alternatives and Options.

14 (1) Settlement and Discussion. A statement summarizing the status of
15 settlement negotiations and indicating whether further negotiations are likely
16 to be productive.

17 (2) Consent to Trial Before a Magistrate Judge. A statement whether
18 reference of all or part of the action to a master or magistrate judge is
19 feasible, including whether the parties consent to a court or jury trial
20 before a magistrate judge, with appeal directly to the Ninth Circuit.

21 (3) Amendments, Dismissals. A statement of requested or proposed
22 amendments to pleadings or dismissals of parties, claims or defenses.

23 (F) Miscellaneous. Any other subjects relevant to the trial of the action or
24 material to its just, speedy and inexpensive determination. The assigned
25 judge may make such pretrial orders at or following the pretrial
26 conference as may be appropriate, and such orders shall control the
27 subsequent course of the action.

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1 **Agenda for the Pretrial Conference**

2 At the Pretrial Conference, the Court will do the following:

- 3 **1.** Set a schedule for the receipt of opposition to and determination of any motions in
- 4 limine or other pretrial motions;
- 5 **2.** Allocate a fixed number of hours to each side for the direct examination and cross-
- 6 examination of witnesses;
- 7 **3.** Set specific dates and times when the trial will be in session;¹
- 8 **4.** For jury trials, determine the number of prospective jurors to be summoned, the
- 9 number of jurors to be seated and whether a jury questionnaire will be used to assist in jury
- 10 selection;
- 11 **5.** Consider any other trial management matter which is likely to promote fair and
- 12 efficient resolution of the case.

13 Questions concerning provisions of this order should be directed to the Courtroom
14 Deputy Clerk at (408) 535-5166.

15 DATED: _____

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19 JEREMY FOGEL
20 United States District Judge
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28 ¹ Jury selection normally commences at 1:30 PM on the Monday on which the trial
is set. The Court normally conducts trials between 10:30 AM and 4:30 PM Tuesday and between
9:00 AM and 4:30 PM Wednesday through Friday.

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