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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GUIDELINES FOR TRIAL AND FINAL PRETRIAL CONFERENCE

IN CIVIL JURY CASES

BEFORE THE HONORABLE WILLIAM ALSUP

FINAL PRETRIAL CONFERENCE

1. Please do not prepare a joint pretrial conference statement. Nor should counsel invest time on deposition designations or extracts from interrogatories or requests for admissions at the pretrial conference stage. Instead, please file seven calendar days in advance of the final pretrial conference the following:

- (a) In lieu of preparing a joint pretrial conference statement, the parties shall meet and confer and prepare a joint proposed final pretrial order, signed and vetted by all counsel, that contains: (i) a brief description of the substance of claims and defenses which remain to be decided, (ii) a statement of all relief sought, (iii) all stipulated facts, (iv) a list of all factual issues which remain to be tried, stating the issues with the same generality/specificity as any contested elements in the relevant jury instructions, all organized by counts, (v) a joint exhibit list in numerical order, including a brief description of the exhibit and Bates numbers, a column for when it is offered in evidence, a column for when it is received in evidence, and a column for any limitations on its use, and

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(vi) each party’s separate witness list for its case-in-chief witnesses (including those appearing by deposition) providing, for all such witnesses other than an individual plaintiff and an individual defendant, a statement of the substance of his/her testimony and, separately, what, if any, non-cumulative testimony the witness will give. If non-cumulative testimony is not spelled out, then the Court will presume the witness is largely cumulative. Time limits will be set based on the non-cumulative descriptions. Items (v) and (vi) should be appendices to the proposed order. The proposed order should also state which issues, if any, are for the Court to decide, rather than the jury. The objective is to convert the proposed order to a final order with the benefit of any discussion at the final pretrial conference.

(b) A joint set of proposed instructions on substantive issues of law arranged in a logical sequence. If undisputed, an instruction shall be identified as “Stipulated Instruction No. ____ Re _____,” with the blanks filled in as appropriate. Even if stipulated, the instruction shall be supported by citation. If disputed, each version of the instruction shall be inserted together, back to back, in their logical place in the overall sequence. Each such disputed instruction shall be identified as, for example, “Disputed Instruction No. ____ Re _____ Offered by _____,” with the blanks filled in as appropriate. All disputed versions of the same basic topic shall bear the same number. Citations with pin cites are required. Any modifications to a form instruction must be plainly identified. If a party does not have a counter version and simply contends no such instruction in any version should be given, then that party should so state (and explain why) on a separate page inserted in lieu of an alternate version. With respect to form preliminary instructions, general instructions, or concluding instructions, please simply cite to the numbers of the requested instructions in the current edition of the *Ninth Circuit Manual of Model Jury Instructions (Civil)*, except the instruction on a simplified statement of the case (No. 1.2 in the

1 1997 edition). Other than citing the numbers, do not include preliminary, general
2 or concluding instructions in the packet.

3 (c) A separate memorandum of law in support of each party’s disputed
4 instructions, organized by instruction number. Please quote exact, controlling
5 passages from the authorities and give pin cites.

6 (d) A joint special verdict form with the questions arranged in a
7 logical sequence.

8 (e) A joint set of proposed voir dire questions supplemented as
9 necessary by separate requests.

10 (f) Any motion *in limine*, with the opposition, filed as follows: At
11 least twenty calendar days before the conference, serve, but do not yet file, the
12 moving papers. At least ten calendar days before the conference, serve the
13 oppositions. When the oppositions are received, the moving party should collate
14 the motion and the opposition together, back to back, and then file the paired sets
15 at least seven calendar days before the conference. Each motion should be
16 presented in a separate memo and numbered as in, for example, “Plaintiff’s
17 Motion in Limine No. 1 to Exclude” Please limit motions *in limine* to
18 circumstances that really need a ruling in advance. Usually five or fewer motions
19 per side is sufficient at the conference stage (without prejudice to raising matters
20 *in limine* as the trial progresses). Each motion should address a single topic, be
21 separate, and contain no more than seven pages of briefing per side. Advance
22 permission will be needed for more or longer motions. **PLEASE** be sure to
23 three-hole punch the chambers copies so they can go into a trial notebook.

24 (g) Trial briefs are optional but most helpful to the Court on any
25 controlling issues of law.

26 2. The joint proposed final pretrial order and instructions shall be submitted on a
27 3-1/2-inch disk in WordPerfect 10.0 format, as well as in hard copies. All hard-copy
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1 submissions should be three-hole punched on the left, so the chambers' copy can be put in
2 binders.

3 3. At the final pretrial conference, the above submissions shall be considered and
4 argued. The parties must take notes on rulings and submit a joint summary of all rulings in
5 proposed-order format.

6 **PRETRIAL ARRANGEMENTS**

7 4. Should a daily transcript and/or real-time reporting be desired, the parties shall
8 make arrangements with Robert Stuart, Supervisor of the Court Reporting Services, at
9 (415) 522-2079, at least ten calendar days prior to the trial date.

10 5. During trial, counsel are encouraged to use overhead projectors,
11 laser-disk/computer graphics, poster blow-ups, models or specimens of devices. If monitor
12 screens are used, there should be a single large screen (not multiple small screens) viewable by
13 the jury, the Court and the witness. It should be large and bright enough to be seen placed on the
14 opposite side of the courtroom from the jury. If counsel cannot conveniently see the screen, then
15 counsel may have a small monitor at counsel table. If both overhead-projector and video
16 equipment are to be used, then a single projection screen is best, thus requiring a projection-type
17 video rather than a monitor. If video equipment is used, equipment capable of instantly
18 accessing the relevant portions of transcripts and graphics should be used (rather than, for
19 example, raw video tapes made at depositions which take time to forward or to rewind).
20 Equipment and its costs should be shared by all counsel to the maximum extent possible. The
21 Court provides no equipment other than an easel. The United States Marshal requires a court
22 order to allow equipment into the courthouse. For electronic equipment, either know how to fix
23 it or have a technician handy at all times. For overhead projectors, have a spare bulb. Tape
24 extension cords to the carpet for safety. Please take down and store the equipment (in the
25 courtroom) at the end of each court day. Please work with Dawn Toland (415-522-2020) on
26 courtroom-layout issues.

SCHEDULING

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2 6. In order to accommodate as many trials as possible, the Court will try one trial in
3 the morning and another trial in the afternoon. The normal trial schedule will be 7:30 a.m. to
4 1:00 p.m. (or slightly longer to finish a witness) with two fifteen-minute breaks and ending
5 before lunch. Counsel must arrive by 7:30 a.m., or earlier as needed for any matters to be heard
6 out of the presence of the jury. The jury will be on-site by 7:45 a.m. Counsel should be
7 prepared to begin jury proceedings as soon as the *in limine* proceedings end, which will normally
8 be 8:00 a.m. at the latest. If an afternoon trial schedule is scheduled, it will run from 2:00 p.m. to
9 6:00 p.m. (or slightly longer) with two fifteen-minute breaks. The trial week is usually Monday
10 through Friday except for any Thursday morning and Tuesday afternoon and all federal court
11 holidays.

THE JURY

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13 7. No later than on the first day of trial, counsel shall jointly submit a simplified
14 statement of the case to be read to the jury during voir dire as part of the proposed jury
15 instructions. Unless the case is extremely complex, this statement should not exceed one page.
16 The Court will usually conduct the voir dire.

17 8. In civil cases, there are no alternate jurors and the jury is selected as follows:
18 Fourteen jurors (sometimes up to sixteen) are called to fill the jury box and given numbers
19 (1 through 14). The remaining venire will be seated in the public benches. Hardship excuses
20 will usually be considered at this point. The Court will then ask questions to those in the box.
21 The lawyers, at a side bar conference, will then advise if there are follow-up questions. For good
22 cause, counsel may also ask questions of jurors at side bar. Challenges for cause will then be
23 addressed. The Court will consider whether to fill in the seats of the stricken jurors. If so,
24 questions will be asked of the additions and cause motions as to them will be considered. After a
25 short recess, each side may exercise its allotment of peremptory challenges. Challenges must be
26 made in writing by each side at the same time (without knowing how the other side is exercising
27 its challenges). Write down the names and numbers of the candidates to be stricken. The eight
28 (or such other size as will constitute the jury) surviving the challenge process with the lowest

1 numbers become the final jury. For example, if the plaintiff strikes 1, 5 and 7 and the defendant
2 strikes 2, 4 and 9, then 3, 6, 8, 10, 11, 12, 13 and 14 become the final jury. If both sides strike
3 one or more of the same jurors, then the eight unstruck jurors with the lowest numbers will be
4 seated. If more than eight jurors (or less) are to be seated, then the starting number will be
5 adjusted. So too if more than six peremptories are allowed. Once the jury selection is
6 completed, the jurors' names will be read again and they will be seated in the jury box and
7 sworn. The Court may alter the procedure in its discretion.

8 9. Jurors may take notes. Stenopads will be distributed at the beginning of each
9 trial. The pads will be collected at the end of each day and locked in chambers. Jurors will be
10 instructed on the use of notes both in the preliminary and final jury instructions.

11 **OPENING STATEMENTS**

12 10. Each side will have a predetermined time limit for its opening statement. Counsel
13 must cooperate and meet and confer to exchange any visuals, graphics or exhibits to be used in
14 the opening statements, allowing for time to work out objections and any reasonable revisions.
15 Be prepared for opening statements as soon as the jury is sworn.

16 **WITNESSES**

17 11. Except for good cause, all counsel are entitled to written notice of the order of
18 witnesses for the next court day and the exhibits to be used on direct examination (other than for
19 impeachment of an adverse witness). The Court encourages two days notice, *i.e.*, written notice
20 by 2:00 p.m. on the *second* calendar day before the witnesses testify or the exhibit is used. At a
21 minimum, notice must be no later than 2:00 p.m. on the calendar day *immediately* preceding. If
22 two days written notice is given, then all other counsel must give written notice of all other
23 exhibits to be used on cross-examination (except for impeachment) by 2:00 p.m. on the calendar
24 day immediately preceding the testimony; otherwise, other counsel need not give notice. Any
25 exhibit timely noticed by anyone is usable as if timely noticed by everyone, subject to
26 substantive objections. If, moreover, reference is made to an exhibit during an examination
27 (even if not offered in evidence and even if not noticed), then in any follow-up examination by
28 others, the exhibit may be used to the same extent as if it had been timely noticed, subject to

1 substantive objections. All notices shall be sent by fax or electronically and be time-and-date
2 verifiable. If counsel decides not to call a noticed witness, then prompt written notice must be
3 given as a professional courtesy. Impeachment exhibits are ordinarily limited to statements
4 signed by or adopted by the witness.

5 12. Always have your next witness ready and in the courthouse. Failure to have the
6 next witness ready or to be prepared to proceed with the evidence will usually constitute resting.
7 If counsel plans to read in a transcript of a deposition anyway, it is advisable to have a deposition
8 prepared and vetted early on to read just in case.

9 13. A witness or exhibit not listed in the joint pretrial statement may not be used
10 without good cause. This rule does not apply to true rebuttal witnesses (other than rebuttal
11 experts who must be listed). Defense witnesses are normally case-in-chief witnesses, not
12 “rebuttal” witnesses.

13 14. When there are multiple parties, counsel are responsible for coordination of the
14 cross-examination to avoid duplication.

15 15. Stand at or near the podium to ask questions, straying only to point out material
16 on charts or overheads. Please request permission to approach the witness or the bench.

17 **EXPERTS**

18 16. A recurring problem in trials is the problem of expert witnesses trying to go
19 beyond the scope of their expert reports on direct examination. FRCP 26(a)(2) and FRCP 37(c)
20 limit experts to the opinions and bases contained in their timely reports (absent substantial
21 justification or harmlessness). The Court regularly enforces these rules. FRCP 26(a) even
22 requires that any “exhibits to be used as a summary of or support for the opinions” be included in
23 the report. Accordingly, at trial, the direct testimony of experts will be limited to the matters
24 disclosed in their reports. New matters may not ordinarily be added on direct examination. This
25 means the reports must be complete and sufficiently detailed. Illustrative animations, diagrams,
26 charts and models may be used on direct examination only if they were part of the expert’s
27 report, with the exception of simple drawings and tabulations that plainly illustrate what is
28 already in the report, which can be drawn by the witness at trial or otherwise shown to the jury.

1 If cross-examination fairly opens the door, however, an expert may go beyond the written report
2 on cross-examination and/or re-direct examination. By written stipulation, of course, all sides
3 may relax these requirements.

4 17. Another recurring problem is the retained expert who seeks to vouch for the
5 credibility of fact witnesses and/or to vouch for one side's fact scenario. Qualified experts, of
6 course, are always welcome to testify concerning relevant scientific principles, professional
7 standards, specialized facts known within a trade or discipline and the like. They are also
8 welcome to apply those principles and standards to various assumed fact scenarios. This is so
9 even if an opinion is given on the "ultimate issue." A problem arises when retained experts try
10 to vouch for one side's fact scenario, *i.e.*, witness believability. For example, counsel often want
11 experts to say that they have read various depositions and other discovery materials and, based
12 thereon, have found that police officers did (or did not) use excessive force. This will not be
13 allowed, at least when the underlying facts are in dispute, as they almost always are. It is the
14 jury's responsibility to sort out whose fact scenario is correct, including issues of credibility. An
15 expert, therefore, should give opinions based only on one or more *assumed* fact scenarios. This
16 can be done, for example, by counsel asking questions such as "Under generally-accepted
17 law-enforcement standards, what degree of force should a police officer use to stop an unarmed
18 and fleeing purse snatcher?" or "Assuming John Doe was an unarmed and fleeing purse snatcher,
19 what degree of force could Officer Smith have used under generally-accepted law-enforcement
20 standards?" Follow-up questions can vary the fact scenario to cover various contingencies in
21 play. For an expert, however, to render findings on the underlying facts in dispute would not
22 only be misleading (since the expert has no personal knowledge on the events) but would require
23 cross-examination time to correct the misimpression.

24 18. Depositions typically given to experts are fine for background. But they are
25 hardly any basis for findings. Depositions usually include only one side's examination. They
26 tell an incomplete story. Findings based on such an incomplete record would, therefore, be
27 problematic for this reason alone, even apart from confusing the jury on credibility issues and on
28 its role in determining the true facts. In the old days, experts could attend the trial and opine

1 based on the trial record. This solved some of the foregoing problems (but not the most
2 fundamental one that experts should not presume to tell the jury who is telling the truth).
3 But Rule 26 has now eclipsed the old practice. Expert reports are due *before* trial. Experts are
4 limited on direct examination to the opinions expressed therein.

5 19. There is an important exception to the rule against experts testifying to findings.
6 Experts and doctors who perform scientific tests, site visits, or treat victims, among other
7 possibilities, may testify to their findings within the scope of their firsthand knowledge. This is
8 because they have made personal observations and have reached professional judgments based
9 thereon. Carrying this one step further, even a retained expert may read a financial statement in
10 evidence, watch a video in evidence, listen to a recording in evidence, and so on and offer
11 opinions based on the contents. This is because the contents themselves are known with clarity.
12 But if the expert must rely upon information in dispute outside the exhibit, such as controverted
13 warning flags allegedly known to an auditor, then the questioning should make clear that the
14 issue of warning flags is for the jury.

15 20. As to damages studies, the cut-off date for *past damages* will be as of the expert
16 report (or such earlier date as the expert may select). In addition, the experts may try to project
17 *future damages* (*i.e.*, after the cut-off date) if the substantive standards for future damages can be
18 met. With timely leave of Court or by written stipulation, the experts may update their reports
19 (with supplemental reports) to a date closer to the time of trial.

20 **USE OF DEPOSITIONS TO IMPEACH AND SHORT READ-INS**

21 21. Depositions can be used at trial to impeach a witness testifying at trial or, in the
22 case of a party deponent, “for any purpose.” Please follow the following procedure:

- 23 (a) On the first day of trial, be sure to bring the original and clean
24 copies of any deposition(s) for which you are responsible. Any corrections must
25 be readily available. If you are likely to need to use the deposition during a
26 witness examination, then give the Court a copy with any corrections at the
27 outset of your examination. This will minimize delay between the original
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question and the read-ins of the impeaching material. Opposing counsel should have their copy immediately available.

(b) When you wish to read in a passage, simply say, for example: “I wish to read in page 210, lines 1 to 10 from the witness’ deposition.” A brief pause will be allowed for any objection.

(c) When reading in the passage, state “question” and then read the question exactly. Then state “answer” and then read the answer exactly. Stating “question” and “answer” is necessary so the jury and the court reporter can follow who was talking at the deposition.

(d) The first time a deposition is read, state the deponent’s name, the date of the deposition, the name of the lawyer asking the question, and if it was FRCP 30(b)(6) deposition, please say so. The first time a deposition is read, the Court will give an appropriate explanation to the jury about depositions. Please do not embellish on this with follow-on questions.

(e) Please do **NOT** ask, “Didn’t you say XYZ in your deposition?” The problem with such a question is that the “XYZ” rarely turns out to be exactly what the deponent said and is just the lawyer’s spin on what was said. Instead, ask for permission to read in a passage, as above, and read it in exactly, without spin, so that the jury can hear what was actually testified to.

(f) Subject to Rule 403, party depositions may be read in whether or not they contradict (and regardless of who the witness is on the stand). For example, a short party deposition excerpt may be used as foundation for questions for a different witness on the stand.

(g) Rather than reading the passage, counsel are free to play an audiovisual digitized version of the passage but counsel must have a system for immediate display of the precise passage.

DEPOSITION DESIGNATION

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2 22. The following procedure applies only to witnesses who appear by deposition. It
3 does not apply to live witnesses whose depositions are read in while they are on the stand. To
4 save time and avoid unnecessary work, it is not necessary to make all deposition designations
5 before trial. Instead, the following steps should be followed:

6 (a) To designate deposition testimony, photocopy the cover page, the
7 page where the witness is sworn, and then each page from which any testimony
8 is proffered. Line through or x-out any portions of such pages not proffered.
9 Also, line through objections or colloquy unless they are needed to understand
10 the question. Please make sure any corrections are interlineated and that
11 references to exhibit numbers are conformed to the trial numbers. Such
12 interlineations should be done by hand. The finished packet should then be the
13 actual script and should smoothly present the identification and swearing of the
14 witness and testimony desired. The packet should be provided to all other
15 parties at least five calendar days before it will be used in court. For the rare
16 case of voluminous designations, more lead time will be required. Please be
17 reasonable.

18 (b) All other parties must then promptly review the packet and
19 highlight in yellow any passages objected to and write in the margin the legal
20 basis for the objections. If any completeness objection is made, the objecting
21 party must insert into the packet the additional passages as needed to cure the
22 completeness objection. A completeness objection should normally be made
23 only if a few extra lines will cure the problem. Such additions shall be
24 highlighted in blue and an explanation for the inclusion shall be legibly
25 handwritten in the margin. Please line out or x-out any irrelevant portions of the
26 additional pages.

27 (c) The packets, as adjusted, must then be returned to the proffering
28 party, who must then decide the extent to which to accept the adjustments. The

1 parties must meet and confer as reasonable. Counsel for the proffering party
2 must collate and assemble a final packet that covers the proffer and all remaining
3 issues. At least two calendar days before the proffer will be used, the proponent
4 must provide the Court with the final packet, with any objected-to portions
5 highlighted and annotated as described above. If exhibits are needed to resolve
6 the objections, include copies and highlight and tag the relevant passages. Alert
7 the Court on the record that the packet is being provided and whether any rulings
8 are needed. *Tag all passages that require a ruling.* The Court will then read the
9 packet and indicate its rulings in the margin in a distinctive manner. Ordinarily,
10 argument will not be needed.

11 (d) Counter designations must be made by providing a packet with
12 the counter-designated passages to the proponent at the same time any objections
13 to the original proffer are returned to the first proffering party, who must then
14 supply its objections in the same manner.

15 (e) When the packet is read to the jury, the examiner reads the
16 questions (and any relevant colloquy) from the lectern and a colleague sits in the
17 witness stand and reads the answers. When a video-taped deposition is to be
18 played instead, the packets must still be prepared, as above, in order to facilitate
19 rulings on objections. The video should omit any dead time, long pauses, and
20 objections/colloquy not necessary to understand the answers.

21 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

22 23. Please designate responses to requests for admissions and interrogatory answers
23 in the same manner and under the same timetable as depositions.

24 **EXHIBITS**

25 24. Prior to the final pretrial conference, counsel must meet and confer in person
26 over all exhibit numbers and objections and to weed out duplicate exhibits and confusion over
27 the precise exhibit. Use numbers only, not letters, for exhibits, preferably the same numbers as
28 were used in depositions. Blocks of numbers should be assigned to fit the need of the case

1 (e.g., Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.).
2 A single exhibit should be marked only once, just as it should have been marked only once in
3 discovery (if this Court’s guidelines were followed). If the plaintiff has marked an exhibit, then
4 the defendant should not re-mark the exact document with another number. Different *versions*
5 of the same document, e.g., a copy with additional handwriting, must be treated as different
6 exhibits with different numbers. To avoid any party claiming “ownership” of an exhibit, all
7 exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as “Plaintiff’s
8 Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a deposition
9 transcript, then the latter transcript must be conformed to the new trial number if and when the
10 deposition testimony is read to the jury (so as to avoid confusion over exhibit numbers). The
11 jury should always hear any given exhibit referred to by its unique number. You cannot have
12 competing versions of the same exhibit number; such discrepancies must be brought to the
13 Court’s attention promptly.

14 25. The exhibit tag shall be in the following form:

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 TRIAL EXHIBIT 100
19 CASE NO. _____
20 DATE ENTERED _____
21 BY _____
22 DEPUTY CLERK
23

24 Counsel preferably will make the tag up in a color that will stand out (yet still allow for
25 photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or,
26 if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank.
27 The parties must jointly prepare a *single* set of all trial exhibits that will be the official record
28 set to be used with the witnesses and on appeal. Each exhibit must be tagged and in a separate

1 folder (not in notebooks). Deposit the exhibits with the deputy clerk (Dawn Toland) on the
2 first day of trial. The tags can be adhesive or stapled on.

3 26. Please move exhibits into evidence as soon as the foundation is laid and it is
4 fresh in the judge's mind. Do not postpone motions and expect the judge to remember the
5 foundation. Counsel must consult with each other and with the deputy clerk at the end of each
6 trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If
7 there are any differences, counsel should bring them promptly to the Court's attention.

8 27. In addition to the official record exhibits, a *single, joint* set of bench binders
9 containing copies of the key exhibits only should be provided to the Court on the first day of
10 trial. Each exhibit must be separated with a label divider (an exhibit tag is unnecessary for the
11 bench set). In large letters, the labels should say the exhibit number on the binders. Please use
12 1-1/2-inch binders with locking rings. (Heavier binders are too hard to handle.)

13 28. The Court prefers that counsel move exhibits in as they come up rather than
14 forgetting until the circumstances are stale. Before the closings, counsel must confer with the
15 clerk to make sure the exhibits in evidence are in good order. Counsel may, but are not required
16 to, jointly provide a revised list of all exhibits actually in evidence (and no others) stating the
17 exhibit number and a brief, non-argumentative description (*e.g.*, letter from A. B. Case to D. E.
18 Frank, dated August 17, 1999). This list may go into the jury room to help the jury sort through
19 exhibits in evidence.

20 29. Exhibit notebooks for the jury will not be permitted. Publication must be by
21 poster blow-up, overhead projection, or such other reasonable method. Poster blow-ups should
22 be about 4' x 6' to be seen by all jurors. Any overhead projector should have a powerful light to
23 help in jury viewing and a noiseless fan. Counsel must have a practical means for all important
24 documents to be published to the jury. It is permissible to highlight, circle or underscore in the
25 enlargements so long as it is clear that it was not on the original. The Court will not allow
26 monitors and screens in the jury box — one large monitor or screen, if any, should be used.
27 Although when the jury and the judge are not present, counsel have wide latitude to set up their
28 equipment, but please do not go behind the bench and look at the bench binders or anything

1 else. Counsel will be allowed in the courtroom before the trial starts in order to test out the
2 equipment.

3 **OBJECTIONS**

4 30. Counsel shall stand when making objections and shall not make speeches. For
5 example, do not say, “Judge, you know what he is really trying to do here is get in evidence by
6 the back door, etc.” Instead, simply give the legal basis for your objection (*e.g.*, “calls for
7 speculation” or “objection, hearsay”). State the legal basis only. Please speak up promptly.

8 31. There can only be one lawyer per witness per party for all purposes, including
9 objections. Side bar conferences are discouraged. The procedure described above should
10 eliminate the need for most side bars. One lawyer per party is usually sufficient at the side bar.

11 32. To maximize jury time, counsel must alert the Court in advance of any problems
12 that will require discussion outside the presence of the jury, so that the conference can be held
13 before court begins or after the jury leaves for the day.

14 **STIPULATIONS**

15 33. You must read all stipulations to the jury (slowly) in order for them to become a
16 part of the jury record. They do not automatically go into the jury room. In fact, they never do.
17 So you must read in any stipulations you wish the jury to consider.

18 **TIME LIMITS**

19 34. Ordinarily, the Court shall set fixed time limits at the final pretrial conference.
20 All of your examination time (whether direct, cross, re-direct or re-cross) for all witnesses must
21 fit within your time limit and you may allocate it as you wish. Opening and closing time limits
22 shall be separately considered. Counsel must keep track of everyone’s usage. At the end of
23 each day, counsel must confer over the time used and the time remaining for all parties and
24 advise the Court daily. The Court will also try to keep track. The time taken at a side bar or on
25 objections will still be charged to the examining party unless otherwise ordered.

26 **PUNITIVE DAMAGES**

27 35. For punitive damages, the jury will ordinarily be asked in their main
28 deliberations only to determine whether a defendant acted with fraud, malice or oppression. If

1 the jury answers “yes,” then (after a fifteen-minute recess) a short supplemental jury proceeding
2 shall be held. The parties may then present evidence of that defendant’s financial condition,
3 followed by brief argument by each side. The Court will then give the jury a supplemental
4 instruction on punitives and a special verdict form. For this proceeding, counsel typically
5 stipulate to the financial condition of the defendant. Failing a stipulation, the parties must put
6 on proof in the traditional way. It is the responsibility of counsel to make whatever motions are
7 necessary, in a timely way, to obtain any relevant financial information.

8 **CHARGING CONFERENCE**

9 36. As the trial progresses and the evidence is heard, the Court will fashion a
10 comprehensive set of jury instructions to cover all issues actually being tried. A few days
11 before the close of the evidence the Court will provide a draft final charge to the parties. After
12 a reasonable period for review, one or more charging conferences will be held at which each
13 party may object to any passage, ask for modifications, or ask for additions. Any instruction
14 request must be renewed specifically at the conference or it will be deemed waived, whether or
15 not it was requested prior to trial. One reason for this ground rule is that, before trial, parties
16 usually submit numerous instruction requests that fall away as the evidence is received. The
17 draft charge will omit points of law that appear irrelevant to the Court. If, however, a party still
18 wishes to request an omitted instruction after reviewing the Court’s draft, then it must
19 affirmatively re-request it at the charging conference in order to give the Court a fair
20 opportunity to correct any error. Otherwise, as stated, the request will be deemed abandoned or
21 waived.

22 **SETTLEMENTS AND CONTINUANCES**

23 37. Shortly before trial or a final pretrial conference, counsel occasionally wish
24 jointly to advise the clerk that a settlement has been reached and seek to take the setting off
25 calendar but it turns out later that there was only a settlement “in principle” and disputes
26 remain. Cases, however, cannot be taken off calendar in this manner. Unless and until a
27 stipulated dismissal or judgment is filed or placed on the record, all parties must be prepared to
28 proceed with the final pretrial conference as scheduled and to proceed to trial on the trial date,

1 on pain of dismissal of the case for lack of prosecution or entry of default judgment. Only an
2 advance continuance expressly approved by the Court will release counsel and the parties from
3 their obligation to proceed. If counsel expect that a settlement will be final by the time of trial
4 or the final pretrial conference, they should notify the Court immediately in writing or, if it
5 occurs over the weekend before the trial or conference, by voice mail to the deputy courtroom
6 clerk. The Court will attempt to confer with counsel as promptly as circumstances permit to
7 determine if a continuance will be in order. Pending such a conference, however, counsel must
8 prepare and make all filings and be prepared to proceed with the trial.

9 38. Local Rule 40-1 provides that jury costs may be assessed as sanctions for failure
10 to provide the Court with timely written notice of a settlement. Please be aware that any
11 settlement reached on the day of trial, during trial, or at any time after the jury or potential
12 jurors have been summoned without sufficient time to cancel, will normally require the parties
13 to pay juror costs.

14 39. Please note that the case management order governs the schedule for expert
15 disclosures under Rule 26(a)(2). Pretrial disclosures under Rule 26(a)(3) (and initial disclosures
16 under Rule 26(a)(1)) shall be made as per the rule unless modified by the case management
17 order.

18
19 **IT IS SO ORDERED.**

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21 Dated: October 19, 2004.

22 S/ WILLIAM ALSUP
23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE
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