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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 JEFFREY S. WHITE**

FINAL PRETRIAL CONFERENCE

1. Counsel shall not prepare a joint pretrial conference statement, nor invest time on deposition designations or extracts from interrogatories or requests for admissions at the pretrial conference stage. Instead, please follow the following procedures:

- (a) In lieu of preparing a joint pretrial conference statement, the parties shall meet and confer in person and prepare a jointly signed proposed final pretrial order to be filed seven calendar days in advance of the final pretrial conference: This joint pretrial conference statement should contain: (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 that remain to be tried, stating the issues with the same generality/specificity as any contested elements in the relevant jury instructions and organized by counts; (v) a joint exhibit list in numerical order, including a brief description of the exhibit and Bates numbers, a blank column for when it will be offered into evidence, a blank column for when it may be received into evidence, and a blank column for any limitations on its use; and (vi) each party's separate witness list for its case-in-chief witnesses (including those appearing by deposition) providing, for all such

1 witnesses other than an individual plaintiff and an individual defendant, a short
2 statement of the substance of his/her testimony and, separately, what, if any, non-
3 cumulative testimony the witness will offer. If non-cumulative testimony is not
4 spelled out, the Court will presume the witness is cumulative. For each witness,
5 state an hour/minute time estimate for the direct examination (only). Items (v)
6 and (vi) should be appendices to the proposed order. The proposed order should
7 also state which issues, if any, are for the Court to decide, rather than the jury.
8 The objective is to convert the proposed order to a final order with the benefit of
9 any discussion at the final pretrial conference.

10 (b) In addition to the joint pretrial statement, seven days in advance of
11 the final pretrial conference, the parties shall also file the following:

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

1 simplified statement of the case (No. 1.2 in the 1997 edition). Other than citing
2 the numbers, the parties shall not include preliminary, general or concluding
3 instructions in the packet.

4 (ii) A separate memorandum of law in support of each party's
5 disputed instructions, organized by instruction number. Please quote exact,
6 controlling passages from the authorities, without ellipses, and give pin cites.

7 (iii) A joint set of proposed voir dire questions supplemented as
8 necessary by separate requests for good cause only. (Keep these to a minimum,
9 please.)

10 (c) Any motions *in limine* shall be submitted as follows: At least
11 twenty calendar days before the conference, the moving party shall serve, but not
12 file, the opening brief. At least ten calendar days before the conference, the
13 responding party shall serve the opposition. There will be no reply. When the
14 oppositions are received, the moving party should collate the motion and the
15 opposition together, back to back, and then file the paired sets at least seven
16 calendar days before the conference. Each motion should be presented in a
17 separate memo and properly identified, for example, "Plaintiff's Motion *in Limine*
18 No. 1 to Exclude" Please limit motions *in limine* to circumstances that really
19 need a ruling in advance. Usually five or fewer motions per side is sufficient.
20 Each motion should address a single, separate topic, and contain no more than
21 seven pages of briefing per side. Leave of Court will be required to file more than
22 five motions or to exceed the page limitations. A binder containing all motions *in*
23 *limine* should be submitted to the Clerk's office in an envelope clearly marked
24 with the case number and "JSW chambers copy."

25 (d) Trial briefs are most helpful to the Court on any controlling issues
26 of law and shall be filed with the motions *in limine*.

27 2. The joint proposed final pretrial order and instructions shall be submitted on a
28 3-3/4-inch disk in WordPerfect 10.0 format, as well as in hard copies. All hard-copy

1 submissions should be submitted in a binder to the Clerk's office in an envelope clearly marked
2 with the case number and "JSW chambers copies".

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

5 **PRETRIAL ARRANGEMENTS**

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

9 5. During trial, counsel may wish to use overhead projectors, laser-disk/computer
10 graphics, poster blow-ups, models or specimens of devices. If monitor screens are used, there
11 should be a single large screen (not multiple small screens) viewable by the jury, the Court and
12 the witness. It should be large and bright enough to be seen when placed on the opposite side of
13 the courtroom from the jury. If counsel cannot conveniently see the screen, counsel may have a
14 small monitor at counsel table. If both overhead projector and video equipment are to be used, a
15 single projection screen is best, thus requiring a projection-type video rather than a monitor. If
16 video equipment is used, equipment capable of instantly accessing the relevant portions of
17 transcripts and graphics should be used (rather than, for example, raw video tapes made at
18 depositions which take time to forward or to rewind). Equipment should be shared by all counsel
19 to the maximum extent possible. The Court provides no equipment other than an easel. The
20 United States Marshal requires a court order to allow equipment into the courthouse. For
21 electronic equipment, parties should be prepared to maintain the equipment or have a technician
22 handy at all times. For overhead projectors, the parties shall provide a spare bulb. The parties
23 shall tape extension cords to the carpet for safety. The parties shall disassemble and store all
24 equipment in the courtroom at the end of each court day. The parties may work with the deputy
25 clerk, Jennifer Ottolini (415-522-4173), on all courtroom-layout issues.

26 **SCHEDULING**

27 6. Trial will be conducted from 8:30 a.m. to 1:30 p.m. (or slightly longer to finish a
28 witness) with two fifteen-minute breaks, Monday through Thursday, excluding holidays.

1 Counsel must arrive by 8:15 a.m., or earlier as needed for any matters to be heard out of the
2 presence of the jury. The jury will be called at 8:30 a.m.

3 **THE JURY**

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

8 8. In civil cases, there are no alternate jurors and the jury is selected as follows:
9 Eighteen jurors are called to fill the jury box and given numbers (1 through 18). The remaining
10 venire will be seated in the public benches. Hardship excuses will usually be considered at this
11 point. The Court will then ask questions to those in the box. The lawyers, at a side bar
12 conference, will then advise if there are follow-up questions. For good cause, counsel may also
13 ask questions of jurors at side bar. Challenges for cause will then be addressed. The Court will
14 consider whether to fill in the seats of the stricken jurors. If so, questions will be asked of the
15 additions and cause motions as to them will be considered. After a short recess, each side may
16 exercise its allotment of peremptory challenges. Challenges must be made simultaneously in
17 writing by each side (without knowing how the other side is exercising its challenges). The
18 parties will write down the names and numbers of the candidates to be stricken. The eight (or
19 such other size as will constitute the jury) surviving the challenge process with the lowest
20 numbers become the final jury. For example, if the plaintiff strikes 1, 5 and 7 and the defendant
21 strikes 2, 4 and 9, then 3, 6, 8, 10, 11, 12, 13 and 14 become the final jury. If both sides strike
22 one or more of the same jurors, then the eight unstruck jurors with the lowest numbers will be
23 seated. If more than eight jurors (or fewer) are to be seated, then the starting number will be
24 adjusted. So too if more than a total of six peremptories is allowed. Once the jury selection is
25 completed, the jurors' names will be read again and they will be seated in the jury box and
26 sworn. The Court may alter the procedure in its discretion.

1 same witness on cross-examination (other than for impeachment). The first notice shall be
2 exchanged prior to the first day of trial. All such notice should be provided in writing.

3 16. The parties shall have all upcoming witnesses on the same day available in the
4 courthouse and ready to testify. Failure to have the next witness ready or to be prepared to
5 proceed with the evidence will usually be deemed to constitute resting. If counsel plans to read
6 in a transcript of a deposition, counsel must have a deposition prepared and vetted early on to
7 read into the record.

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

12 18. When there are multiple parties, counsel are responsible for coordination of
13 cross-examination to avoid duplication. If there are multiple parties on a side, counsel for only
14 one party may cover a subject matter; reiteration of the examination, whether direct or cross, will
15 not be permitted.

16 19. Counsel shall stand at or near the podium to ask questions, straying only to point
17 out material on charts or overheads. Counsel should request permission from the Court to
18 approach the witness or the bench.

19 20. Counsel shall treat witnesses with courtesy and respect, and not become familiar
20 (e.g., avoiding the use of first or nick-names).

21 21. Counsel shall pose brief, direct and simply stated questions, covering one point at
22 a time. Leading questions may be used for background or routine matters.

23 22. Cross-examination similarly should consist of brief, simple questions. Cross-
24 examination should not be a restatement of the direct examination and should not be used for
25 discovery.

26 **EXPERTS**

27 23. At trial, direct testimony of experts will be limited to the matters disclosed in their
28 reports. Omitted material may not ordinarily be added on direct examination. Illustrative

1 animations, diagrams, charts and models may be used on direct examination only if they were
2 part of the expert report, with the exception of simple drawings and tabulations that plainly
3 illustrate the content of the report, which can be drawn by the witness at trial or otherwise shown
4 to the jury. If cross-examination fairly opens the door, however, an expert may go beyond the
5 written report on cross-examination and/or re-direct examination. By written stipulation, all
6 parties may relax these requirements. The Court will not permit Federal Rule of Evidence 703 to
7 be used to admit otherwise inadmissible evidence through the expert (*i.e.*, through the “back
8 door”).

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

14 USE OF DEPOSITIONS TO IMPEACH AND SHORT READ-INS

15 25. Depositions can be used at trial to impeach a witness testifying at trial or, in the
16 case of a party deponent, “for any purpose.” The parties shall abide by the following procedure:

17 (a) On the first day of trial, counsel shall bring the original and clean
18 copies of any deposition(s) intended to be used during the course of the trial.

19 Any corrections must be readily available. If counsel need to use the deposition
20 during a witness examination, they shall provide the Court with a copy **and** with
21 any corrections at the outset of the examination. This will minimize delay
22 between the original question and the read-ins of the impeaching material.

23 Opposing counsel should have their copy immediately available.

24 (b) When counsel reads a passage into the record, counsel should
25 seek permission from the Court. For example, counsel should state: “I wish to
26 read in page 210, lines 1 to 10 from the witness’ deposition.” A brief pause will
27 be allowed for any objection.
28

1 (c) The first time a deposition is read, counsel shall state the
2 deponent's name, the date of the deposition, the name of the lawyer asking the
3 question, and if it was a Federal Rule of Civil Procedure 30(b)(6) deposition.
4 The first time a deposition is read, the Court will give an appropriate explanation
5 to the jury about depositions. Do not embellish the deposition testimony with
6 follow-on questions.

7 (d) When reading in the passage, counsel shall state "question" and
8 then read the question exactly, followed by, "answer" and then read the answer
9 exactly. Stating "question" and "answer" is necessary so the jury and the court
10 reporter can follow who was talking at the deposition. Once the passage is on the
11 record, move on. Opposing counsel may then immediately ask to read such
12 additional testimony as is necessary to complete the context.

13 (e) To avoid mischaracterizing the record, counsel should not ask,
14 "Didn't you say XYZ in your deposition?" It is unnecessary to ask a witness if
15 he "recalls" the testimony or otherwise to lay a foundation.

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

20 **DEPOSITION DESIGNATION**

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

25 (a) To designate deposition testimony, counsel shall photocopy the
26 cover page, the page where the witness is sworn, and then each page containing
27 any testimony to be proffered, with lines through portions of such pages not
28 proffered. In addition, counsel shall line through objections or colloquy unless

1 they are needed to understand the question. Any corrections must be
2 interlineated and references to exhibit numbers must conform to the trial
3 numbers. Such interlineations should be done by hand. The finished packet
4 should then be the actual script and should smoothly present the identification
5 and swearing of the witness and testimony desired. The packet must be provided
6 to all other parties at least five calendar days before it will be used in court. For
7 the rare case of voluminous designations, more lead time will be required.
8 Counsel are advised to be reasonable.

9 (b) All other parties must promptly review the packet and highlight in
10 yellow any passages objected to and write in the margin the legal basis for the
11 objections. If a completeness objection is made, the objecting party must insert
12 into the packet the additional passages as needed to cure the completeness
13 objection. A completeness objection generally should be made only if a few
14 extra lines will cure the problem. Such additions shall be highlighted in pink and
15 an explanation for the inclusion shall be legibly handwritten in the margin.
16 Counsel must line out or x-out any irrelevant portions of the additional pages.

17 (c) The packets, as adjusted, must then be returned to the proffering
18 party, for consideration of whether to accept the adjustments. The parties shall
19 meet and confer. Counsel for the proffering party must collate and assemble a
20 final packet that covers the proffer and all remaining issues. At least two
21 calendar days before the proffer will be used, the proponent must provide the
22 Court with the final packet, with any objected-to portions highlighted and
23 annotated as described above. If exhibits are needed to resolve the objections,
24 counsel should include copies, and highlight and tag the relevant passages.
25 Counsel should alert the Court on the record that the packet is being provided
26 and advise as to whether any rulings are needed. If so, the Court will then read
27 the packet and indicate its rulings in the margin in a distinctive manner.
28 Ordinarily, argument will not be needed.

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

5 (e) When the packet is read to the jury, the examiner shall read the
6 questions (and any relevant colloquy) from the lectern while a colleague sits in
7 the witness stand and reads the answers. While reading the deposition the reader
8 and “witness” shall refrain from undue emoting, emphasis or other dramatization.
9 The same procedure shall be followed when a video-taped deposition is to be
10 played instead, in order to facilitate rulings on objections. The video should omit
11 any dead time, long pauses, and objections/colloquy not necessary to understand
12 the answers.

13 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

14 27. Please designate responses to requests for admissions and interrogatory answers
15 in the same manner and under the same timetable as deposition designations.

16 **EXHIBITS**

17 28. Prior to the final pretrial conference, counsel must meet and confer in person to
18 consider all exhibit numbers and objections and to eliminate duplicate exhibits and confusion
19 over the precise exhibit.

20 29. Use numbers only, not letters, for exhibits, preferably the same numbers as were
21 used in depositions. Blocks of numbers should be assigned to fit the need of the case
22 (e.g., Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.).
23 A single exhibit should be marked only once, just as it should have been marked only once in
24 discovery pursuant to this Court’s discovery guidelines). If the plaintiff has marked an exhibit,
25 then the defendant should not re-mark the exact document with another number. Different
26 *versions* of the same document, e.g., a copy with additional handwriting, must be treated as
27 different exhibits with different numbers. To avoid any party claiming “ownership” of an
28 exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as

1 “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a
 2 deposition transcript, then the latter transcript must be conformed to the new trial number if and
 3 when the deposition testimony is read to the jury (so as to avoid confusion over exhibit
 4 numbers). The jury should always hear any given exhibit referred to by its unique number.
 5 There should be no competing versions of the same exhibit number; any discrepancies must be
 6 brought to the Court’s attention promptly.

7 30. The exhibit tag shall be in the following form:

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA TRIAL EXHIBIT 100 CASE NO. _____ DATE ENTERED _____ BY _____ DEPUTY CLERK

17 Counsel preferably will make the tag up in a color that will stand out (yet still allow for
 18 photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or,
 19 if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank.
 20 The parties must jointly prepare a *single* set of all trial exhibits that will be the official record set
 21 to be used with the witnesses and on appeal. Each exhibit must be tagged and in a separate
 22 folder (not in notebooks). Deposit the exhibits with the deputy clerk on the first day of trial.
 23 The tags can be adhesive or stapled on.

24 31. Counsel must consult with each other and with the deputy clerk at the end of
 25 each trial day and compare notes as to which exhibits are in evidence and any limitations
 26 thereon. If there are any differences, counsel should bring them promptly to the Court’s
 27 attention.
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