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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 BENCH 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 fourteen (14) calendar days in advance of the final pretrial conference. This joint pretrial conference 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 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 witnesses other

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

9 (b) In addition to the joint pretrial conference statement, fourteen (14)
10 calendar days in advance of the final pretrial conference, each side shall file their:
11 (i) proposed findings of fact and conclusions of law; and (ii) trial brief.

12 (c) The parties shall be prepared to meet and confer at the end of each
13 day of trial in an effort to prepare stipulated findings of fact and conclusions of
14 law and to update the previously submitted proposed findings of fact and
15 conclusions to reflect the proceedings at trial.

16 (d) Any motions *in limine* shall be submitted as follows: At least
17 thirty (30) calendar days before the Final Pretrial Conference, the moving party
18 shall serve, but not file, the opening brief. At least twenty (20) calendar days
19 before the Final Pretrial Conference, the responding party shall serve the
20 opposition. There will be no reply.

21 When the oppositions are received, the parties should collate the motions
22 and the oppositions together for inclusion in a binder, as set forth below, and then
23 shall file the moving papers and the opposition briefs no later than fourteen (14)
24 calendar days before the conference. Each motion should be presented in a
25 separate memo and properly identified, for example, "Plaintiff's Motion in
26 Limine No. 1 to Exclude" Please limit motions *in limine* to circumstances
27 that really need a ruling in advance. Usually five or fewer motions per side is
28 sufficient. Each motion should address a single, separate topic, and contain no

1 more than seven pages of briefing per side. Leave of Court will be required to file
2 more than five motions or to exceed the page limitations. A binder containing all
3 motions in limine should be submitted to the Clerk's office in an envelope clearly
4 marked with the case number and "JSW chambers copy."

5 2. The joint proposed final pretrial order shall be submitted on a 3-3/4-inch disk in
6 WordPerfect 10.0 format, as well as in hard copies. All hard-copy submissions should submitted
7 in a binder to the Clerk's office in an envelope clearly marked with the case number and "JSW
8 chambers copies".

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

11 **PRETRIAL ARRANGEMENTS**

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

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

1 extension cords to the carpet for safety. The parties shall disassemble and store all equipment in
2 the courtroom at the end of each court day. The parties may work with the deputy clerk, Jennifer
3 Ottolini (415-522-4173), on all courtroom-layout issues.

4 **SCHEDULING**

5 6. Trial normally will be conducted from 8:30 a.m. to 1:30 p.m. (or slightly longer to
6 finish a witness) with two fifteen-minute breaks, Monday through Thursday, excluding holidays.
7 Counsel must arrive by 8:15 a.m., or earlier as needed for any matters to be heard before the
8 evidence begins. This schedule may be modified at the discretion of the Court.

9 **OPENING STATEMENTS**

10 7. If openings are permitted, each side will have a predetermined time limit for its
11 opening statement. Counsel should meet and confer to exchange any visuals, graphics or
12 exhibits to be used in the opening statements, allowing for time to work out objections and any
13 reasonable revisions.

14 **WITNESSES**

15 8. At the close of each trial day, all counsel shall exchange a list of witnesses for the
16 next two full court days and the exhibits that will be used during direct examination (other than
17 for impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall
18 provide any objections to such exhibits and shall provide a list of all exhibits to be used with the
19 same witness on cross-examination (other than for impeachment). The first notice shall be
20 exchanged prior to the first day of trial. All such notice should be provided in writing.

21 9. The parties shall have all upcoming witnesses on the same day available in the
22 courthouse and ready to testify. Failure to have the next witness ready or to be prepared to
23 proceed with the evidence will usually be deemed to constitute resting. If counsel plans to read
24 in a transcript of a deposition, counsel must have a deposition prepared and vetted early on to
25 read into the record.

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

3 11. When there are multiple parties, counsel are responsible for coordination of the
4 cross-examination to avoid duplication.

5 12. Counsel shall stand at or near the podium to ask questions, straying only to point
6 out material on charts or overheads. Counsel should request permission from the Court to
7 approach the witness or the bench.

8 13. On the first day of trial, counsel shall bring the original and clean copies of any
9 deposition(s) intended to be used during the course of the trial. Any corrections must be readily
10 available. If counsel need to use the deposition during a witness examination, they shall provide
11 the Court with a copy with any corrections at the outset of the examination.

12 14. In lieu of direct testimony, the Court will consider receiving “prepared direct”
13 testimony in the form of declarations. When the witness is presented, the proponent must
14 verbally summarize the direct. Live cross-examination and redirect shall then occur.

15 **EXPERTS**

16 15. At trial, direct testimony of experts will be limited to the matters disclosed in their
17 reports. Omitted material may not ordinarily be added on direct examination. Illustrative
18 animations, diagrams, charts and models may be used on direct examination only if they were
19 part of the expert report, with the exception of simple drawings and tabulations that plainly
20 illustrate the content of the report, which can be drawn by the witness at trial or otherwise shown
21 to the Court. If cross-examination fairly opens the door, however, an expert may go beyond the
22 written report on cross-examination and/or re-direct examination. By written stipulation, all
23 parties may relax these requirements. The Court will not permit Federal Rule of Evidence 703 to
24 be used to admit otherwise inadmissible evidence through the expert (*i.e.*, through the “back
25 door”). At its discretion, the Court may require the parties’ expert witnesses to testify
26 immediately following one another

27 16. As to damages studies, the cut-off date for *past damages* will be as of the expert
28 report (or such earlier date as the expert may select). In addition, the experts may try to project

1 *future damages (i.e., after the cut-off date) if the substantive standards for future damages can be*
2 *met. With timely leave of Court or by written stipulation, the experts may update their reports*
3 *(with supplemental reports) to a date closer to the time of trial.*

4 17. The case management order will set out the timetable for expert reports.

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

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

8 (a) This will minimize delay between the original question and the
9 read-ins of the impeaching material. Opposing counsel should have their copy
10 immediately available.

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

15 (c) The first time a deposition is read, counsel shall state the
16 deponent’s name, the date of the deposition, the name of the lawyer asking the
17 question, and if it was a Federal Rule of Civil Procedure 30(b)(6) deposition.

18 (d) When reading in the passage, counsel shall state “question” and
19 then read the question exactly, followed by, “answer” and then read the answer
20 exactly. Stating “question” and “answer” is necessary so the court reporter can
21 follow who was talking at the deposition. Once the passage is on the record,
22 move on. Opposing counsel may then immediately ask to read such additional
23 testimony as is necessary to complete the context.

24 (e) Subject to Federal Rule of Evidence 403, party depositions may
25 be read into the record whether or not they contradict (and regardless of who the
26 witness is on the stand). For example, a short party deposition excerpt may be
27 used as foundation for questions for a different witness on the stand.
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DEPOSITION DESIGNATION

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

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

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

26 (c) The packets, as adjusted, must then be returned to the proffering
27 party, for consideration of whether to accept the adjustments. The parties shall
28 meet and confer. Counsel for the proffering party must collate and assemble a

1 final packet that covers the proffer and all remaining issues. At least two
2 calendar days before the proffer will be used, the proponent must provide the
3 Court with the final packet, with any objected-to portions highlighted and
4 annotated as described above. For the rare case of voluminous designations,
5 more lead time will be required. If exhibits are needed to resolve the objections,
6 counsel should include copies, and highlight and tag the relevant passages.
7 Counsel should alert the Court on the record that the packet is being provided
8 and advise as to whether any rulings are needed. If so, the Court will then read
9 the packet and indicate its rulings in the margin in a distinctive manner.
10 Ordinarily, 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 in court, the examiner shall read the
16 questions (and any relevant colloquy) from the lectern while a colleague sits in
17 the witness stand and reads the answers. While reading the deposition the reader
18 and “witness” shall refrain from undue emoting, emphasis or other
19 dramatization. The same procedure shall be followed when a video-taped
20 deposition is to be played instead, in order to facilitate rulings on objections.
21 The video should omit any dead time, long pauses, and objections/colloquy not
22 necessary to understand the answers.

23 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

24 20. Please designate responses to requests for admissions and interrogatory answers
25 in the same manner and under the same timetable as deposition designations.
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EXHIBITS

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

22. Use numbers only, not letters, for exhibits, preferably the same numbers as were used in depositions. Blocks of numbers should be assigned to fit the need of the case (*e.g.*, Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single exhibit should be marked only once, just as it should have been marked only once in discovery pursuant to this Court’s discovery guidelines). If the plaintiff has marked an exhibit, then the defendant should not re-mark the exact document with another number. Different *versions* of the same document, *e.g.*, a copy with additional handwriting, must be treated as different exhibits with different numbers. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a deposition transcript, then the latter transcript must be conformed to the new trial number, if and when the deposition testimony is used (so as to avoid confusion over exhibit numbers). There should be no competing versions of the same exhibit number; any discrepancies must be brought to the Court’s attention promptly.

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23. 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

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

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

25. In addition to the official record exhibits, two copies of the joint set of bench binders containing a copy of the exhibits must be provided to the Court on the first day of trial. Each exhibit must be separated with a label divider (an exhibit tag is unnecessary for the bench set). In large letters, the labels should identify the range of exhibit numbers contained in a binder.

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

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9 **IT IS SO ORDERED.**

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11 _____
12 JEFFREY S. WHITE
13 UNITED STATES DISTRICT JUDGE

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16 7/06 Rev.
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