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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 AND REQUIRED FILINGS

Counsel shall not prepare a joint pretrial conference statement. Instead, counsel shall follow the following procedures:

1. 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 order 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 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)

1 providing, for all such witnesses other than an individual plaintiff and an individual defendant, a
2 short 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 detailed, the
4 Court will presume the witness is cumulative. For each witness, state an hour/minute time
5 estimate for both direct and cross examination. The Court uses this information to estimate the
6 time limits to be allocated for trial. Items (v) and (vi) should be appendices to the proposed
7 order. The objective is to convert the proposed order to a final order with the benefit of any
8 discussion at the final pretrial conference.

9 2. In addition to the joint pretrial order, fourteen (14) days in advance of the final
10 pretrial conference, the parties shall file the following materials:

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

14 (b) A trial brief not to exceed ten pages on any controlling issues of law.

15 (c) Excerpts of any deposition designations that are to be used in a parties' case in
16 chief as to which there are objections. The parties should include with these excerpts the basis
17 for the objection and the response thereto. If the parties do not have objections to deposition
18 designations, they should follow the procedures set forth in paragraph 26.

19 (d) Excerpts of responses to interrogatories and requests for admissions that are to be
20 used in a party's case-in-chief as to which there are objections. The parties should include with
21 these excerpts the basis for the objection and the response thereto. If the parties do not have
22 objections to responses to interrogatories or requests for admissions, they should follow the
23 procedures set forth in paragraph 27.

24 (e) A list of objections to each exhibit, in tabular form. The first column should
25 describe the exhibit, the second column should set briefly set forth the basis of the objection, the
26 third column should set forth a brief response thereto, and the fourth column should provide a
27 space for the Court's ruling.

28 The parties shall meet and confer, in person, in an attempt to resolve objections to the

1 exhibits before this list is filed with the Court, to consider exhibit numbers, and to eliminate
2 duplicate exhibits and confusion over the precise exhibit. Unless there is a genuine issue as to
3 the authenticity of exhibits, a party that has produced documents should not object to the other
4 party offering those documents as exhibits on the basis of authenticity or the best evidence rule.
5 Finally, the Court normally will not entertain routine objections to exhibits on the basis of a lack
6 of foundation.

7 If there are exhibits to which the parties' object, the parties shall submit to chambers, but
8 shall not file, a joint binder that contains the disputed exhibits and the list of objections.

9 (f) Any motions *in limine*, as to which the parties should follow the following
10 procedure:

11 The motions *in limine* and all oppositions thereto must be filed no later than fourteen (14)
12 calendar days prior to the Final Pretrial Conference, and shall be submitted to the Court collated
13 and in a binder, as set forth below. In order to ensure that motions *in limine* and oppositions are
14 timely filed, at least thirty (30) calendar days before the Final Pretrial Conference, the moving
15 party shall serve, but not file, the opening brief, and at least twenty (20) days before the Final
16 Pretrial Conference, the responding party shall serve, but not file, the opposition. The Court
17 does not permit reply briefs. Each motion should be presented in a separate memo and properly
18 identified, for example, "Plaintiff's Motion in Limine No. 1 to Exclude"

19 Please limit motions *in limine* to circumstances that require an advance ruling. No more
20 than five motions per side will be allowed. If a party seeks to file more than five motions *in*
21 *limine*, they must file an administrative motion at least fourteen days before the motions *in*
22 *limine* are due to be served on opposing counsel, and should demonstrate extraordinarily good
23 cause for allowing the excess motions. The administrative motion should summarize the subject
24 matter of each proposed additional motion in limine.

25 Each motion *in limine* should address a single, separate topic, and contain no more than
26 seven pages of briefing per side. Leave of Court will be required to exceed the page limitations.
27 A binder containing all motions in limine should be submitted to the Clerk's office in an
28 envelope clearly marked with the case number and "JSW chambers copy."

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SCHEDULING

7. Trial normally will be conducted from 8:00 a.m. to 1:30 p.m. (or slightly longer to finish a witness) with two fifteen-minute breaks, Monday through Thursday, excluding holidays. Counsel must arrive by 7:45 a.m. This schedule may be modified at the discretion of the Court.

GENERAL DECORUM

8. A trial is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times. Disruptive tactics or appeals to prejudice are not acceptable.

9. Colloquy between counsel on the record is not permitted. All remarks are to be addressed to the Court.

10. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Addressing witnesses or parties by first names or the Court by “Judge” or “Sir” on the record is not appropriate.

11. Counsel shall not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client should indicate approval, disapproval or otherwise react to any testimony or argument.

OPENING STATEMENTS

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

WITNESSES

13. At the close of each trial day, all counsel shall exchange a list of witnesses for the next two full court days and the exhibits that will be used during direct examination (other than for impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall provide any objections to such exhibits and shall provide a list of all exhibits to be used with the

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 14. It is the Court's preference that where the parties identify the same witness, the
4 parties should call that witness once during the trial, unless either party can show that they would
5 be prejudiced by this procedure. When the Court follows this procedure, the Court allows a
6 defendant to reserve the right to move for judgment as a matter of law, and the Court will only
7 consider evidence presented by the plaintiff as part of the plaintiff's case-in-chief when
8 evaluating that motion.

9 15. The parties shall have all upcoming witnesses on the same day available in the
10 courthouse and ready to testify. Failure to have the next witness ready or to be prepared to
11 proceed with the evidence may be deemed to constitute resting. If counsel plans to read in a
12 transcript of a deposition, counsel must have a deposition prepared and vetted beforehand to read
13 into the record.

14 16. A witness or exhibit not listed in the joint pretrial order may not be used without
15 good cause. This rule does not apply to true rebuttal witnesses (other than rebuttal experts who
16 must be listed). Defense witnesses are considered case-in-chief witnesses, not "rebuttal"
17 witnesses.

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

22 18. Counsel shall stand at or near the podium to ask questions, straying only to point
23 out material on charts or overheads. If counsel wish to approach the witness or the bench, they
24 must request permission from the Court and clearly identify the reason for the request.

25 19. Counsel shall treat witnesses, including parties, with courtesy and respect, and not
26 become familiar with the witnesses, *e.g.*, they should avoid the use of first or nick-names.

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

1 (a) On the first day of trial, counsel shall bring the original and clean copies of any
2 deposition(s) intended to be used during the course of the trial. Any corrections must be
3 readily available. If counsel need to use the deposition during a witness examination, they
4 shall provide the Court with a copy and with any corrections at the outset of the examination.
5 This will minimize delay between the original question and the read-ins of the impeaching
6 material. Opposing counsel should have their copy immediately available.

7 (b) When counsel reads a passage into the record, counsel should seek permission
8 from the Court. For example, counsel should state: "I wish to read in page 210, lines 1 to 10
9 from the witness' deposition." A brief pause will be allowed for any objection.

10 (c) The first time a deposition is read, counsel shall state the deponent's name, the
11 date of the deposition, the name of the lawyer asking the question, and if it was a Federal Rule
12 of Civil Procedure 30(b)(6) deposition. Counsel shall not embellish the deposition testimony
13 with follow-on questions.

14 (d) When reading in the passage, counsel shall state "question" and then read the
15 question exactly, followed by, "answer" and then read the answer exactly. Stating "question"
16 and "answer" is necessary so the Court and the court reporter can follow who was talking at
17 the deposition. Once the passage is on the record, counsel shall proceed. Opposing counsel
18 may then immediately ask to read such additional testimony as is necessary to complete the
19 context.

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

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

27 26. The following procedure applies to the manner in which deposition designations
28 shall be presented. The parties shall have met in conferred sufficiently in advance of trial to

1 ensure that they will be able to submit their objections to the Court at the pretrial conference.
2 (*See* Paragraph 2(c) of this Order.) In addition, the parties must have met and conferred
3 regarding counter-designations, and shall submit any objections to counter-designations in
4 accordance with Paragraph 2(c) of this Order. It does not apply to live witnesses whose
5 depositions are read into the record while they are on the stand.

6 (a) To prepare designated deposition testimony, counsel shall photocopy the
7 cover page, the page where the witness is sworn, and then each page containing any
8 testimony to be proffered, with lines through portions of such pages not proffered. In
9 addition, counsel shall line through objections or colloquy unless they are needed to
10 understand the question. Any corrections must be interlineated and references to exhibit
11 numbers must conform to the trial exhibit numbers. Such interlineations should be done by
12 hand. The finished packet should then be the actual script and should smoothly present the
13 identification and swearing of the witness and testimony desired.

14 (b) When the packet is read into the record, the examiner shall read the
15 questions (and any relevant colloquy) from the lectern while a colleague sits in the witness
16 stand and reads the answers. While reading the deposition the reader and “witness” shall
17 refrain from undue emoting, emphasis or other dramatization. The same procedure shall be
18 followed when a video-taped deposition is to be played instead, in order to facilitate rulings
19 on objections. The video should omit any dead time, long pauses, and objections/colloquy
20 not necessary to understand the answers.

21 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

22 27. Please prepare responses to requests for admissions and interrogatory answers in
23 the same manner for presentation in the same manner as deposition designations.

24 **EXHIBITS**

25 28. Use numbers only, not letters, for exhibits, preferably the same numbers as were
26 used in depositions. Blocks of numbers should be assigned to fit the need of the case
27 (*e.g.*, Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.).
28 A single exhibit should be marked only once, just as it should have been marked only once in

1 discovery pursuant to this Court’s discovery guidelines. If the plaintiff has marked an exhibit,
2 then the defendant should not re-mark the exact document with another number. Different
3 *versions* of the same document, *e.g.*, a copy with additional handwriting, must be treated as
4 different exhibits with different numbers. To avoid any party claiming “ownership” of an
5 exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as
6 “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a
7 deposition transcript, then the latter transcript must be conformed to the new trial number, if and
8 when the deposition testimony is used (so as to avoid confusion over exhibit numbers). There
9 should be no competing versions of the same exhibit number; any discrepancies must be
10 brought to the Court’s attention promptly.

11 29. The exhibit tag shall be in the following form:

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 100

CASE NO. _____

DATE ENTERED _____

BY _____

DEPUTY CLERK

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

1 argue and objection, and the Court overrules that party's objection, the Court may charge the
2 time spent at side bar to that party.

3 **SETTLEMENTS AND CONTINUANCES**

4 36. Shortly before trial or the final pretrial conference, counsel occasionally wish
5 jointly to advise the Court or the Courtroom Deputy Clerk that a settlement has been reached and
6 to take the pretrial conference or trial off calendar. Cases cannot be taken off calendar in this
7 manner. Unless and until a stipulated dismissal or judgment is filed or placed on the record, all
8 parties must be prepared to proceed with the final pretrial conference as scheduled and to
9 proceed to trial on the trial date, or face dismissal of the case for lack of prosecution or entry of
10 default judgment. Only an advance continuance expressly approved by the Court will release
11 counsel and the parties from their obligation to proceed. If counsel expect that a settlement will
12 be final by the time of trial or the final pretrial conference, they should notify the Court
13 immediately in writing or, if it occurs over the weekend before the trial or conference, by voice
14 mail to the Courtroom Deputy Clerk. The Court will attempt to confer with counsel as promptly
15 as circumstances permit to determine if a continuance will be in order. Pending such a
16 conference, however, counsel must prepare and make all filings and be prepared to proceed with
17 the trial.

18 **IT IS SO ORDERED.**

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21 _____
22 JEFFREY S. WHITE
23 UNITED STATES DISTRICT JUDGE

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4/2014 Rev.