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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STANDING ORDER FOR CIVIL JURY TRIALS BEFORE JUDGE JAMES DONATO

These requirements and guidelines apply to all civil cases to be tried to a jury before Judge Donato, unless the parties have specifically been ordered otherwise in their case.

INVITATION TO COUNSEL AND PARTIES

The Court encourages parties and their lawyers to use juries to resolve disputes subject to trial. Counsel and their clients are invited to think creatively about ways to minimize trial costs, enhance jury comprehension and deliberations, and maximize trial efficiency. Counsel should include discussion of ideas along these lines in the communications leading up to the pretrial filings and conference. The Court will consider all reasonable proposals, particularly ones made jointly by the parties.

SCHEDULING OF PRETRIAL CONFERENCE AND MEETING

1. The Court will schedule a final pretrial conference 19 days before the start of trial. Pretrial conferences are held on Thursdays at 1:30 p.m. in Courtroom 11, 19th Floor, United States Courthouse, San Francisco, California. The pretrial materials detailed here must be filed 14 days before the final pretrial conference. Lead trial counsel must meet and confer about the preparation of the joint pretrial materials no later than 30 days before they are due. Lead trial counsel and a primary party representative must also personally attend the final pretrial conference.

PRETRIAL FILINGS

2. The parties must file these pretrial documents no later than 14 days before the final pretrial conference (this date will be referred to as “the pretrial filings due date”). Two three-hole punched, double-sided chambers copies of these materials must be delivered to the Clerk’s office

1 by noon the day after filing. Failure to file a required document may result in sanctions, including
2 a finding that an argument or request has been waived, and failure to conform to page limitations
3 and filing deadlines may result in a filing being disregarded or stricken.

4 3. **Joint Pretrial Statement.** The parties will file a **joint** pretrial statement, signed
5 and vetted by all lead trial counsel, that contains the following information:

- 6 i. *Substance of the Action:* A brief description of the substance of the claims and
7 defenses which remain to be decided.
- 8 ii. *Relief Requested:* A statement of all relief sought, itemizing all elements of
9 damages claimed.
- 10 iii. *Undisputed Facts:* A statement of all relevant undisputed facts to which the
11 parties will stipulate for incorporation into the trial record without the necessity
12 of supporting testimony or exhibits.
- 13 iv. *Disputed Factual Issues:* A statement of all relevant disputed facts that remain to
14 be decided.
- 15 v. *Disputed Legal Issues:* Without extended legal argument, a brief statement of
16 disputed points of law concerning liability and relief.
- 17 vi. *Stipulations:* A statement of stipulations requested or proposed.
- 18 vii. *Bifurcation:* A statement of whether bifurcation or a separate trial of specific
19 issues is feasible and desired.
- 20 viii. *Settlement:* A statement summarizing the status of settlement negotiations and
21 indicating whether further negotiations are likely to be productive.
- 22 ix. *Estimate of trial length:* An estimate of the total length of the trial.

23 4. **Trial Brief.** Each party will serve and file a trial brief, not to exceed 10 pages,
24 specifying each cause of action and defense remaining to be tried along with a statement of the
25 applicable legal standard.

26 5. **Motions In Limine.** The parties are expected to work together in good faith to
27 resolve evidentiary issues before the pretrial conference. If disputes remain, the Court will allow
28 up to 8 motions in limine per *side*, each addressing a single specific evidentiary issue, to be served
and filed as follows:

- i. At least 14 days before the pretrial filings due date, counsel must serve, but not
file, the moving papers.

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- ii. At least 4 days before the pretrial filings due date, the responding party must serve, but not file, the oppositions.
- iii. The moving party should then collate each motion and opposition together and file the paired sets along with that party's other pretrial materials on the pretrial filings due date.
- iv. No brief in support or opposition of a motion in limine may exceed **3 pages** in length, and proposed orders need not be prepared. Reply briefs are not permitted.

6. Motions in limine should be used for evidentiary issues that require a ruling in advance of trial. They are not substitutes for summary judgment or other dispositive motions, or motions to exclude expert testimony. Motions in limine may not be used to request summary judgment or raise *Daubert* challenges unless the Court has specifically granted prior approval.

7. **Proposed Jury Instructions And Verdict Forms.** The parties must file a joint set of proposed jury instructions, arranged in the order the parties propose the Court give the instructions. The parties should use the Ninth Circuit Model Jury Instructions to the fullest extent possible. Modifications and "custom" proposed instructions are discouraged. If offered, they should be clearly identified as such.

8. Undisputed instructions must be identified as "Stipulated Instruction No. __ Re _____," with the blanks filled in as appropriate. For disputed instructions, each party's proposed version must be provided and identified as, "Disputed Instruction No. __ Re _____ Offered by _____," with the blanks filled in as appropriate. All proposed versions of the same instruction should bear the same number.

9. Following each set of competing versions of a disputed instruction, each party may explain, in no more than two pages, why the Court should give that party's proposed instruction. Any party taking the position that an instruction should not be given at all may submit a two-page explanation of its position in lieu of a counter-version.

10. The parties must also file a joint proposed verdict form, using the same process.

11. The parties must e-mail a Microsoft Word version of the proposed jury instructions and verdict form to jdpo@cand.uscourts.gov by noon the day after the pretrial filings due date. The parties should not submit proposed preliminary instructions, which the Court will do on its own in a draft to which the parties may propose modifications.

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12. **Voir Dire.** As a general matter, the Court will handle voir dire based on questions proposed by the parties that the Court agrees to ask. If the parties would like the Court to consider particular voir dire questions, they should file a joint set of proposed questions. There is no need to include basic background questions such as name, occupation, education and so on. The Court has standard questions prepared on those topics. If the parties disagree on any proposed question, the disagreement should be noted and explained, in no more than one page per party.

13. A Microsoft Word version of the proposed voir dire questions should be e-mailed to jdpo@cand.uscourts.gov by noon the day after the pretrial filings due date.

14. **Witness List.** The parties must file by the pretrial filings due date a joint list of all witnesses who are likely to be called at trial (other than solely for impeachment or rebuttal purposes), including a brief statement describing the substance of the testimony to be given by each witness and an estimate of minutes or hours the witness's testimony is expected to take (direct and cross).

15. **Exhibit Lists.** The parties must jointly file by the pretrial filings due date two separate charts of proposed documentary exhibits, with one chart summarizing those exhibits that the parties agree are admissible and another chart summarizing those exhibits for which admissibility is disputed. The chart of disputed exhibits must identify the objecting party and include succinct summaries of the objection and the response, with authority that supports the parties' respective positions. Both charts must also include the following information as to all exhibits: (1) exhibit number; (2) name or brief description of the exhibit; and (3) the exhibit's purpose and sponsoring witness.

JURY MATERIALS

16. Counsel should focus intensely on ways of enhancing the jury's comprehension of trial testimony and evidence. To that end, the parties will jointly prepare by the first day of trial notebooks for the jury's use. Each notebook will be a 1-inch three-ring black binder with a plastic slip pocket on the cover. Each binder should have a title page inserted in the slip pocket with the name and case number of the action in large print. Inside the binder, the parties will provide 50 pages of lined notepaper clipped into the rings. The parties should consider including a glossary

1 of acronyms or specialized terms that they expect to come up during trial. The glossary needs to
2 be jointly prepared and approved by the Court before it goes to the jury. For each witness, the
3 sponsoring party will hand out a photograph captioned with the witness's name and printed on a
4 full sheet of paper that is hole-punched for the binder. The photograph must consist of a head-shot
5 of the witness dressed as he or she appears on the stand. The photograph will be handed to the
6 jury before the witness's testimony starts.

7 17. In most cases, exhibits admitted into the record will be made available to the jury in
8 searchable electronic form on a computer in the jury room. Please consult with Lisa Clark, the
9 Courtroom Deputy, on the requirements for this system. More information can also be found on
10 the Court's website at <http://www.cand.uscourts.gov/jurypc>.

11 18. This is a non-exclusive list of jury materials. The Court is happy to consider other
12 ideas from counsel at the pretrial conference.

13 19. The Court has found that juries benefit considerably from the opportunity to ask
14 questions at trial. Jurors typically will be allowed to submit questions in writing before a witness
15 is excused. The Court will discuss the questions with counsel before deciding whether to ask them
16 of the witness.

17 **COURTROOM TECHNOLOGY**

18 20. Courtroom 11 is fully set up for the electronic display of evidence to the jury, the
19 Court and opposing counsel. Counsel should plan on using this system.

20 **EXHIBITS**

21 21. The parties must provide two sets of all trial exhibits -- double-sided and three-
22 hole-punched in three-ring binders, with each exhibit tagged and separated by a label divider
23 identifying the exhibit number. These sets must be delivered to the Court on the morning of the
24 first day of trial.

25 22. Prior to the final pretrial conference, counsel must meet and confer in person over
26 all exhibit numbers and objections and to weed out duplicate exhibits and confusion over the
27 precise exhibit. Parties should use numbers only, not letters, for exhibits, and preferably the same
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1 numbers as were used in depositions. The parties should work in good faith to resolve authenticity
2 concerns.

3 23. Blocks of numbers should be assigned to fit the needs of the case (e.g., Plaintiff has
4 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single exhibit should
5 be marked only once. If the plaintiff has marked an exhibit, then the defendant should not re-mark
6 the exact document with another number. Different versions of the same document, e.g., a copy
7 with additional handwriting, must be treated as different exhibits with different numbers.

8 24. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked
9 and referred to as “Trial Exhibit No. __,” and not as “Plaintiff’s Exhibit” or “Defendant’s
10 Exhibit.” If an exhibit number differs from that used in a deposition transcript, then the deposition
11 transcript must be conformed to the new trial number if and when the deposition testimony is read
12 to the jury (so as to avoid confusion over exhibit numbers). The jury should always hear any
13 given exhibit referred to by its trial number. There should be no competing versions of the same
14 exhibit number; any discrepancies must be brought to the Court’s attention immediately.

15 25. Each exhibit shall be tagged in the following form:

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

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23 The tag should be placed on or near the lower right-hand corner or, if a photograph, on the back.
24 Counsel should fill in the case number but leave the last two spaces blank.

25 26. The parties must jointly prepare a single set of all trial exhibits (a copy set of which
26 must be provided as noted above) that will be the official record set to be used with the witnesses,
27 in the jury room, and on appeal.

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TRIAL SCHEDULE & TIMEKEEPING

33. The Court’s usual trial schedule is Monday, Tuesday, Wednesday and Friday from 9 a.m. to 2:30 p.m. There will be two breaks of about 20 minutes each but no lunch break. Trial usually will not take place on Thursdays, although this might happen depending on the circumstances of the case. Any matters that need to be heard outside the presence of the jury will usually be addressed at 8:30 a.m. on trial days.

34. Each side must designate an official “timekeeper” who will keep track of the number of minutes and hours of trial time used by each side. The timekeepers for both sides must check their tracked time against the time noted in the Court’s daily report, and must confer with the Courtroom Deputy about any perceived discrepancies on a daily basis. The Courtroom Deputy has the final word on the time count.

OPENING STATEMENTS

35. Each side will receive a time limit for its opening statement (to be determined at the final pretrial conference). As a general rule, openings will not exceed 30 minutes per side. Counsel must cooperate and 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. Counsel must be prepared to proceed with opening statements as soon as the jury is sworn. Counsel are advised that jury selection is typically completed in a half day and they should assume they will make opening statements later on the same day.

MOTIONS

36. Prior to filing any motions during trial, the moving party must first discuss the proposed motion with the Court.

OBJECTIONS AND SIDEBARS

37. When making objections, counsel should stand and state only the legal grounds for the objection and must withhold all further comment or argument unless elaboration is requested by the Court.

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38. The Court does not permit sidebars or other distractions when the jury is present. Counsel should not ask for them. Any pressing issues can be dealt with on a break or before or after the jury is present for the day.

SETTLEMENTS AND CONTINUANCES

39. Cases cannot be taken off calendar -- and trial dates will not be moved -- based on settlements "in principle." Unless and until a stipulated dismissal or judgment is filed or placed on the record, all parties must be prepared to proceed with the final pretrial conference as scheduled and/or proceed to trial on the trial date. Only a continuance in advance expressly approved by the Court will release counsel and the parties from their obligation to proceed.

40. Counsel should try to resolve or settle cases no later than 24 hours before the jury pool is called to the courthouse and before the close of business on a Friday. Civil Local Rule 40-1 provides that jury costs may be assessed as sanctions for failure to provide the Court with timely written notice of a settlement. If a case settles less than 24 hours before the jury pool is scheduled to appear, or over the weekend before a Monday trial call, the parties will be required to pay the Court's jury costs (typically the per diem and mileage for each member of the jury pool) in equal shares in addition to any agreed-upon settlement amounts.

IT IS SO ORDERED.

Dated: January 5, 2017



JAMES DONATO
United States District Judge