

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STANDING ORDER RE: PRETRIAL INSTRUCTIONS IN CIVIL CASES

**Judge Yvonne Gonzalez Rogers
(Updated April 2, 2019)**

1. **PRETRIAL CONFERENCE:** Trials are scheduled to begin Monday mornings. The trial day is from 8:00 a.m. through 1:30 p.m. with two 15-minute breaks. Fridays are generally dark. Pretrial Conferences generally are scheduled on the third Friday preceding the trial at 9:00 a.m. Parties shall comply in all respects with Fed. R. Civ. P. 16.
2. **PRETRIAL CONFERENCE STATEMENT:** The parties shall file a joint Pretrial Conference Statement containing the information listed below. To comply with this requirement, trial counsel shall meet and confer at least twenty-one (21) days in advance of the Pretrial Conference. More complicated cases may require the meet and confer process to occur even earlier. The Statement is due **fourteen (14) days** prior to the Pretrial Conference.

A compliance calendar hearing will be set by the Court to confirm that counsel have met and conferred timely, as required by these Pretrial Instructions. **Five (5) business days** prior to the date of the compliance hearing, the parties shall file a Joint Statement confirming they have complied with this requirement or explaining their failure to comply. If compliance is complete, the Court will vacate the compliance hearing and the parties need not appear. Telephonic appearances may be allowed if the parties have submitted a Joint Statement in a timely fashion. Failure to do so may result in sanctions.

a. The Action.

- i. ***Substance of the Action.*** A brief description of the substance of claims and defenses which remain to be decided, including a list of the claims and defenses to be tried. In addition, each party shall attach to the Statement the elements of proof for any claim and/or defense which they assert and a summary of the evidence anticipated to prove the same.
- ii. ***Relief Prayed.*** A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

b. The Factual Basis of the Action.

- i. ***Undisputed Facts.*** A plain and concise statement of all relevant facts not in dispute, as well as all facts the parties will stipulate for admission into the trial record without the necessity of supporting testimony or exhibits.
- ii. ***Disputed Factual Issues.*** A plain and concise statement of all disputed factual elements of a claim which remain to be decided.
- iii. ***Agreed Statement.*** A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

- iv. ***Stipulations.*** A statement of stipulations requested or proposed for pretrial or trial purposes.
- c. **Disputed Legal Issues.**
 - i. ***Points of Law.*** Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief, citing supporting statutes and decisions setting forth the nature of each party's contentions concerning each disputed point of law, including procedural and evidentiary issues. Supporting statutes and decisions and the parties' contentions regarding the same shall be brief and provided in an outline or bullet-point format.
 - ii. ***Proposed Conclusions of Law.*** If the case is to be tried without a jury, unless otherwise ordered, parties should briefly indicate objections to Proposed Conclusions of Law. *See* Paragraph 7, below.
- d. **Further Discovery or Motions.** A statement of any remaining discovery and why the same was not completed by the cutoff dates and pending motions.
- e. **Estimate of Trial Time.** An estimate of the number of court days requested for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.
- f. **List of Motions in Limine.** *See* Item 4 below. The list shall include only contested, non-duplicative motions.
- g. **Juror Questionnaire.** Whether the parties intend to file proposed additional questions for jury selection. *See* Item 3.h below.
- h. **Trial Alternatives and Options.**
 - i. ***Settlement Discussions.*** A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
 - ii. ***Consent to Trial Before a Magistrate Judge.*** A statement of whether reference of all or part of the action to a master or magistrate judge is feasible, including whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit. The Court will entertain requests for reference to a specific magistrate.
 - iii. ***Amendments, Dismissals.*** A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses and any objections thereto.
 - iv. ***Bifurcation, Separate Trial of Issues.*** A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

3. **TRIAL READINESS FILINGS AND BINDER and PROPOSED ORDER THEREON:** The parties shall file each of the documents listed below and deliver to chambers two copies of a JOINT TRIAL READINESS BINDER. To provide the Court with sufficient time to prepare, the binder of documents is due by noon no less than **seven (7) days** prior to the Pretrial Conference. The Joint Trial Readiness Binders shall contain

copies of filed documents **with the ECF header** reflecting the item's docket number and filing date.

It is the responsibility of the parties to provide two copies of revised or updated trial documents to insert into the Court's Trial Readiness Binders. The parties shall provide a labeled tab to identify the document(s) being added to the binder. The parties may also provide updated indexes for the Court, if an index was provided with the original binders.

- a. **Proposed Order Re: Trial Stipulations.** During the meet and confer process, the Court expects that the parties will agree to a variety of stipulations regarding the conduct of the trial. A Proposed Order outlining all such stipulations shall be presented to the Court.
- b. **Witness List.** A list of all witnesses likely to be called at trial (other than solely for impeachment or rebuttal), with a brief statement following each name that describes the substance of the testimony to be given and provides a time estimate of the direct and cross examinations. This information shall be presented in chart format and organized by party. Witnesses not included on the list will be excluded from testifying unless the Court orders otherwise. The list shall identify by an asterisk or other notation whether the witness listed is viewed as a primary witness or only included as a precautionary measure. Such identification tends to be useful during pretrial discussions.
- c. **Expert Witness List.** A list of all expert witnesses with a summary plainly stating the expert's theories and conclusions and the basis therefore, accompanied by a curriculum vitae. If the expert has prepared a report in preparation for the testimony, a copy thereof shall be furnished to opposing counsel and included in the Trial Readiness Binder. Witnesses not included on the list will be excluded from testifying unless the Court orders otherwise.
- d. **Exhibit Lists Annotated with Stipulations/Objections.**
 - i. The parties shall comply with Item 6 below regarding the meet and confer process for exhibits.
 - ii. As part of the Trial Readiness Binder, the parties shall include a list of all documents and other items to be offered as exhibits at the trial (other than solely for impeachment or rebuttal). Each entry shall include a brief description of the contents, and the identity of each sponsoring witness. The Exhibit List shall specify for each exhibit: (1) if it is being marked for identification only, not for admission; (2) whether the parties stipulate to its admission; and (3) the grounds for any objection to its admission. The Exhibit List shall also include an additional column so that the Court can track the date on which each exhibit is admitted. Prior to submitting the list, the parties shall meet and confer and attempt to stipulate as to the admissibility of each exhibit. This information shall be presented in chart format and organized numerically. The parties should consult the Appendix for a suggested format of the Exhibit List.
 - iii. Parties shall meet and confer and agree on numeric designations for exhibits, such as plaintiffs shall have numbers 1-99, defendant one: numbers 100-199, defendant two: numbers 200-299, etc. The agreed-upon designations shall be noted for the Court.

- iv. The parties shall also provide the Court with a copy of any exhibit or representative samples of any exhibits which require discussion at the Pretrial Conference.
- e. **List of Discovery Excerpts, Audios, and Videos.** The parties shall list (i) those excerpts from depositions, from interrogatory answers, or from responses to requests for admission (other than those solely for impeachment or rebuttal) and (ii) any other audio or video likely to be used at trial.

Prior to submitting the list, the parties shall meet and confer and attempt to resolve any disagreements regarding designations or counter-designations. The parties shall (i) identify any remaining legal objections to the excerpts on the list itself, and (ii) attach in a separate appendix copies of the disputed excerpts/ transcripts so that the Court can review the disputed materials. The parties should consult the Appendix for a suggested format of the List of Discovery/Audio/ Video Excerpts. EACH disputed designation shall be separately numbered and shall correspond to the materials provided to the Court for resolution of the dispute. Further, they shall be highlighted, underlined or otherwise marked for ease of the Court's reference and contain sufficient contextual information.

The parties shall provide a single proposed order with each disputed designation which will allow the Court to rule whether permission to use each is granted, granted with modification, or denied. The parties should consult the Appendix for a suggested format of a chart to be contained within the Proposed Order Re: Discovery Excerpts.

Parties are advised that the Court will not resolve more than six pages of disputed excerpts. However, the parties can provide a representative sample to obtain guidance from the Court so that the parties can resolve their disputes independently.

f. **Jury Instructions.**

i. ***Joint Set of Jury Instructions.***

- (A) The parties shall meet and confer and prepare one Joint Set of Jury Instructions provided to the Court in the logical sequence to be read to the jury. Authority shall be provided for all instructions.
- (B) The parties shall prepare an index which identifies: (i) whether the parties stipulate or object to each instruction; and (ii) the competing instruction(s) preferred on a given topic such that the Court can readily compare and contrast the same.
- (C) Disputed instructions must be annotated with: (i) the proponent's authority for seeking the instruction and a brief explanation of how the authority supports the instruction; and (ii) the opponent's reason for opposition with any applicable authority and a brief explanation why the instruction should not be given. It shall clearly identify which party is proposing each disputed instruction, the nature of the dispute, and any competing instruction.
- (D) Every instruction submitted (whether disputed or stipulated) must include "Date Submitted: [insert date]" or "Date Revised: [insert date]" (as applicable).

- ii. If the parties resolve any disputes prior to the Pretrial Conference, the parties must immediately inform the Court which proposed instructions are withdrawn, and submit the stipulated instruction to the Court.
- iii. If the parties wish to revise any proposed instructions, they must be identified as a “revised” instructions, such that the Court can easily identify and remove the previously proposed instruction, and insert the revised instruction into the Trial Readiness Binders.
- iv. If the parties wish to propose additional instructions, they must be clearly identified as “supplemental” instructions. Competing supplemental instructions must be filed jointly such that the Court can readily compare and contrast the same. The parties must identify where in the sequence of previously submitted instructions the supplemental instructions should be added.
- v. The parties will be required to re-organize and re-submit a complete set of instructions once the Court has resolved all disputes. Clean sets of all jury instructions (without the parties’ arguments and authorities) must be provided to the Court in electronic format (MS Word) upon request.
- vi. ***Substance and Format of Instructions.*** The instructions shall cover all substantive issues and other points not covered by the Ninth Circuit Manual of Model Jury Instructions. All instructions submitted to the Court, whether stipulated or disputed, shall contain a table of contents. Each requested instruction shall be typed in full on a separate page with annotations or citations to the authorities upon which the instruction is based included below the instruction. Instructions shall be brief, clear, written in plain English, and free of argument. Model Instructions shall be revised to address the particular facts and issues of this case. The parties shall give a brief explanation of their authorities and any revisions to Model Instructions.
- vii. ***Routine Instructions.*** Absent objection, and as appropriate, the Court will give the Model Instructions in Chapter 1 (Instructions on the Trial Process) and 3.1-3.3 (concerning deliberations) from the most recent version of the Manual of Model Civil Jury Instructions for the Ninth Circuit. If any party seeks to alter the above-referenced Model Instructions, that party (or parties, if stipulated) shall provide the Court with a redline in MS Word reflecting the proposed changes to the Model Instructions. The parties should not file the redline document, but should send an electronic copy to ygrchambers@cand.uscourts.gov and ygrpo@cand.uscourts.gov.
- g. **Preliminary Statement of the Case and Instructions.** The parties shall propose a joint statement of the case to be read to the jury. The parties may also propose additional preliminary instructions where appropriate.
- h. **Jury Selection.**
 - i. Parties are advised that jury selection may occur on the Wednesday or Friday preceding the Monday trial date to allow for a full day of voir dire.

- ii. The Court will conduct most of the voir dire and will provide limited time for attorney follow-up. Parties may file proposed additional questions for jury voir dire.
- iii. Parties are advised that juror questionnaires are not mailed in advance to any prospective jurors unless the trial is scheduled to proceed three weeks or more. In those cases, the parties must submit a proposed joint questionnaire, not to exceed two pages, at least **seven weeks** prior to jury selection. The standard form used is attached in the Appendix.
- iv. For shorter trials, jurors will be provided a basic one-page questionnaire. (*See Appendix.*) Parties may jointly request one additional page of questions.
- v. To determine whether prospective jurors know any of the parties, attorneys or potential trial witnesses, the parties shall provide the Court with one alphabetical list of all names for distribution to the prospective jurors.
- vi. Generally, in civil cases, the jury commissioner will summon 20 to 25 prospective jurors. The Court will seat 8 jurors and no alternates.
- i. **Proposed Verdict Forms.** The parties shall meet and confer and prepare a joint proposed Verdict Form. If an agreement cannot be reached, each may file their own proposed verdict form.

4. **MOTIONS *IN LIMINE*.**

- a. Any party wishing to have motions *in limine* heard prior to the commencement of trial must **exchange** (but not file) the same no later than twenty-eight (28) days prior to the date set for the Pretrial Conference. Each motion may not exceed more than four (4) pages. No more than fifteen (15) motions may be exchanged, and each motion shall be numbered. The parties shall then meet and confer and attempt to resolve the issues raised in the motions prior to the filing of the Pretrial Statement. Parties frequently misuse motions *in limine* in an attempt to exclude broad categories of possible evidence. Such motions are routinely denied. Any motion *in limine* must specify the precise exhibits or proffered testimony the party seeks to exclude.
- b. Any motions *in limine* not resolved shall be filed at the same time as the Pretrial Conference Statement. To the extent the motion *in limine* refers to exhibits, the moving party must provide a copy of the exhibit(s) along with the motion. Any party opposing such a motion *in limine* shall file and serve its opposition papers no later than **nine (9) days prior** to the Pretrial Conference. Each opposition shall reference the moving party's motion *in limine* number. Reply papers are not permitted.
- c. Chambers copies shall be provided in a separate binder entitled **MOTIONS *IN LIMINE*** and collated with the opposition papers following the motion papers. Said binder shall be delivered no later than **noon, seven (7) days** prior to the Pretrial Conference. The binder shall include copies of the motions and oppositions *with* the ECF header reflecting the item's docket number and filing date.
- d. One Proposed Order on Motions *in Limine* per side shall be provided, briefly identifying the requested relief and the legal basis therefor. The proposed order shall be formatted to

allow the Court state a ruling of granted, granted with modification, or denied for each motion *in limine*.

5. ELECTRONIC COPIES OF TRIAL DOCUMENTS.

Parties shall send an electronic copy in MS **Word** format to ygrchambers@cand.uscourts.gov and ygrpo@cand.uscourts.gov of the following documents listed above: (i) Proposed Order Re: Trial Stipulations; (ii) Proposed Order Re: Discovery Excerpts; (iii) Joint Set of Jury Instructions; (iv) any revised or supplemental jury instructions; (v) Proposed Juror Questionnaire (if any); (vi) Proposed Verdict Forms; and (vii) Proposed Order(s) on Motions *in limine*.

6. EXHIBITS

- a. **Delivery of Exhibits to Other Parties.** At least twenty-eight (28) days before the Pretrial Conference, the parties shall exchange with every other party one set of all proposed exhibits, charts, schedules, summaries, diagrams, recordings, and other similar documentary materials *in the form to be used at trial*, together with a complete list of all such proposed exhibits. By joint agreement only, the parties may exchange the above-referenced documents by providing only a complete list of proposed exhibits through reference to bates labels or other identification.
- b. **Voluminous or lengthy exhibits** shall be reduced by the elimination of irrelevant portions and/or through the use of summaries, if possible. For particularly lengthy exhibits, the offering party should indicate why a summary is not being offered.
- c. **Audio/Video Evidence.** A written transcript of all audio or video recordings to be used at trial must be delivered to opposing counsel twenty-eight (28) days in advance, and discussed during the meet and confer process. The exhibit list must identify the specific portions of the recording the party intends to offer in its case in chief by reference to transcript pages. The parties shall meet and confer and attempt to resolve any disagreements regarding designations or counter-designations. The Court recommends that the parties confer in advance of the 28 days to discuss the issue and avoid duplicative costs. Parties are reminded to designate those portions of deposition transcripts which introduce the deponent to the jury.
- d. **Subparts.** All groups of exhibits containing multiple parts (including photographs) shall be marked separately for each part (*e.g.*, 1-A, 1-B, and 1-C).
- e. **Stipulations re: Admissibility.** The parties shall make a good faith effort to stipulate to admissibility of exhibits. If stipulation is not possible, the parties shall make every effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection. To reduce the number of disputes, if a potential exhibit is identified by a party “in an abundance of caution,” it shall be identified as such.
- f. Until it is admitted, NO EXHIBIT may be shown to the jury, including during Opening Statements, without the express approval of the Court.
- g. All exhibits which have not been exchanged as required are subject to exclusion.

h. **Copies of Exhibits to Court.**

- i. Unless otherwise ordered, a final set of exhibits shall be provided to the Court on the **Friday prior to the trial date** as follows:
 - (A) One original set is for use in the trial and to be provided to the jurors.
 - (B) The second set is for the Court and shall be provided in binders, marked, tabbed, and indexed. However, if a party uses witness binders, a copy of the witness binder for the Court is sufficient.
 - (C) If a bench trial, a third set for Court staff which shall also be in binders, marked, tabbed, and indexed.
- ii. Exhibits sets shall be delivered to Chambers in coordination with the Courtroom Deputy.
- iii. Each exhibit shall be pre-marked with an exhibit tag placed in the top right corner of the first page of a document. Parties are to use different colors than white for the exhibit tags. A page of blank trial exhibit tags can be found on the Court's website.
- iv. If an exhibit is a physical object (rather than a document), a picture should be taken and placed in the respective binders.
- v. Updated Exhibit Lists shall be included in the binders.
- i. No later than the start of closing arguments, the parties shall provide the Courtroom Deputy with a list of Admitted Exhibits for use by the jury in its deliberations.
- j. **Disposition of Exhibits after Trial.** Upon the conclusion of the trial, the Court will retain the original of all exhibits in accordance with Local Rule 79-4.

7. **NON-JURY TRIALS.**

In non-jury cases, each party shall serve and lodge with the Court **fourteen (14) days** prior to the Pretrial Conference, proposed Findings of Fact and Conclusions of Law on all material issues. Proposed Findings shall be brief, written in plain English and free of pejorative language, conclusions, and argument. In addition to the copy in the binder, parties shall send an electronic copy in Word format to ygrchambers@cand.uscourts.gov and ygrpo@cand.uscourts.gov.

8. **MISCELLANEOUS.**

- a. The parties shall take and provide a photograph of each witness who testifies on the day of their testimony to assist the trier of fact with recalling the testimony. Sufficient copies for the Court and all jurors shall be provided by the end of the day of testimony.
- b. If a party wishes to use electronic equipment or other large items (such as bookshelves), the party must file a request and proposed order with the Court by the second Friday preceding the trial. Equipment not provided by the Court must be tested in the courtroom prior to the day when it will be used. Arrangements may be made with the Courtroom Deputy, Frances Stone, at (510) 637-3540 as to an appropriate time for doing so.

- c. Please **DO NOT** call Chambers. If you need to contact the Courtroom Deputy, please call (510) 637-3540 and leave a message if the Deputy is not available.

9. PROFESSIONAL RESPONSIBILITY.

- a. The Court expects all parties to meet and confer in good faith, which will have the effect of reducing the costs of trial for all involved. This requires that all parties comply independently, and simultaneously, then jointly. Any breakdown in the meet and confer process should be reported so that the Court may take action well in advance of the Pretrial Conference.
- b. **No party is relieved of any of the requirements of this Standing Order without a prior written order of this Court.**

IT IS SO ORDERED.

Dated: April 2, 2019


YVONNE GONZALEZ ROGERS
United States District Judge

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Judge Yvonne Gonzalez Rogers**

APPENDIX

When printing and providing these documents to the Court, please use the “portrait” orientation only. (Do not use “landscape” orientation.)

(SAMPLE EXHIBIT LIST)

Ex. No.	Description	Sponsoring Witness	Stipulation to Admit	Objection	Date Admitted

(SAMPLE LIST OF DISCOVERY/AUDIO/VIDEO EXCERPTS)

No.	Form of Excerpt	Designation in Dispute	Legal Objection

(SAMPLE PROPOSED ORDER RE: DISCOVERY/AUDIO/VIDEO EXCERPTS)

No.	Form of Excerpt	Designation in Dispute	Court’s Ruling