GUIDELINES FOR TRIAL IN CIVIL CASES (JURY AND BENCH)

PRETRIAL ARRANGEMENTS

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

2. During trial, parties may wish to use, *e.g.*, overhead projectors, laser-disk/computer graphics, poster blow-ups, models, or specimens of devices. The United States Marshal requires a court order to allow equipment into the Courthouse. Parties should be prepared to fix any equipment, if necessary.

SCHEDULING

1. Trial will normally be conducted from 8:30 a.m. to 2:00 p.m. (or slightly longer to finish a witness), with one 15-minute break and one 40-minute lunch break. Parties must arrive by 8:00 a.m. or, in a jury trial, earlier as needed for any matters to be heard out of the presence of the jury. The jury will be called at 8:30 a.m. The trial week is Monday through Friday, excluding holidays. Thursday are dark.

JURY SELECTION

1. In civil jury cases, there are no alternate jurors, and the jury is typically selected as follows. At the outset, 18 potential jurors are called and seated in the jury box and front courtroom bench in the order their names are drawn from the drum. This placement will determine their order in the selection process. The Court will first conduct its voir dire of the entire panel (not just the seated 18) to determine hardships. Jurors excused from the seated 18 will be replaced from those drawn from the panel. The Court will then voir dire the seated 18 for

cause. Afterwards, the parties will be allowed a brief follow-up voir dire (15 minutes). Once all voir dire is completed, the Court will address all challenges for cause and excuse those potential jurors who have been successfully challenged. After a short recess, each side may exercise its allotment of peremptory challenges. The plaintiff has the first challenge, the defendant the next two, the plaintiff the next two, and so forth. The default number of peremptory challenges per party or side is three. Any party that passes will be deemed to have used a challenge. The eight (or such other size as will constitute the jury) surviving the challenge process with the lowest numbers become the final jury. Once the jury selection is completed, the jurors' names will be read again, and they will be seated in the jury box and sworn in. The Court may alter the above procedure in its discretion.

2. Jurors may take notes. Note pads will be distributed at the beginning of each trial. The pads will remain in the jury room at the end of each day. Jurors will be instructed on the use of notes both in the preliminary and final jury instructions.

TIME LIMITS

1. Ordinarily, the Court shall set fixed time limits for the presentation of evidence by each side at the final pretrial conference. The time limit includes all examination time (whether direct, cross, re-direct, or re-cross) for each witness regardless of which party called the witness. Opening and closing time limits shall be separately considered.

OPENING STATEMENTS

1. Each side may be subject to a predetermined time limit for its opening statement.

2. Parties 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 one court day in advance of trial.

3. In a jury case, parties should be prepared to give opening statements as soon as the jury is sworn.

WITNESSES

1. At the close of each trial day (at 2:00 p.m.), parties shall exchange a list of witnesses for the next full court day and the exhibits that will be used on direct and cross-examination (other than for impeachment of an adverse witness). By 4:00 p.m. that same day, opposing parties shall provide any objections to such exhibits and further shall provide a list of all exhibits to be used with the same witnesses on cross-examination (other than for impeachment). The Court will address objections before 8:30 a.m. on the following day. The first notice of objection shall be provided one court day prior to the first day of trial. All notices should be provided in writing and filed with the Court, and a courtesy copy should be given to chambers immediately.

2. Parties should always have their next witness ready and in the Courthouse. Failure to have the next witness ready may constitute resting.

3. Parties are expected to cooperate with each other in the scheduling and production of witnesses. Witnesses may be taken out of order if necessary. Every effort shall be made to avoid calling a witness twice (as an adverse witness and later as a party's witness).

4. If a witness is testifying at the time of a recess or adjournment and has not been excused, the witness shall be seated back on the stand when court reconvenes. If a new witness is to be called immediately following recess or adjournment, the witness should be seated in the front row, ready to be sworn.

5. Immediately before each new witness takes the stand, counsel calling the witness shall place on the witness stand a clearly marked copy of each exhibit that counsel expects to

have the witness refer to during his or her direct examination. Immediately before beginning cross-examination, counsel conducting cross-examination shall do the same with any additional exhibits to be referenced on cross.

6. If counsel intends to have the witness draw diagrams or put markings on visual exhibits or diagrams prepared by the party calling the witness, the witness shall do so before taking the stand. Once on the stand, the witness shall adopt the diagrams and/or markings and explain what they represent. If the diagram or visual exhibit is prepared by the opposing party, the witness shall not make any markings on the diagram or visual exhibit without leave of the Court.

7. A witness or exhibit not listed in the joint pretrial conference statement may not be called or used without good cause. This rule does not apply to true rebuttal witnesses (other than experts). Defense witnesses are normally considered case-in-chief witnesses, not "rebuttal" witnesses.

USE OF DEPOSITIONS TO IMPEACH OR SHORT READ-INS

1. Depositions used at trial for impeachment shall comply with the following procedure:

a. On the first day of trial, bring the original and clean copies of any deposition(s) intended to be used. A sealed original copy shall be provided to the Judge.

b. The first time a deposition is read, counsel should state the deponent's name, the date of the deposition, and the name of the lawyer asking the question. If the deposition was a Rule 30(b)(6) deposition, counsel should so state.

c. When counsel reads a passage into the record, counsel should simply say, for example, "I wish to read in page ____, lines ____ to ____ from the witness's deposition." A

brief pause will be allowed for any objection.

d. Counsel should then proceed by stating "question" and reading the question exactly, then stating "answer" and reading the answer exactly. Stating "question" and "answer" is necessary so that the court reporter, the Court, and the jury (in a jury trial) can follow who was talking at the deposition.

e. Rather than reading a passage, counsel is free to play a videotaped version of the passage, but counsel must have a system for immediate display of the precise passage.

DEPOSITION DESIGNATIONS

1. The following procedure applies only to witnesses who appear by deposition. It does not apply to live witnesses whose depositions are read in while they are on the stand. To prepare designated deposition testimony, counsel shall photocopy the cover page, the page where the witness is sworn, and each page from which any testimony is proffered, including pages containing a counter-designation made by opposing counsel. Counsel should redact objections or colloquy unless needed to understand the question. In addition, counsel should redact any testimony that has not been designated or any testimony to which an objection has been made and sustained by the Court. Any corrections must be interlineated and references to exhibit numbers must conform to the trial numbers. The finished packet should then be the actual script and should smoothly present the identification and swearing of the witness and testimony desired.

2. Counsel is free to play a videotaped version of any deposition testimony, but counsel must have a system for immediate display of the precise testimony omitting any properly redacted passages.

EXHIBITS

1. 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. If the plaintiff has marked an exhibit, then the defendant should not re-mark it. Different versions of the same document, *e.g.*, a copy with additional handwriting, must be treated as different exhibits. 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, however, then the latter must be conformed to the new trial number if and when the deposition testimony is read (so as to avoid confusion over exhibit numbers).

2. Exhibits are not to be filed but rather shall be submitted to chambers (two sets). *Exhibits must be premarked. In addition, one set of exhibits must be tagged.* Exhibits shall be three-hole punched and shall be submitted in binders. Sample tags may be obtained from the Courtroom Deputy and are attached as Exhibit A hereto.

3. Parties must consult with each other and with the Courtroom Deputy at the end of each trial date and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, parties should bring them promptly to the Court's attention.

4. In a jury trial, before the case goes to the jury, parties must confer with the Courtroom Deputy to make sure the exhibits going to the jury room are all in evidence and in good order. Parties may, but are not required to, jointly provide a revised list of all exhibits actually in evidence (and no others) stating the exhibit number and a brief, non-argumentative description (*e.g.*, letter from A to B, dated August 17, 1999). This list may go into the jury room

to help the jury sort through exhibits. In a bench trial, parties may follow a similar procedure to help the Court sort through exhibits.

OBJECTIONS

1. Counsel shall stand when making objections and briefly state the basis of the objection.

2. Counsel shall not make speaking objections.

3. There can be only one lawyer per witness per party for all purposes, including objections.

4. In a jury trial, sidebar conferences are discouraged. The procedures outlined in these guidelines should eliminate the need for most sidebars.

5. In a jury trial, to maximize jury time, parties must alert the Court in advance of any problems that will require discussion outside the presence of the jury so that the conference can be held before court begins or after the jury leaves for the day.

SETTLEMENTS AND CONTINUANCES

1. Shortly before trial or a final pretrial conference, parties occasionally wish jointly to advise the Courtroom Deputy that a settlement has been reached and seek to take the matter off calendar, but it turns out later that there was only a settlement "in principle" and disputes remain. Cases, however, cannot be taken off calendar in this manner. Unless and until a legally binding settlement is reached, all parties must be prepared to proceed with the final pretrial conference as scheduled and to proceed to trial on the trial date, or face dismissal of the case for lack of prosecution or entry of default judgment. To facilitate settlement, the Court is available to place the material terms of a settlement on the record. Only an advance continuance expressly approved by the Court will release parties from their obligation to proceed to trial. If parties

expect that a settlement will be final by the time of trial or the final pretrial conference, they should notify the Court immediately in writing or, if it occurs over the weekend before the trial or conference, by voicemail to the Courtroom Deputy. The Court will attempt to confer with the parties as promptly as circumstances permit to determine if a continuance will be in order or if it can assist the parties in putting the settlement on the record. Pending such a conference, however, parties must prepare and make all filings and be prepared to proceed with trial.

2. 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. Please be aware that any settlement reached on the day of trial, during trial, or at any time after the jury or potential jurors have been summoned will normally require the parties to pay juror costs.

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case Number:

PLTF / DEFT EXHIBIT
NO.______________

Date
Admitted:__________________________

By:__________________________________

Angella Meuleman, Deputy Clerk

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