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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**GUIDELINES FOR FINAL PRETRIAL CONFERENCES IN BENCH TRIALS  
BEFORE DISTRICT JUDGE LUCY H. KOH**

**A. Meeting and Disclosure Prior to Pretrial Conference:** At least 21 days<sup>1</sup> before the final Pretrial Conference, lead counsel who will try the case shall meet and confer with respect to:

1. Settlement of the Case;
2. Preparation of the Joint Pretrial Statement;
3. Preparation and exchange of pretrial materials to be served and lodged pursuant to Federal Rule of Civil Procedure 26(a)(3); and
4. Clarifying and narrowing the contested issues for trial in order to achieve a just, speedy, and efficient determination of the case.

**B. Joint Pretrial Statement:** At least 14 days before the final Pretrial Conference, the parties shall lodge and serve a Joint Pretrial Statement containing the following information:

1. Substance of the Action. A brief description of the parties, the substance of claims and defenses that remain to be decided, and the operative pleadings that raise the issues;

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<sup>1</sup> Time shall be computed according to Federal Rule of Civil Procedure 6(a).

- 1           2. Relief Sought. A detailed statement of all relief claimed, particularly itemizing all  
2           elements of damages claimed as well as witnesses, documents, or other evidentiary  
3           material to be presented concerning the amount of damages;
- 4           3. Undisputed Facts. A plain and concise statement of all relevant facts to which the  
5           parties will stipulate for incorporation into the trial record without the necessity of  
6           supporting testimony or exhibits;
- 7           4. Disputed Factual Issues. A plain and concise list of the issues of fact that are  
8           contested and remain to be litigated at trial;
- 9           5. Agreed Statement. A statement assessing whether all or part of the action may be  
10          presented upon an agreed statement of facts;
- 11          6. Stipulations. A statement of proposed stipulations or agreements that will expedite  
12          the presentation of evidence;
- 13          7. Witnesses to be Called. A list of witnesses likely to be called at trial, other than  
14          solely for impeachment or rebuttal, together with a brief statement following each  
15          name describing the substance of the testimony to be given. No party shall be  
16          permitted to call any witness in its case in chief who is not disclosed in its Joint  
17          Pretrial Statement without leave of the Court for good cause;
- 18          8. Exhibits, Schedules, Summaries. A list of all documents and other items to be  
19          offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a  
20          brief statement following each, describing its substance or purpose and the identity  
21          of the sponsoring witness;
- 22          9. Disputed Legal Issues. Without extended legal argument, a concise statement of  
23          each disputed point of law concerning liability or relief, citing supporting statutes  
24          and decisions;
- 25          10. Further Discovery or Motions. A statement of all remaining discovery, if any, or  
26          any motions or matters that must be resolved prior to trial, including motions in  
27          limine;
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- 1 11. Disputed Evidentiary Issues. A concise statement of each disputed evidentiary issue  
2 (even if a motion in limine will not be filed on that issue), citing supporting statutes  
3 and decisions or referring to the appropriate motion in limine;
- 4 12. Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a  
5 separate trial of specific issues is feasible and desired;
- 6 13. Estimate of Trial Time. An estimate of the total number of hours or days needed for  
7 the trial; and
- 8 14. Miscellaneous. Any other matters that will facilitate the just, speedy and efficient  
9 determination of the action.

10 **C. Binding Effect of the Joint Pretrial Statement**: The parties are bound by their  
11 admissions in the Joint Pretrial Statement.

12 **D. Preparation for Trial**

- 13 1. Joint and Parties' Exhibits:
  - 14 a) At least 14 days before the final Pretrial Conference, the parties shall exchange  
15 copies of all exhibits, summaries, charts, and diagrams to be used at trial other  
16 than solely for impeachment or rebuttal.
  - 17 b) The parties shall meet and confer and create a list of joint exhibits.
  - 18 c) Each exhibit shall be pre-marked for identification. Counsel shall meet and  
19 confer and reach agreement upon a method for marking exhibits (for example,  
20 Plaintiff shall use numbers and Defendant shall use letters, or Plaintiff shall use  
21 numbers 100-199 and Defendant shall use numbers 200-299, etc.).
  - 22 d) At least 7 days before trial, the parties shall deliver three sets of the pre-marked,  
23 double-sided joint exhibits and parties' exhibits in three ring binders to  
24 Cassandra Dibble, Courtroom Deputy to Judge Koh.
  - 25 e) No party shall be permitted to offer any exhibit at trial that is not disclosed in its  
26 Joint Pretrial Statement without leave of the Court for good cause.
- 27 2. Motions in Limine: Each side may file up to three motions in limine. Each motion  
28 in limine and each opposition shall not exceed three pages. No replies are

1 permitted. Motions in limine shall be filed at least 14 days before the final Pretrial  
2 Conference. Oppositions thereto shall be filed at least 10 days before the final  
3 Pretrial Conference. Each motion should be presented in a separate memo and  
4 numbered as, for example, “Plaintiff’s Motion in Limine No. 1 to Exclude . . . .”  
5 Please limit motions in limine to circumstances that actually require a ruling in  
6 advance of trial. Each motion should address a single topic. These motions  
7 generally will be decided without oral argument.

- 8 3. Deposition and Discovery Designations: At least 14 days before trial, the parties  
9 shall file and serve any excerpts of deposition testimony or other discovery to be  
10 offered at trial, other than solely for impeachment or rebuttal. (A hard copy of the  
11 designated deposition testimony with page and line references, or the interrogatory  
12 response or admission shall be provided.) Any objections to the use of designated  
13 excerpts and any counter-designations of deposition testimony shall be filed and  
14 served at least 10 days before trial.
- 15 4. Proposed Findings of Fact and Conclusions of Law. At least 7 days before the final  
16 Pretrial Conference, each party shall file and serve proposed findings of fact and  
17 conclusions of law. The findings of fact shall set forth in simple declarative  
18 sentences, separately numbered, all factual contentions relied upon by the party in  
19 support of its claims or defenses and shall be free of pejorative language and  
20 argument. Conclusions of law shall be supported by appropriate citation to legal  
21 authority. The proposed findings of fact and conclusions of law shall be delivered  
22 in hard copy to Chambers as well as emailed in Microsoft Word to  
23 [LHKpo@cand.uscourts.gov](mailto:LHKpo@cand.uscourts.gov).
- 24 5. Trial Briefs: Trial briefs are optional, but any party wishing to file a trial brief must  
25 do so not less than 7 days before trial.
- 26 6. Time Limits: At or before the final Pretrial Conference, the Court will set time  
27 limits on opening statements (if any), evidence, and closing arguments (if any). All  
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examination (direct, cross, re-direct or re-cross) time and all time introducing exhibits must fit within your evidence time limit.

**E. Scheduling**

The normal trial schedule will be 9:00 a.m. to 4:30 p.m., with a lunch break from 12:00 p.m. to 1:00 p.m., on Mondays, Tuesdays, and Fridays.

**F. Settlement and Continuances**

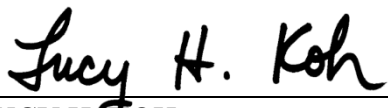
The Court will not vacate pretrial conferences or trials until the parties file a stipulation of dismissal. If the parties are not prepared to file a stipulation of dismissal with prejudice, they may file a stipulation of dismissal without prejudice then file a stipulation of dismissal with prejudice after all actions required by the settlement have been completed.

**G. Opportunities for Less Experienced Lawyers**

The Court strongly encourages parties to permit less experienced lawyers to examine witnesses at trial and to have an important role at trial. Counsel should be prepared to discuss such opportunities at the Pretrial Conference.

**IT IS SO ORDERED.**

Dated: September 23, 2019

  
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LUCY H. KOH  
United States District Judge