

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

A. Meeting and Disclosure Prior to Pretrial Conference: At least 21 days¹ 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;

¹ 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;
- 28

- 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. Jury Materials:

16 a. At least 7 days before the final Pretrial Conference, the parties shall file and
17 serve:

- 18 1) Jury Voir Dire Questions;
- 19 2) Joint Proposed Preliminary Jury Instructions;
- 20 3) Joint Proposed Final Jury Instructions; and
- 21 4) Joint Proposed Jury Verdict Form.

22 b. At least 7 days before the final Pretrial Conference, the parties shall email to
23 LHKpo@cand.uscourts.gov their joint preliminary jury instructions, their
24 joint final jury instructions, and their joint verdict form in Microsoft Word.

25 c. The parties shall use the Model Jury Instructions of the Ninth Circuit as
26 much as possible where appropriate. In the event the parties are unable to
27 agree to the language of a particular jury instruction or verdict form
28

1 question, the parties shall provide a brief statement in support of their
2 respective positions.

3 5. Trial Briefs: Trial briefs are optional, but any party wishing to file a trial brief must
4 do so not less than 7 days before trial.

5 6. Time Limits: At or before the final Pretrial Conference, the Court will set time
6 limits on attorney voir dire, opening statements, evidence, and closing arguments.
7 All examination (direct, cross, re-direct or re-cross) time and all time introducing
8 exhibits must fit within your evidence time limit.

9 7. Joint List of Entities, Individuals, and Locations: At least 7 days before the final
10 Pretrial Conference, the parties shall file one joint list of entities, individuals and
11 locations involved in the case, so that the jurors can review this list during jury
12 selection. The joint list should include the names of the parties, witnesses,
13 attorneys, paralegals, secretaries, and investigators involved in the case as well as
14 their places of employment.

15 **E. Scheduling**

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

18 **F. Settlement and Continuances**

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

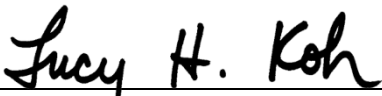
24 **G. Opportunities for Less Experienced Lawyers**

25 The Court strongly encourages parties to permit less experienced lawyers to examine
26 witnesses at trial and to have an important role at trial. Counsel should be prepared to
27 discuss such opportunities at the Pretrial Conference.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: September 23, 2019



LUCY H. KOH
United States District Judge