

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

**CIVIL PRETRIAL AND TRIAL STANDING ORDER FOR CASES BEFORE
DISTRICT JUDGE HAYWOOD S. GILLIAM, JR.¹**

INTRODUCTION

1. The parties must make every effort to raise and, if possible, resolve pretrial and trial issues early. While the Court understands that trial is not entirely predictable, the parties must frontload all evidentiary and legal disputes to the extent possible. Issues that surface unnecessarily on the eve of or during trial waste the jury’s time and are strongly disfavored.

MEET AND CONFER

2. At least 28 days before the final Pretrial Conference, lead counsel who will try the case shall meet and confer with respect to the following subjects: (1) settlement of the case; (2) preparation of the joint pretrial filings; and (3) clarifying and narrowing the contested issues for trial. Counsel in close geographical proximity are encouraged to meet in person.

EXCHANGE OF EVIDENCE

3. At least 28 days before the Pretrial Conference, each party shall provide every other party (but not the Court) with one set of all proposed exhibits, charts, schedules, summaries, diagrams, and other similar documentary materials to be used in its case in chief at trial, together with a complete list of all such proposed exhibits. These materials may be provided in electronic form if the parties so agree. Voluminous exhibits shall be reduced by elimination of irrelevant portions or through the use of summaries. Exhibits must be marked in accordance with paragraphs 16-18 of this Order. *All exhibits not provided are subject to exclusion in the reasonable exercise of the Court’s discretion.*

4. At least 28 days before the Pretrial Conference, each party shall provide every other party (but not the Court) with (1) the names of all witnesses each party intends to call at trial, as

¹ For the parties’ convenience, a timeline of the parties’ pretrial obligations under this Standing Order is attached as Appendix A. The Appendix contains significantly less detail than the Standing Order itself and should not be used as a substitute for reading and following the requirements in the full Standing Order.

1 well as a brief description of the subject matter of their testimony; and (2) a list containing
2 citations to all evidence that a party might introduce at trial, other than that to be used solely for
3 impeachment or rebuttal, that was obtained from deposition testimony, interrogatory responses, or
4 responses to requests for admission. *All witnesses and citations not identified are subject to*
5 *exclusion in the reasonable exercise of the Court's discretion.*

6 **PRETRIAL FILINGS**

7 5. Unless otherwise ordered, the parties shall file the documents listed in paragraphs
8 6-15 (*i.e.*, joint pretrial statement and proposed order, proposed jury instructions, proposed voir
9 dire questions, proposed verdict forms, proposed statement of the case, and trial briefs) no later
10 than 14 days before the pretrial conference. Proposed jury instructions, voir dire questions, verdict
11 forms, and proposed statements of the case should not be submitted in cases tried to the bench.
12 No later than 14 days before the final pretrial conference, the parties shall also submit the
13 proposed joint pretrial statement and proposed order, and any proposed jury instructions, voir dire
14 questions, verdict form(s), and statement of the case in Word format via email to
15 HSGpo@cand.uscourts.gov.

16 6. Two side-tabbed binders containing courtesy copies of these materials (as well as
17 any motions in limine, oppositions to those motions, and/or statements of non-opposition) must be
18 delivered to the Clerk's office by noon the day after filing. All courtesy copies must be double-
19 sided, three-hole punched at the left margin, and marked with the ECF stamp (case number,
20 document number, date, and page number) on the top of each page. These binders shall be marked
21 "Chambers Copy – Do Not File" and shall be clearly labeled with Judge Gilliam's name and the
22 case number.

23 7. **Joint Pretrial Statement and Proposed Order.** The parties shall file a joint
24 pretrial statement and proposed order, which must contain the following information:

- 25 a) Substance of the Action. A brief description of the parties, the substance of claims and
26 defenses that remain to be decided, and the operative pleadings that raise the issues.
27 b) Relief Requested. A detailed statement of all requested relief, particularly itemizing all
28 elements of damages claimed.

- 1 c) Undisputed Facts. A plain and concise statement of all relevant facts to which the
2 parties will stipulate for incorporation into the trial record without supporting
3 testimony or exhibits. The parties shall exercise good faith in stipulating to facts that
4 are not reasonably disputable.
- 5 d) Disputed Factual Issues. A plain and concise list of the issues of fact that are contested
6 and remain to be litigated at trial.
- 7 e) Agreed Statement. A statement assessing whether all or part of the action may be
8 presented upon an agreed statement of facts.
- 9 f) Stipulations. A statement of stipulations requested or proposed.
- 10 g) Witness to be Called. A list of all witnesses likely to be called at trial, other than solely
11 for impeachment or rebuttal, together with a brief statement following each name
12 describing the substance of the testimony to be given. *No party shall be permitted to*
13 *call any witness in its case in chief who is not disclosed in its pretrial statement unless*
14 *the Court grants leave for good cause.*
- 15 h) Exhibits, Schedules, and Summaries. A list of all documents or other items to be
16 offered as exhibits at trial, other than solely for impeachment or rebuttal, and a brief
17 statement following each that describes: (1) its substance or purpose; (2) the identity of
18 the sponsoring witness; and (3) whether the parties have stipulated to its admissibility
19 and, if they have not, the objection to its admission, the grounds for the objection, and
20 the position of the offering party. If the list is voluminous, Section h) should be
21 attached as an appendix to the joint pretrial statement and proposed order.
- 22 i) Disputed Legal Issues. Without extended legal argument, a concise statement of each
23 disputed point of law concerning liability or relief, citing supporting statutes and
24 decisions.
- 25 j) Pending Motions or Matters. A statement of any motions or other matters that must be
26 resolved prior to trial.
- 27 k) Bifurcation or Separate Trial of Issues. A statement of whether either party requests
28 bifurcation or a separate trial of specific issues and why.

- 1) Use of Discovery Responses. A list containing citations to all evidence that a party might introduce at trial, other than that to be used solely for impeachment or rebuttal, that was obtained from deposition testimony, interrogatory responses, or responses to requests for admission. Counsel shall state any objections to the use of these materials, the grounds for the objections, the position of the offering party, and shall certify that the parties have conferred regarding such objections. If the list is voluminous, Section 1) should be attached as an appendix to the joint pretrial statement and proposed order.
- m) Estimate of Trial Time. An estimate of the number of court days needed 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.
- n) Settlement Discussion. A brief summary of the status of settlement negotiations, without indicating specific dollar amounts, and an indication of whether further negotiations are likely to be productive and what, if anything, would facilitate settlement.
- o) Miscellaneous. Any other matters that will facilitate the just, speedy, and efficient resolution of the action.

The joint pretrial statement and proposed order shall include the following language directly above the signature lines:

The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of trial of this case, unless modified by the Court to prevent manifest injustice.

8. **Proposed Jury Instructions**. The parties shall meet and confer and 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 where possible. Any modifications to a form instruction must be plainly identified to the Court. Any language a party proposes to be removed from a model instruction must be designated with a ~~striketrough~~ and language proposed to be added to a model instruction must be underlined.

1 9. The parties should include proposed text for all proposed jury instructions, even for
2 any form preliminary instructions, general instructions, or concluding instructions on which they
3 agree. Instructions upon which the parties agree shall be identified as “Stipulated Instruction No.
4 __ Re _____,” with blanks filled in as appropriate.

5 10. If, after meeting and conferring in good faith, the parties cannot agree on a
6 proposed jury instruction, each party’s proposed version shall be provided and identified as
7 “Disputed Instruction No. __ Re _____, Offered by _____,” with blanks filled in as
8 appropriate. All proposed versions of the same instruction shall bear the same number. Following
9 each set of proposed versions of a disputed instruction, each party shall explain, in no more than
10 one page, why the Court should give that party’s proposed instruction. If the parties dispute
11 whether a particular instruction should be given at all, the proponent of the instruction shall
12 provide proposed language, identified as “Disputed Instruction No. __ Re _____, Offered by
13 _____,” with blanks filled in as appropriate. Following the disputed instruction, each party
14 shall explain, in no more than one page why the instruction should or should not be given.

15 11. **Proposed Voir Dire Questions.** In cases tried before a jury, the parties are
16 expected to meet and confer and file a joint set of proposed voir dire questions for the Court to
17 ask. Unless otherwise indicated, the Court will conduct voir dire.

18 12. If, after meeting and conferring in good faith, there are proposed questions about
19 which the parties do not agree, each party may submit a list of disputed proposed questions they
20 wish to be put to the venire. The proponent of each disputed question shall provide proposed
21 language, identified as “Disputed Question No. __, Offered by _____,” with blanks filled in as
22 appropriate. No argument concerning why a disputed proposed question should or should not be
23 asked shall be submitted.

24 13. Note that during voir dire the Court will elicit the jurors’ basic biographical
25 information through its own questioning (*e.g.*, current employment, marital status, past jury
26 service), so those subjects need not be included in the parties’ set of proposed questions.

27 14. **Proposed Verdict Forms.** The parties are expected to meet and confer and file a
28 joint proposed verdict form. If, after a good faith effort to meet and confer, the parties cannot

1 agree on a joint form, the parties may submit separate proposed verdict forms. If the verdict form
2 is disputed, each party shall explain, in no more than one page, why its proposed verdict form
3 should be given.

4 15. **Proposed Statement of the Case.** The parties shall jointly file a proposed
5 Statement of the Case to be read to the jury during voir dire. Unless the case is extremely
6 complex, this statement should not exceed one page (double-spaced).

7 16. **Trial Briefs.** Parties are not required to file trial briefs. If a party chooses to file a
8 trial brief, it shall not be longer than five pages. Trial briefs shall not duplicate the contents of the
9 joint pretrial statement and proposed order.

10 **EXHIBITS**

11 17. Each exhibit shall be pre-marked with a trial exhibit sticker (“Trial Exhibit
12 No. __”), not deposition exhibit label, and defendant’s exhibit numbers shall be sequenced to begin
13 after plaintiff’s exhibit numbers.

14 18. The parties shall agree on blocks of numbers to fit the needs of the case (e.g.,
15 Plaintiff has 1-100, Defendant has 101-200) and make a good faith effort to avoid marking the
16 same exhibit in their respective blocks. If the same exhibit is marked by more than one party, the
17 defendant shall withdraw the duplicative exhibit (but should not renumber its portion of the
18 exhibit list). Section h) of the parties’ joint pretrial statement and proposed order must identify the
19 exhibit numbers of the exhibits withdrawn as duplicates.

20 19. Exhibits shall be identified as follows:

21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT 100
Case No. _____
Date Entered _____
By _____ Deputy Clerk

1 support of the motion. No party filing a motion in limine should submit courtesy copies of their
2 motions to the Court until the parties file their pretrial filings 14 days before the Pretrial
3 Conference.

4 25. Any party opposing a motion in limine shall file its opposition papers (or statement
5 of non-opposition) no later than 14 days prior to the Pretrial Conference. Each opposition is
6 limited to five pages; the moving party shall not file a reply brief. Courtesy copies of all motions
7 in limine and oppositions must be included in the binder containing the parties' pretrial filings in
8 the format described in paragraph five of this Order.

9 26. The motions will be heard at the Pretrial Conference or at such other time as the
10 Court may direct.

11 **TRIAL**

12 27. Trial will be conducted from 8:30 a.m. to 1:30 p.m. on Mondays through Fridays.
13 Counsel must arrive by 8:00 a.m. each day, or earlier if directed by the Court, to discuss any
14 matters that need to be heard outside the presence of the jury. The jury will be called at 8:30 a.m.

15 28. Should a daily transcript and/or real-time reporting be desired, the parties shall
16 make arrangements with the Supervisor of the Court Reporting Services at (415) 522-2079 at least
17 14 days before trial.

18 29. The courtroom is equipped with monitors and a sound system. Should the parties
19 wish to utilize additional technology, the United States Marshals Service requires a court order to
20 allow equipment into the Courthouse. The parties must file a written request and proposed order
21 no later than seven days prior to the beginning of trial if they wish to bring any such technology
22 into the Courthouse. Parties should be prepared to fix any equipment, if necessary.

23 30. The parties shall disclose the witnesses whom they will call and the exhibits to be
24 introduced through those witnesses (except exhibits to be used solely for impeachment purposes)
25 by noon the day before the parties intend to call those witnesses. Failure to have a witness ready
26 to proceed at trial will usually constitute resting.

27 31. At the end of the trial day, the parties shall meet and confer regarding all exhibits
28 and demonstratives intended to be produced on the following day. Meeting and conferring via


1 email is not sufficient; the parties must meet in person or over the telephone. If the parties cannot
2 in good faith resolve all of their evidentiary disputes without the Court's involvement, each party
3 shall file a single statement of five pages or less framing its position on the dispute(s) by midnight.
4 If deposition designations are the subject of any unresolved disputes, the relevant deposition
5 excerpts must be attached to the parties' statements.

6 32. Counsel must consult with the Courtroom Deputy at the beginning of the first day
7 of trial regarding the procedure for tracking admitted exhibits and any limitations thereon. If there
8 are any disagreements between the parties regarding the status of the exhibits, counsel shall bring
9 them promptly to the Court's attention. At the close of evidence, before closing arguments,
10 counsel must confer with the Courtroom Deputy to make sure the exhibits in evidence are in good
11 order. Counsel should also be prepared to upload all admitted exhibits from a flash drive to the
12 jury computer so that the jury may access the exhibits during deliberation.

13 33. Upon the conclusion of the trial, each party shall retain its exhibits through the
14 appellate process. It is each party's responsibility to make arrangements with the Clerk of Court
15 to file the record on appeal.

16 **IT IS SO ORDERED.**

17 Dated: January 12, 2017

18 
19 HAYWOOD S. GILLIAM, JR.
20 United States District Judge
21
22
23
24
25
26
27
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

APPENDIX A

CHRONOLOGICAL SUMMARY OF PRETRIAL EXCHANGES AND SUBMISSIONS

Date	Event
28 Days Before Pretrial Conference	Lead counsel to meet and confer regarding settlement, pretrial filings, and narrowing of issues (¶ 2)
	Provide all other parties with proposed exhibits, charts, schedules, summaries, diagrams, and other similar documentary materials to be used case in chief at trial, as well as a list of those materials (¶ 3)
	Provide all other parties (1) the names of all witnesses each party intends to call at trial, as well as a brief description of the subject matter of their testimony; and (2) a list containing citations to all evidence that a party might introduce at trial, other than that to be used solely for impeachment or rebuttal, that was obtained from deposition testimony, interrogatory responses, or responses to requests for admission (¶ 4)
21 Days Before Pretrial Conference	File any motions in limine (¶¶ 23- 24)
14 Days Before Pretrial Conference	File joint pretrial statement and proposed order (¶ 7)
	File proposed jury instructions (jury trial only) (¶¶ 8-10)
	File proposed voir dire questions (jury trial only) (¶¶ 11-13)
	File proposed verdict forms (jury trial only) (¶ 14)
	File proposed statement of the case (jury trial only) (¶ 15)
	File trial briefs (optional) (¶ 16)
	File oppositions/statements of non-opposition to motions in limine (¶ 25)
File proposed joint pretrial statement and proposed order, proposed jury instructions, voir dire questions, verdict form(s), and statement of the case to HSGpo@cand.uscourts.gov . (¶ 5)	
13 Days Before Pretrial Conference (by Noon)	Submit two binders to the Clerk’s office containing the joint pretrial statement and proposed order, any proposed jury instructions, voir dire questions, verdict forms, statement of the case, and trial briefs, as well as all motions in limine, oppositions, and/or statements of non-opposition (¶ 6)
7 Days Before Trial	Submit a flash drive to the Clerk’s office containing the exhibits identified in Section (h) of the parties’ joint pretrial statement and proposed order (and not already excluded by the Court in limine) (¶ 21)
3 Days Before Trial	File form exhibit and witness lists (¶ 22)