

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**STANDING ORDER FOR CIVIL JURY TRIALS BEFORE JUDGE JAMES DONATO**

These requirements and guidelines apply to all civil cases to be tried to a jury before Judge Donato, unless the parties have specifically been ordered otherwise in their case.

**INVITATION TO COUNSEL AND PARTIES**

The Court encourages parties and their lawyers to use juries to resolve disputes that are subject to trial. Counsel and their clients are invited to think creatively about ways to minimize trial costs, enhance jury comprehension and deliberations, and maximize trial efficiency. Counsel should include discussion of ideas along these lines in the communications leading up to the pretrial filings and conference. The Court will consider all reasonable proposals, particularly ones made jointly by the parties.

**SCHEDULING OF PRETRIAL CONFERENCE AND MEETING**

1. The Court will schedule a final pretrial conference 19 days before the start of trial. The pretrial materials detailed here must be filed 14 days before the final pretrial conference. Lead trial counsel must meet and confer about the preparation of the joint pretrial materials no later than 30 days before they are due. Lead trial counsel and a primary party representative must also personally attend the final pretrial conference.

**PRETRIAL FILINGS**

2. The parties must file these pretrial documents no later than 14 days before the final pretrial conference (this date will be referred to as “the pretrial filings due date”). Two three-hole punched, double-sided chambers copies of these materials must be delivered to the Clerk’s office by noon the day after filing. Failure to file a required document may result in sanctions, including

a finding that an argument or request has been waived, and failure to conform to page limitations and filing deadlines may result in a filing being disregarded or stricken.

3. **Joint Pretrial Statement.** The parties will file a **joint** pretrial statement, signed and vetted by all lead trial counsel, that contains the following information:

- i. *Substance of the Action:* A brief description of the substance of the claims and defenses which remain to be decided.
- ii. *Relief Requested:* A statement of all relief sought, itemizing all elements of damages claimed.
- iii. *Undisputed Facts:* A statement of all relevant undisputed facts to which the parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
- iv. *Disputed Factual Issues:* A statement of all relevant disputed facts that remain to be decided.
- v. *Disputed Legal Issues:* Without extended legal argument, a brief statement of disputed points of law concerning liability and relief.
- vi. *Stipulations:* A statement of stipulations requested or proposed.
- vii. *Bifurcation:* A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.
- viii. *Settlement:* A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- ix. *Estimate of trial length:* An estimate of the total length of the trial.

4. **Trial Brief.** Each party will serve and file a trial brief, not to exceed 10 pages, specifying each cause of action and defense remaining to be tried along with a statement of the applicable legal standard.

5. **Motions In Limine.** The parties are expected to work together in good faith to resolve evidentiary issues before the pretrial conference. If disputes remain, the Court will allow up to 10 motions in limine per *side*, to be served and filed as follows:

- i. At least 14 days before the pretrial filings due date, counsel must serve, but not file, the moving papers.
- ii. At least 4 days before the pretrial filings due date, the responding party must serve, but not file, the oppositions.

1           iii.    The moving party should then collate each motion and opposition together and  
2                file the paired sets along with that party's other pretrial materials on the pretrial  
3                filings due date.

4           iv.    No brief in support or opposition of a motion in limine may exceed **3 pages** in  
5                length, and proposed orders need not be prepared. Reply briefs are not permitted.

6           6.    Motions in limine should be used for evidentiary issues that require a ruling in  
7                advance of trial. They are not substitutes for summary judgment or other dispositive motions, or  
8                motions to exclude expert testimony. Motions in limine may not be used to request summary  
9                judgment or raise *Daubert* challenges unless the Court has specifically granted prior approval.

10          7.    **Proposed Jury Instructions And Verdict Forms.** The parties must file a joint set  
11                of proposed jury instructions, *arranged in the order the parties propose the Court give the*  
12                *instructions.* The parties should use the Ninth Circuit Model Jury Instructions to the fullest extent  
13                possible. Modifications and "custom" proposed instructions are discouraged. If offered, they  
14                should be clearly identified as such.

15          8.    Undisputed instructions must be identified as "Stipulated Instruction No. \_\_ Re  
16                \_\_\_\_\_,," with the blanks filled in as appropriate. For disputed instructions, each party's  
17                proposed version must be provided and identified as, "Disputed Instruction No. \_\_ Re \_\_\_\_\_  
18                Offered by \_\_\_\_\_," with the blanks filled in as appropriate. All proposed versions of the  
19                same instruction should bear the same number.

20          9.    Following each set of competing versions of a disputed instruction, each party may  
21                explain, in no more than two pages, why the Court should give that party's proposed instruction.  
22                Any party taking the position that an instruction should not be given at all may submit a two-page  
23                explanation of its position in lieu of a counter-version.

24          10.   The parties must also file a joint proposed verdict form, using the same process.

25          11.   The parties must e-mail a Microsoft Word version of the proposed jury instructions  
26                and verdict form to jdpo@cand.uscourts.gov by noon the day after the pretrial filings due date.  
27                The parties should not submit proposed preliminary instructions, which the Court will do on its  
28                own in a draft to which the parties may propose modifications.

          12.   **Voir Dire.** As a general matter, the Court will handle voir dire based on questions  
              proposed by the parties that the Court agrees to ask. If the parties would like the Court to consider

1 particular voir dire questions, they should file a joint set of proposed questions. There is no need  
2 to include basic background questions such as name, occupation, education and so on. The Court  
3 has standard questions prepared on those topics. If the parties disagree on any proposed question,  
4 the disagreement should be noted and explained, in no more than one page per party.

5 13. A Microsoft Word version of the proposed voir dire questions should be e-mailed  
6 to jdpo@cand.uscourts.gov by noon the day after the pretrial filings due date.

7 14. **Witness List.** The parties must file by the pretrial filings due date a joint list of all  
8 witnesses who are likely to be called at trial (other than solely for impeachment or rebuttal  
9 purposes), including a brief statement describing the substance of the testimony to be given by  
10 each witness and an estimate of minutes or hours the witness's testimony is expected to take  
11 (direct and cross).

12 15. **Exhibit Lists.** The parties must jointly file by the pretrial filings due date two  
13 separate charts of proposed documentary exhibits, with one chart summarizing those exhibits that  
14 the parties agree are admissible and another chart summarizing those exhibits for which  
15 admissibility is disputed. The chart of disputed exhibits must identify the objecting party and  
16 include succinct summaries of the objection and the response, with authority that supports the  
17 parties' respective positions. Both charts must also include the following information as to all  
18 exhibits: (1) exhibit number; (2) name or brief description of the exhibit; and (3) the exhibit's  
19 purpose and sponsoring witness.

## 20 **JURY MATERIALS**

21 16. Counsel should focus intensely on ways of enhancing the jury's comprehension of  
22 trial testimony and evidence. To that end, the parties will jointly prepare by the first day of trial  
23 notebooks for the jury's use. Each notebook will be a 1-inch three-ring black binder with a plastic  
24 slip pocket on the cover. Each binder should have a title page inserted in the slip pocket with the  
25 name and case number of the action in large print. Inside the binder, the parties will provide 50  
26 pages of lined notepaper clipped into the rings. The parties should consider including a glossary  
27 of acronyms or specialized terms that they expect to come up during trial. The glossary needs to  
28 be jointly prepared and approved by the Court before it goes to the jury. For each witness, the

sponsoring party will hand out a photograph captioned with the witness's name and printed on a full sheet of paper that is hole-punched for the binder. The photograph must consist of a head-shot of the witness dressed as he or she appears on the stand. The photograph will be handed to the jury before the witness's testimony starts.

17. In most cases, exhibits admitted into the record will be made available to the jury in searchable electronic form on a computer in the jury room. Please consult with Lisa Clark, the Courtroom Deputy, on the requirements for this system. More information can also be found on the Court's website at <http://www.cand.uscourt.gov/jurypc>.

18. This is a non-exclusive list of jury materials. The Court is happy to consider other ideas from counsel at the pretrial conference.

19. The Court has found that juries benefit considerably from the opportunity to ask questions at trial. The Court favors allowing jurors to ask questions during testimony by raising a hand and stating the question. The Court will screen the question and decide whether to allow it. Counsel are directed to consider stipulating to this procedure.

### **COURTROOM TECHNOLOGY**

20. Courtroom 11 is fully set up for the electronic display of evidence to the jury, the Court and opposing counsel. Counsel should plan on using this system.

### **EXHIBITS**

21. The parties must provide two sets of all trial exhibits -- double-sided and three-hole-punched in three-ring binders, with each exhibit tagged and separated by a label divider identifying the exhibit number. These sets must be delivered to the Court on the morning of the first day of trial.

22. Prior to the final pretrial conference, counsel must meet and confer *in person* over all exhibit numbers and objections and to weed out duplicate exhibits and confusion over the precise exhibit. Parties should use numbers only, not letters, for exhibits, and preferably the same numbers as were used in depositions. The parties should work in good faith to resolve authenticity concerns.

23. Blocks of numbers should be assigned to fit the needs 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 the exact document with another number. Different versions of the same document, e.g., a copy with additional handwriting, must be treated as different exhibits with different numbers.

24. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. \_\_,” and not as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a deposition transcript, then the deposition transcript must be conformed to the new trial number if and when the deposition testimony is read to the jury (so as to avoid confusion over exhibit numbers). The jury should always hear any given exhibit referred to by its trial number. There should be no competing versions of the same exhibit number; any discrepancies must be brought to the Court’s attention immediately.

25. Each exhibit shall be tagged in the following form:

<p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA <b>TRIAL EXHIBIT 100</b> CASE NO. _____ DATE ENTERED _____ BY _____ DEPUTY CLERK</p>
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The tag should be placed on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the case number but leave the last two spaces blank.

26. The parties must jointly prepare a single set of all trial exhibits (a copy set of which must be provided as noted above) that will be the official record set to be used with the witnesses, in the jury room, and on appeal.

27. Counsel should move exhibits into evidence as soon as the foundation is laid. Counsel must consult with each other and with the Courtroom Deputy at the end of each trial day and compare notes as to which exhibits are in evidence and any limitations thereon.

29. A party must disclose the identity of the witnesses it plans to call -- as well as the exhibits to be used during the direct examination of any witness -- by 4 p.m. two calendar days before calling the witness to the stand. For example, a witness that will be called on Wednesday must be disclosed to the other parties by Monday at 4 p.m. Any party that has an objection must alert the Court as soon as possible but no later than the end of the day before any witness is to be called, and the Court will take up the objection outside the presence of the jury.

30. Only the tagged exhibit should be shown to witnesses. Before the examination begins, counsel must retrieve the tagged exhibits to be used and have them at the ready.

31. The parties must have all upcoming witnesses for the trial day available in the courthouse and ready to testify. Failure to have the next witness ready or to be prepared to proceed with the evidence will usually constitute resting.

32. Unless otherwise ordered, no later than 5 days before trial is set to begin, the parties must jointly file all excerpts of deposition testimony or other discovery responses that will be offered by any party at trial for any reason other than impeachment or rebuttal. The parties must meet and confer about these designations no later than 21 days before trial. By the 5-day-before-trial deadline, each party must also submit any counter-designations or objections it may have to the deposition testimony or discovery designated by any other party. The Court strongly favors use of deposition videos over reading a transcript in court.

33. The Court's normal trial schedule will be Monday, Tuesday, Thursday and Friday from 9 a.m. to 2 p.m. There will be two breaks of about 15 minutes each but no lunch break.

1 Wednesdays are dark. Any matters that need to be heard outside the presence of the jury will  
2 usually be addressed at 8:30 a.m. on trial days.

3 34. Each side must designate an official “timekeeper” who will keep track of the  
4 number of minutes and hours of trial time used by each side. The timekeepers for both sides must  
5 check their tracked time against the time noted in the Court’s daily report, and must confer with  
6 the Courtroom Deputy about any perceived discrepancies on a daily basis. The Courtroom Deputy  
7 has the final word on the time count.

### 8 **OPENING STATEMENTS**

9 35. Each side will receive a time limit for its opening statement (to be determined at the  
10 final pretrial conference). As a general rule, openings will not exceed 30 minutes per side.  
11 Counsel must cooperate and meet and confer to exchange any visuals, graphics or exhibits to be  
12 used in the opening statements, allowing for time to work out objections and any reasonable  
13 revisions. Counsel must be prepared to proceed with opening statements as soon as the jury is  
14 sworn. Counsel are advised that jury selection is typically completed in a half day and they should  
15 assume they will make opening statements later on the same day.

### 16 **MOTIONS**

17 36. Prior to filing any motions during trial, the moving party must first discuss the  
18 proposed motion with the Court.

### 19 **OBJECTIONS AND SIDEBARS**

20 37. When making objections, counsel should stand and state only the legal grounds for  
21 the objection and must withhold all further comment or argument unless elaboration is requested  
22 by the Court.

23 38. The Court does not permit sidebars or other distractions when the jury is present.  
24 Counsel should not ask for them. Any pressing issues can be dealt with on a break or before or  
25 after the jury is present for the day.

### 26 **SETTLEMENTS AND CONTINUANCES**

27 39. Cases cannot be taken off calendar -- and trial dates will not be moved -- based on  
28 settlements “in principle.” Unless and until a stipulated dismissal or judgment is filed or placed on




1 the record, all parties must be prepared to proceed with the final pretrial conference as scheduled  
2 and/or proceed to trial on the trial date. Only a continuance in advance expressly approved by the  
3 Court will release counsel and the parties from their obligation to proceed.

4 40. Counsel should try to resolve or settle cases no later than 24 hours before the jury  
5 pool is called to the courthouse and before the close of business on a Friday. Civil Local Rule 40-  
6 1 provides that jury costs may be assessed as sanctions for failure to provide the Court with timely  
7 written notice of a settlement. If a case settles less than 24 hours before the jury pool is scheduled  
8 to appear, or over the weekend before a Monday trial call, the parties will be required to pay the  
9 Court's jury costs (typically the per diem and mileage for each member of the jury pool) in equal  
10 shares in addition to any agreed-upon settlement amounts.

11 **IT IS SO ORDERED.**

12 Dated: November 24, 2015

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15 JAMES DONATO  
16 United States District Judge  
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