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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**GUIDELINES FOR TRIAL AND FINAL PRETRIAL CONFERENCE
IN CIVIL JURY CASES BEFORE THE HONORABLE JEFFREY S. WHITE**

FINAL PRETRIAL CONFERENCE PROCEDURES AND REQUIRED FILINGS

Counsel shall not prepare a joint pretrial conference statement. Instead, please follow the following procedures:

1. In lieu of preparing a joint pretrial conference statement, the parties shall meet and confer in person and prepare a jointly signed proposed final pretrial order to be filed fourteen (14) calendar days in advance of the final pretrial conference. This joint pretrial conference order should contain: (i) a brief description of the substance of claims and defenses which remain to be decided; (ii) a statement of all relief sought; (iii) all stipulated facts; (iv) a list of all factual issues that remain to be tried, stating the issues with the same generality/specificity as any contested elements in the relevant jury instructions and organized by counts; (v) a joint exhibit list in numerical order, including a brief description of the exhibit and Bates numbers, a blank column for when it will be offered into evidence, a blank column for when it may be received into evidence, and a blank column for any limitations on its use; and (vi) each party's separate witness list for its case-in-chief witnesses (including those appearing by deposition) providing, for all

1 such witnesses other than an individual plaintiff and an individual defendant, a short
2 statement of the substance of his/her testimony and, separately, what, if any, non-
3 cumulative testimony the witness will offer. If non-cumulative testimony is not spelled
4 out, the Court will presume the witness is cumulative. For each witness, state an
5 hour/minute time estimate for both direct and cross examination. The Court uses this
6 information to estimate the time limits to be allocated for trial. Items (v) and (vi) should
7 be appendices to the proposed order. The proposed order should also state which issues,
8 if any, are for the Court to decide, rather than the jury. The objective is to convert the
9 proposed order to a final order with the benefit of any discussion at the final pretrial
10 conference.

11 2. In addition to the joint pretrial order, fourteen (14) days in advance of the
12 final pretrial conference, the parties also shall file the following materials:

13 (a) A joint set of proposed instructions on substantive issues of law arranged
14 in a logical sequence. If undisputed, an instruction shall be identified as “Stipulated
15 Instruction No. ____ Re _____.” The parties also must ensure that all
16 modifications to form instructions are submitted to the Court, *i.e.* if a model instruction
17 includes bracketed language or blanks, the parties must provide the Court with the
18 appropriate language from the brackets and the blanks shall be completed.

19 Even if stipulated, the instruction shall be supported by citation. If disputed, each
20 version of the instruction shall be inserted together, back to back, in their logical place in
21 the overall sequence. Each such disputed instruction shall be identified as, for example,
22 “Disputed Instruction No. ____ Re _____ Offered by _____,”
23 with the blanks filled in as appropriate. All disputed versions of the same basic
24 instruction shall bear the same number. Citations with pin cites are required. Any
25 modifications to a form instruction must be clearly identified, *i.e.* in bold or italics. If a
26 party does not have a counter version and simply contends that no such instruction in any
27 version should be given, then that party should so state (and explain why in the separate
28 memoranda required by paragraph 2.b) on a separate page inserted in lieu of an alternate

1 version. With respect to form preliminary instructions, general instructions, or
2 concluding instructions, please simply cite to the numbers of the requested instructions in
3 the current edition of the *Ninth Circuit Manual of Model Jury Instructions (Civil)*. Other
4 than citing the numbers, the parties shall not include preliminary, general or concluding
5 instructions in the packet, but shall include the full text of these instructions on the CD-
6 ROM required by this Order. Again, if the form instructions contain bracketed language
7 or blanks, the parties should provide the Court with the appropriate language from the
8 brackets and all blanks should be completed.

9 (b) The parties are encouraged to keep disputed instructions to a minimum.
10 To the extent they are unable to resolve their disputes, the court requires complete
11 briefing on disputed instructions. Thus, a party supporting an instruction must submit a
12 separate memorandum of law in support of its disputed instructions, organized by
13 instruction number. Please quote exact, controlling passages from the authorities,
14 without ellipses, and give pin cites. The party opposing a given instruction or
15 instructions must include a responsive brief to the supporting party's memorandum,
16 organized by instruction number and also shall quote exact, controlling passages from the
17 authorities, without ellipses and with pin cites.

18 (c) A simplified statement of the case to be read to the jury during voir dire
19 and as part of the proposed jury instructions. Unless the case is extremely complex, this
20 statement should not exceed one page.

21 (d) A joint set of proposed voir dire questions supplemented as necessary by
22 separate requests for good cause only. (Keep these to a minimum, please.)

23 (e) A trial brief not to exceed ten pages on any controlling issues of law.

24 (f) Excerpts of any deposition designations that are to be used in a parties'
25 case in chief as to which there are objections. The parties should include with these
26 excerpts the basis for the objection and the response thereto. If the parties do not have
27 objections to deposition designations, they should follow the procedures set forth in
28 paragraph 27.

1 (g) Excerpts of responses to interrogatories and requests for admissions that
2 are to be used in a party’s case-in-chief as to which there are objections. The parties
3 should include with these excerpts the basis for the objection and the response thereto. If
4 the parties do not have objections to responses to interrogatories or requests for
5 admissions, they should follow the procedures set forth in paragraph 29.

6 (h) A list of objections to each exhibit, in tabular form. The first column
7 should describe the exhibit, the second column should set briefly set forth the basis of the
8 objection, and the third column should set forth a brief response thereto. The parties
9 shall meet and confer, in person, in an attempt to resolve objections to the exhibits before
10 this list is filed with the Court, to consider exhibit numbers, and to eliminate duplicate
11 exhibits and confusion over the precise exhibit. Unless there is a genuine issue as to the
12 authenticity of exhibits, a party that has produced documents should not object to the
13 other party offering those documents as exhibits on the basis of authenticity or the best
14 evidence rule. Finally, the Court normally will not entertain routine objections to
15 exhibits on the basis of a lack of foundation.

16 (i) Any motions *in limine*, as to which the parties should follow the following
17 procedure:

18 The motions *in limine* and all oppositions thereto must be filed no later than
19 fourteen (14) calendar days prior to the Final Pretrial Conference, and shall be submitted
20 to the Court collated and in a binder, as set forth below. Therefore, the parties must serve
21 their motions *in limine* on the opposing party reasonably in advance of the pretrial to
22 permit the opposing party to prepare and serve its opposition.¹ The Court does not permit
23 reply briefs. Each motion should be presented in a separate memo and properly
24 identified, for example, “Plaintiff’s Motion in Limine No. 1 to Exclude”
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28 ¹ The Court suggests, but does not require, that at least thirty (30) calendar days before the
Final Pretrial Conference, the moving party serve, but not file, the opening brief and at least twenty (20)
calendar days before the Final Pretrial Conference, the responding party serve the opposition.

1 Please limit motions *in limine* to circumstances that really need a ruling in
2 advance. No more than five motions per side will be allowed. If a party seeks to file
3 more than five motions *in limine*, they must file an administrative motion at least fourteen
4 days before the motions *in limine* are due to be filed with the Court demonstrating
5 extraordinarily good cause for allowing the excess motions. The administrative motion
6 should summarize the subject matter of each proposed additional motion in limine.

7 Each motion *in limine* should address a single, separate topic, and contain no
8 more than seven pages of briefing per side. Leave of Court will be required to exceed the
9 page limitations. A binder containing all motions in limine should be submitted to the
10 Clerk's office in an envelope clearly marked with the case number and "JSW chambers
11 copy."

12 (j) If the parties intend to use special verdict forms, they should meet and
13 confer in an effort to submit a joint proposed special verdict form. If the parties cannot
14 agree on a proposed special verdict form, they may submit separate proposals.

15 3. The joint proposed final pretrial order, the jury instructions, proposed voir dire,
16 the statement of the case required by Paragraph 2(c) of this Order, objections to exhibits required
17 by paragraph 2(h) of this Order, and any proposed special verdict forms, shall be submitted in
18 WordPerfect 10.0 format on a CD-ROM, as well as in hard copies. All hard-copy submissions
19 should be submitted in a binder to the Clerk's office in an envelope clearly marked with the case
20 number and "JSW chambers copies".

21 4. At the final pretrial conference, the above submissions shall be considered and
22 argued.

23 PRETRIAL ARRANGEMENTS

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

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1 must be listed). Defense witnesses are considered case-in-chief witnesses, not “rebuttal”
2 witnesses.

3 20. When there are multiple parties, counsel are responsible for coordination of
4 cross-examination to avoid duplication. If there are multiple parties on a side, counsel for only
5 one party may cover a subject matter; reiteration of the examination, whether direct or cross, will
6 not be permitted.

7 21. Counsel shall stand at or near the podium to ask questions, straying only to point
8 out material on charts or overheads. Counsel should request permission from the Court to
9 approach the witness or the bench.

10 22. Counsel shall treat witnesses with courtesy and respect, and not become familiar
11 (*e.g.*, avoiding the use of first or nick-names).

12 23. Counsel shall pose brief, direct and simply stated questions, covering one point at
13 a time. Leading questions may be used for background or routine matters.

14 24. Cross-examination similarly should consist of brief, simple questions. Cross-
15 examination should not be a restatement of the direct examination and should not be used for
16 discovery.

17 EXPERTS

18 25. At trial, direct testimony of experts will be limited to the matters disclosed in their
19 reports. Omitted material may not ordinarily be added on direct examination. Illustrative
20 animations, diagrams, charts and models may be used on direct examination only if they were
21 part of the expert report, with the exception of simple drawings and tabulations that plainly
22 illustrate the content of the report, which can be drawn by the witness at trial or otherwise shown
23 to the jury. If cross-examination fairly opens the door, however, an expert may go beyond the
24 written report on cross-examination and/or re-direct examination. By written stipulation, all
25 parties may relax these requirements. The Court will not permit Federal Rule of Evidence 703 to
26 be used to admit otherwise inadmissible evidence through the expert (*i.e.*, through the “back
27 door”). At its discretion, the Court may require the parties’ expert witnesses to testify
28 immediately following one another, with appropriate explanatory instructions to the jury.

1 26. As to damages studies, the cut-off date for *past damages* will be as of the expert
2 report (or such earlier date as the expert may select). In addition, the experts may try to project
3 *future damages* (*i.e.*, after the cut-off date) if the substantive standards for future damages can be
4 met. With timely leave of Court or by written stipulation, the experts may update their reports
5 (with supplemental reports) to a date closer to the time of trial.

6 **USE OF DEPOSITION DESIGNATIONS AND USE OF DEPOSITIONS FOR**
7 **IMPEACHMENT OR SHORT READ-INS**

8 27. Depositions can be used at trial to impeach a witness testifying at trial or, in the
9 case of a party deponent, “for any purpose.” For depositions to be used for impeachment
10 purposes, the parties shall abide by the following procedure:

11 (a) On the first day of trial, counsel shall bring the original and clean
12 copies of any deposition(s) intended to be used during the course of the trial.

13 Any corrections must be readily available. If counsel need to use the deposition
14 during a witness examination, they shall provide the Court with a copy and with
15 any corrections at the outset of the examination. This will minimize delay
16 between the original question and the read-ins of the impeaching material.

17 Opposing counsel should have their copy immediately available.

18 (b) When counsel reads a passage into the record, counsel should
19 seek permission from the Court. For example, counsel should state: “I wish to
20 read in page 210, lines 1 to 10 from the witness’ deposition.” A brief pause will
21 be allowed for any objection.

22 (c) The first time a deposition is read, counsel shall state the
23 deponent’s name, the date of the deposition, the name of the lawyer asking the
24 question, and if it was a Federal Rule of Civil Procedure 30(b)(6) deposition.
25 The first time a deposition is read, the Court will give an appropriate explanation
26 to the jury about depositions. Do not embellish the deposition testimony with
27 follow-on questions.
28

1 (d) When reading in the passage, counsel shall state “question” and
2 then read the question exactly, followed by, “answer” and then read the answer
3 exactly. Stating “question” and “answer” is necessary so the jury and the court
4 reporter can follow who was talking at the deposition. Once the passage is on
5 the record, move on. Opposing counsel may then immediately ask to read such
6 additional testimony as is necessary to complete the context.

7 (e) To avoid mischaracterizing the record, counsel should not ask,
8 “Didn’t you say XYZ in your deposition?” It is unnecessary to ask a witness if
9 he “recalls” the testimony or otherwise to lay a foundation.

10 (f) Subject to Federal Rule of Evidence 403, party depositions may
11 be read into the record whether or not they contradict (and regardless of who the
12 witness is on the stand). For example, a short party deposition excerpt may be
13 used as foundation for questions for a different witness on the stand.

14 28. The following procedure applies to the manner in which deposition designations
15 shall be presented to the jury. The parties shall have met in conferred sufficiently in advance
16 of trial to ensure that they will be able to submit their objections to the Court at the pretrial
17 conference pursuant to Paragraph 2(f) of this Order. In addition, the parties must have met and
18 conferred regarding counter-designations, and shall submit any objections to counter-
19 designations in accordance with Paragraph 2(f) of this Order. It does not apply to live
20 witnesses whose depositions are read into the record while they are on the stand.

21 (a) To prepare designated deposition testimony to be read to the jury,
22 counsel shall photocopy the cover page, the page where the witness is sworn, and
23 then each page containing any testimony to be proffered, with lines through
24 portions of such pages not proffered. In addition, counsel shall line through
25 objections or colloquy unless they are needed to understand the question. Any
26 corrections must be interlineated and references to exhibit numbers must
27 conform to the trial numbers. Such interlineations should be done by hand. The
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1 finished packet should then be the actual script and should smoothly present the
2 identification and swearing of the witness and testimony desired.

3 (b) When the packet is read to the jury, the examiner shall read the
4 questions (and any relevant colloquy) from the lectern while a colleague sits in
5 the witness stand and reads the answers. While reading the deposition the reader
6 and “witness” shall refrain from undue emoting, emphasis or other
7 dramatization. The same procedure shall be followed when a video-taped
8 deposition is to be played instead, in order to facilitate rulings on objections.
9 The video should omit any dead time, long pauses, and objections/colloquy not
10 necessary to understand the answers.

11 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

12 29. Please prepare responses to requests for admissions and interrogatory answers in
13 the same manner for presentation to the jury in the same manner as deposition designations.

14 **EXHIBITS**

15 30. Use numbers only, not letters, for exhibits, preferably the same numbers as were
16 used in depositions. Blocks of numbers should be assigned to fit the need of the case
17 (*e.g.*, Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.).
18 A single exhibit should be marked only once, just as it should have been marked only once in
19 discovery pursuant to this Court’s discovery guidelines). If the plaintiff has marked an exhibit,
20 then the defendant should not re-mark the exact document with another number. Different
21 *versions* of the same document, *e.g.*, a copy with additional handwriting, must be treated as
22 different exhibits with different numbers. To avoid any party claiming “ownership” of an
23 exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as
24 “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a
25 deposition transcript, then the latter transcript must be conformed to the new trial number if and
26 when the deposition testimony is read to the jury (so as to avoid confusion over exhibit
27 numbers). The jury should always hear any given exhibit referred to by its unique number.
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1 There should be no competing versions of the same exhibit number; any discrepancies must be
2 brought to the Court's attention promptly.

3 31. The exhibit tag shall be in the following form:

4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 **TRIAL EXHIBIT 100**
8 CASE NO. _____
9 DATE ENTERED _____
10 BY _____
11 DEPUTY CLERK
12

13 Counsel preferably will make the tag up in a color that will stand out (yet still allow for
14 photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or,
15 if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank.
16 The parties must jointly prepare a *single* set of all trial exhibits that will be the official record
17 set to be used with the witnesses and on appeal. Each exhibit must be tagged and in a separate
18 folder (not in notebooks). Deposit the exhibits with the deputy clerk on the first day of trial.
19 The tags can be adhesive or stapled on.

20 32. Counsel must consult with each other and with the deputy clerk at the end of
21 each trial day and compare notes as to which exhibits are in evidence and any limitations
22 thereon. If there are any differences, counsel should bring them promptly to the Court's
23 attention.

24 33. In addition to the official record exhibits, two copies of the joint set of bench
25 binders containing a copy of the exhibits must be provided to the Court on the first day of trial.
26 Each exhibit must be separated with a label divider (an exhibit tag is unnecessary for the bench
27 set). In large letters, the labels should identify the range of exhibit numbers contained in a
28 binder.

TIME LIMITS

1
2 41. Ordinarily, the Court shall set fixed time limits at the final pretrial conference.
3 All of your examination time (whether direct, cross, re-direct or re-cross) for all witnesses and
4 side bar conference time (as specified above) must fit within your time limit and you may
5 allocate it as you wish. Opening and closing time limits shall be considered separately.
6 Counsel must keep track of everyone’s usage. At the end of each day, counsel must confer over
7 the time used and the time remaining for all parties and advise the Court daily. The time taken
8 at a side bar or on objections will still be charged to the examining party unless otherwise
9 ordered.

CHARGING CONFERENCE

10
11 42. As the trial progresses and the evidence is heard, the Court will fashion a
12 comprehensive set of jury instructions to cover all issues actually being tried. Prior to the close
13 of the evidence, the Court will provide a draft final charge to the parties. After a reasonable
14 period for review, one or more charging conferences will be held at which each party may
15 object to any passage, ask for modifications, or ask for additions. Any instruction request must
16 be renewed specifically at the conference or it will be deemed waived, whether or not it was
17 requested prior to trial. If, however, a party still wishes to request an omitted instruction after
18 reviewing the Court’s draft, then it must affirmatively re-request it at the charging conference in
19 order to give the Court a fair opportunity to correct any error. Otherwise, as stated, the request
20 will be deemed abandoned or waived.

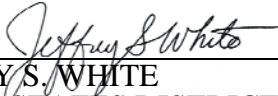
SETTLEMENTS AND CONTINUANCES

21
22 43. Shortly before trial or the final pretrial conference, counsel occasionally wish
23 jointly to advise the clerk that a settlement has been reached and seek to take the setting off
24 calendar but it turns out later that there was only a settlement “in principle” and disputes
25 remain. Cases, however, cannot be taken off calendar in this manner. Unless and until a
26 stipulated dismissal or judgment is filed or placed on the record, all parties must be prepared to
27 proceed with the final pretrial conference as scheduled and to proceed to trial on the trial date,
28 or face dismissal of the case for lack of prosecution or entry of default judgment. Only an

1 advance continuance expressly approved by the Court will release counsel and the parties from
2 their obligation to proceed. If counsel expect that a settlement will be final by the time of trial
3 or the final pretrial conference, they should notify the Court immediately in writing or, if it
4 occurs over the weekend before the trial or conference, by voice mail to the deputy clerk. The
5 Court will attempt to confer with counsel as promptly as circumstances permit to determine if a
6 continuance will be in order. Pending such a conference, however, counsel must prepare and
7 make all filings and be prepared to proceed with the trial.

8 44. Local Rule 40-1 provides that jury costs may be assessed as sanctions for failure
9 to provide the Court with timely written notice of a settlement. Please be aware that any
10 settlement reached on the day of trial, during trial, or at any time after the jury or potential
11 jurors have been summoned without sufficient time to cancel, will normally require the parties
12 to pay juror costs.

13 **IT IS SO ORDERED.**

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16 JEFFREY S. WHITE
17 UNITED STATES DISTRICT JUDGE

18 10/08 Rev.
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