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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 BENCH CASES BEFORE THE HONORABLE JEFFREY S. WHITE**

FINAL PRETRIAL CONFERENCE AND REQUIRED FILINGS

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

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,

1 for all 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-cumulative
3 testimony the witness will offer. If non-cumulative testimony is not spelled out, the Court will
4 presume the witness is cumulative. For each witness, state an hour/minute time estimate for both
5 direct and cross examination. The Court uses this information to estimate the time limits to be
6 allocated for trial. Items (v) and (vi) should be appendices to the proposed order. The objective
7 is to convert the proposed order to a final order with the benefit of any discussion at the final
8 pretrial conference.

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

11 (a) In addition to the joint pretrial conference statement, fourteen (14) calendar days
12 in advance of the final pretrial conference, each side shall file their: (i) proposed findings of fact
13 and conclusions of law. The parties shall be prepared to meet and confer at the end of each day
14 of trial in an effort to prepare stipulated findings of fact and conclusions of law and to update the
15 previously submitted proposed findings of fact and conclusions to reflect the proceedings at trial.

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

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

21 (d) Excerpts of responses to interrogatories and requests for admissions that are to be
22 used in a party's case-in-chief as to which there are objections. The parties should include with
23 these excerpts the basis for the objection and the response thereto. If the parties do not have
24 objections to responses to interrogatories or requests for admissions, they should follow the
25 procedures set forth in paragraph 26.

26 (e) A list of objections to each exhibit, in tabular form. The first column should
27 describe the exhibit, the second column should set briefly set forth the basis of the objection, and
28 the third column should set forth a brief response thereto. The parties shall meet and confer, in

1 person, in an attempt to resolve objections to the exhibits before this list is filed with the Court,
2 to consider exhibit numbers, and to eliminate duplicate exhibits and confusion over the precise
3 exhibit. Unless there is a genuine issue as to the authenticity of exhibits, a party that has
4 produced documents should not object to the other party offering those documents as exhibits on
5 the basis of authenticity or the best evidence rule. Finally, the Court normally will not entertain
6 routine objections to exhibits on the basis of a lack of foundation.

7 (f) Any motions *in limine*, as to which the parties should follow the following
8 procedure:

9 The motions *in limine* and all oppositions thereto must be filed no later than fourteen (14)
10 calendar days prior to the Final Pretrial Conference, and shall be submitted to the Court collated
11 and in a binder, as set forth below. Therefore, the parties must serve their motions *in limine* on
12 the opposing party reasonably in advance of the pretrial to permit the opposing party to prepare
13 and serve its opposition.¹ The Court does not permit reply briefs. Each motion should be
14 presented in a separate memo and properly identified, for example, “Plaintiff’s Motion in Limine
15 No. 1 to Exclude”

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

22 Each motion *in limine* should address a single, separate topic, and contain no more than
23 seven pages of briefing per side. Leave of Court will be required to exceed the page limitations.
24 A binder containing all motions in limine should be submitted to the Clerk’s office in an
25 envelope clearly marked with the case number and “JSW chambers copy.”

26 3. The proposed findings of fact and conclusions of law, the joint proposed final

27
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 pretrial order, and objections to exhibits required by paragraph 2(e) of this Order, shall be
2 submitted in WordPerfect 10.0 format on a CD-ROM, as well as in hard copies. All hard-copy
3 submissions should be submitted in a binder to the Clerk's office in an envelope clearly marked
4 with the case number and "JSW chambers copies".

5 4. At the final pretrial conference, the above submissions shall be considered and
6 argued.

7 **PRETRIAL ARRANGEMENTS**

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

11 6. During trial, counsel may wish to use overhead projectors, laser-disk/computer
12 graphics, poster blow-ups, models or specimens of devices. The United States Marshal requires
13 a court order to allow equipment into the courthouse.

14 If monitor screens are used, there should be a single large screen (not multiple small
15 screens) viewable by the Court, the witness and most counsel. It should be large and bright
16 enough to be seen when placed on the opposite side of the courtroom. If counsel cannot
17 conveniently see the screen, counsel may have a small monitor at counsel table. If both
18 overhead projector and video equipment are to be used, a single projection screen is best, thus
19 requiring a projection-type video rather than a monitor. If video equipment is used, equipment
20 capable of instantly accessing the relevant portions of transcripts and graphics should be used
21 (rather than, for example, raw video tapes made at depositions which take time to forward or to
22 rewind). Equipment should be shared by all counsel to the maximum extent possible. The Court
23 provides no equipment other than an easel. For electronic equipment, parties should be prepared
24 to maintain the equipment or have a technician handy at all times. For overhead projectors, the
25 parties shall provide a spare bulb. The parties shall tape extension cords to the carpet for safety.
26 The parties shall disassemble and store all equipment in the courtroom at the end of each court
27 day. The parties may work with the deputy clerk, Jennifer Ottolini (415-522-4173), on all
28 courtroom-layout issues.

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SCHEDULING

7. Trial normally will be conducted from 8:00 a.m. to 1:30 p.m. (or slightly longer to finish a witness) with two fifteen-minute breaks, Monday through Thursday, excluding holidays. Counsel must arrive by 7:30 a.m., or earlier as needed for any matters to be heard before the evidence begins. This schedule may be modified at the discretion of the Court.

GENERAL DECORUM

8. A trial is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times. Disruptive tactics or appeals to prejudice are not acceptable.

9. Colloquy between counsel on the record is not permitted -- all remarks are to be addressed to the Court.

10. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Addressing witnesses or parties by first names or the Court by “Judge” or “Sir” on the record is not appropriate.

11. Counsel shall not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client should indicate approval, disapproval or otherwise react to any testimony or argument.

OPENING STATEMENTS

12. If openings are permitted, each side will have a predetermined time limit for its opening statement. Counsel should meet and confer to exchange any visuals, graphics or exhibits to be used in the opening statements, allowing for time to work out objections and any reasonable revisions.

WITNESSES

13. At the close of each trial day, all counsel shall exchange a list of witnesses for the next two full court days and the exhibits that will be used during direct examination (other than for impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall provide any objections to such exhibits and shall provide a list of all exhibits to be used with the

1 same witness on cross-examination (other than for impeachment). The first notice shall be
2 exchanged prior to the first day of trial. All such notice should be provided in writing.

3 14. The parties shall have all upcoming witnesses on the same day available in the
4 courthouse and ready to testify. Failure to have the next witness ready or to be prepared to
5 proceed with the evidence will usually be deemed to constitute resting. If counsel plans to read
6 in a transcript of a deposition, counsel must have a deposition prepared and vetted early on to
7 read into the record.

8 15. A witness or exhibit not listed in the joint pretrial order may not be used without
9 good cause. This rule does not apply to true rebuttal witnesses (other than rebuttal experts who
10 must be listed). Defense witnesses are considered case-in-chief witnesses, not “rebuttal”
11 witnesses.

12 16. When there are multiple parties, counsel are responsible for coordination of the
13 cross-examination to avoid duplication. If there are multiple parties on a side, counsel for only
14 one party may cover a subject matter; reiteration of the examination, whether direct or cross, will
15 not be permitted.

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

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

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

23 20. Cross-examination similarly should consist of brief, simple questions. Cross-
24 examination should not be a restatement of the direct examination and should not be used for
25 discovery.

26 21. In lieu of direct testimony, the Court will consider receiving “prepared direct”
27 testimony in the form of declarations. When the witness is presented, the proponent must
28 verbally summarize the direct. Live cross-examination and redirect shall then occur.

EXPERTS

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

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

18 **USE OF DEPOSITION DESIGNATIONS AND USE OF DEPOSITIONS FOR**
19 **IMPEACHMENT OR SHORT READ-INS**

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

- 23 (a) On the first day of trial, counsel shall bring the original and clean copies
24 of any deposition(s) intended to be used during the course of the trial. Any corrections
25 must be readily available. If counsel need to use the deposition during a witness
26 examination, they shall provide the Court with a copy and with any corrections at the
27 outset of the examination. This will minimize delay between the original question and
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1 the read-ins of the impeaching material. Opposing counsel should have their copy
2 immediately available.

3 (b) When counsel reads a passage into the record, counsel should seek
4 permission from the Court. For example, counsel should state: “I wish to read in page
5 210, lines 1 to 10 from the witness’ deposition.” A brief pause will be allowed for any
6 objection.

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

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

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

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

25 25. The following procedure applies to the manner in which deposition designations
26 shall be presented. The parties shall have met in conferred sufficiently in advance of trial to
27 ensure that they will be able to submit their objections to the Court at the pretrial conference,
28 *see* Paragraph 2(c) of this Order. In addition, the parties must have met and conferred

1 regarding counter-designations, and shall submit any objections to counter-designations in
2 accordance with Paragraph 2(c) of this Order. It does not apply to live witnesses whose
3 depositions are read into the record while they are on the stand.

4 (a) To prepare designated deposition testimony, counsel shall
5 photocopy the cover page, the page where the witness is sworn, and then each
6 page containing any testimony to be proffered, with lines through portions of
7 such pages not proffered. In addition, counsel shall line through objections or
8 colloquy unless they are needed to understand the question. Any corrections
9 must be interlineated and references to exhibit numbers must conform to the trial
10 numbers. Such interlineations should be done by hand. The finished packet
11 should then be the actual script and should smoothly present the identification
12 and swearing of the witness and testimony desired.

13 (b) When the packet is read into the record, the examiner shall read
14 the questions (and any relevant colloquy) from the lectern while a colleague sits
15 in the witness stand and reads the answers. While reading the deposition the
16 reader and “witness” shall refrain from undue emoting, emphasis or other
17 dramatization. The same procedure shall be followed when a video-taped
18 deposition is to be played instead, in order to facilitate rulings on objections.
19 The video should omit any dead time, long pauses, and objections/colloquy not
20 necessary to understand the answers.

21 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

22 26. Please prepare responses to requests for admissions and interrogatory answers in
23 the same manner for presentation in the same manner as deposition designations.

24 **EXHIBITS**

25 27. Use numbers only, not letters, for exhibits, preferably the same numbers as were
26 used in depositions. Blocks of numbers should be assigned to fit the need of the case
27 (*e.g.*, Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.).
28 A single exhibit should be marked only once, just as it should have been marked only once in

1 discovery pursuant to this Court’s discovery guidelines). If the plaintiff has marked an exhibit,
2 then the defendant should not re-mark the exact document with another number. Different
3 *versions* of the same document, *e.g.*, a copy with additional handwriting, must be treated as
4 different exhibits with different numbers. To avoid any party claiming “ownership” of an
5 exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as
6 “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” If an exhibit number differs from that used in a
7 deposition transcript, then the latter transcript must be conformed to the new trial number, if and
8 when the deposition testimony is used (so as to avoid confusion over exhibit numbers). There
9 should be no competing versions of the same exhibit number; any discrepancies must be
10 brought to the Court’s attention promptly.

11 28. The exhibit tag shall be in the following form:

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 100

CASE NO. _____

DATE ENTERED _____

BY _____

DEPUTY CLERK

21 Counsel preferably will make the tag up in a color that will stand out (yet still allow for
22 photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or,
23 if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank.
24 The parties must jointly prepare a *single* set of all trial exhibits that will be the official record
25 set to be used with the witnesses and on appeal. Each exhibit must be tagged and in a separate
26 folder (not in notebooks). Deposit the exhibits with the deputy clerk on the first day of trial.
27 The tags can be adhesive or stapled on.
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29. Counsel must consult with each other and with the deputy clerk at the end of each trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, counsel should bring them promptly to the Court’s attention.

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

31. Before the closing arguments, counsel must confer with the deputy clerk to make sure the exhibits in evidence are in good order. Before the case goes to the Court, counsel shall prepare an easy to read index of admitted exhibits, which should include all exhibits actually in evidence (and no others) stating the exhibit number and a brief, non-argumentative description (*e.g.*, letter from A. B. Case to D. E. Frank, dated August 17, 1999).

OBJECTIONS

32. Counsel shall stand when making objections and shall not make speaking objections.

33. There can only be one lawyer per witness per party for all purposes, including objections. Only one lawyer will be permitted to make the opening statement and closing argument unless the Court has given prior approval to more than one lawyer doing so.

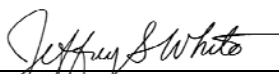
TIME LIMITS

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

1 **SETTLEMENTS AND CONTINUANCES**

2 35. Shortly before trial or the final pretrial conference, counsel occasionally wish
3 jointly to advise the clerk that a settlement has been reached and seek to take the setting off
4 calendar but it turns out later that there was only a settlement “in principle” and disputes
5 remain. Cases, however, cannot be taken off calendar in this manner. Unless and until a
6 stipulated dismissal or judgment is filed or placed on the record, all parties must be prepared to
7 proceed with the final pretrial conference as scheduled and to proceed to trial on the trial date,
8 or face dismissal of the case for lack of prosecution or entry of default judgment. Only an
9 advance continuance expressly approved by the Court will release counsel and the parties from
10 their obligation to proceed. If counsel expect that a settlement will be final by the time of trial
11 or the final pretrial conference, they should notify the Court immediately in writing or, if it
12 occurs over the weekend before the trial or conference, by voice mail to the deputy clerk. The
13 Court will attempt to confer with counsel as promptly as circumstances permit to determine if a
14 continuance will be in order. Pending such a conference, however, counsel must prepare and
15 make all filings and be prepared to proceed with the trial.

16 **IT IS SO ORDERED.**

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19 JEFFREY S. WHITE
20 UNITED STATES DISTRICT JUDGE

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23 10/08 Rev.
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