Last revised March 5, 2012.

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 WILLIAM ALSUP

FRCP 26(a)(3) DISCLOSURES

1. All parties are reminded of their disclosure duties under FRCP 26(a)(3), which begin **THIRTY CALENDAR DAYS** before trial. The FRCP 26(a)(3)(A)(ii) requirement for designating deposition transcripts, however, need not be done until later, as set forth below, although the name of each trial witness to appear by deposition must be so designated at least **THIRTY CALENDAR DAYS** before trial.

FINAL PRETRIAL CONFERENCE

2. At least **SEVEN CALENDAR DAYS** in advance of the final pretrial conference, please file the following:

(a) A joint proposed final pretrial order, signed and vetted by all counsel, that contains: (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 which remain to be tried, stating the issues with the same generality/specificity as any contested elements in the relevant jury instructions, all organized by counts, (v) a joint exhibit list in

numerical order, including a brief description of the exhibit and Bates numbers, a column for when it is offered in evidence, a column for when it is received in evidence, and a 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 such witnesses other than an individual plaintiff and an individual defendant, a statement of the substance of his/her testimony and, separately, what, if any, non-cumulative testimony the witness will give (to be used to set time limits). Items (v) and (vi) should be appendices to the proposed order. Please state which issues, if any, are for the Court to decide, rather than the jury.

(b) A joint set of proposed instructions on *substantive* issues of law arranged in a logical sequence. If undisputed, an instruction shall be identified as "Stipulated Instruction No. _____ Re _____," with the blanks filled in as appropriate. If disputed, each version of the instruction shall be inserted together, back to back, in their logical place in the overall sequence. Each such disputed instruction shall be identified as, for example, "Disputed Instruction No. _____ Re _____ Offered by _____," with the blanks filled in as appropriate. All disputed versions of the same basic topic shall bear the same number. Citations with pin cites are required, even if the instruction is by stipulation. Any modifications to a form instruction must be plainly identified. If a party does not have a counter-version and simply contends no such instruction in any version should be given, then that party should so state (and explain why) on a separate page inserted in lieu of an alternate version. You need not provide any preliminary instructions, general instruction or concluding instructions, all of which the Court will do on its own in a draft for comment.

(c) A separate memorandum of law in support of each party's disputed instruction, organized by instruction number. *Please quote exactly (without ellipses) controlling passages from the authorities and give pin cites.*

(d) A joint special verdict form with the questions (as few as possible) arranged in a logical sequence.

(e) A joint set of proposed voir dire questions supplemented as necessary by separate requests.

(f) Any motion *in limine*, with the opposition, filed as follows: At least **TWENTY CALENDAR DAYS** before the conference, serve, but do not yet file, the moving papers. At least **TEN CALENDAR DAYS** before the conference, serve the oppositions. When the oppositions are received, the moving party should collate the motion and the opposition together, back to back, and then file the paired sets at least **SEVEN CALENDAR DAYS** before the conference. Each motion should be presented in a separate memo and numbered as in, for example, "Plaintiff's Motion in Limine No. 1 to Exclude . . . ." Please limit motions *in limine* to circumstances that really need a ruling in advance. Usually five or fewer motions per side is sufficient at the conference stage (without prejudice to raising matters *in limine* as the trial progresses). Each motion should address a single topic, be separate, and contain no more than seven pages of briefing per side.

(g) Copies of the Rule 26(a)(3) disclosures.

(h) Trial briefs are optional.

3. The above shall be submitted in *Word Perfect X3 or 10* format to whapo@cand.uscourts.gov, as well as in hard copies. *All hard-copy submissions should be three-hole punched on the left, so the judge's copy can be put in binders. Please provide them at least seven calendar days prior to the pretrial conference for the judge's study and review — THIS IS IMPORTANT.*

4. At the final pretrial conference, counsel must take notes on rulings and promptly submit a joint summary of all rulings in proposed-order format.

PRETRIAL ARRANGEMENTS

5. Should a daily transcript and/or real-time reporting be desired, the parties shall make timely arrangements with Deb Campbell, Court Services Coordinator, at debra_campbell@cand.uscourts.gov.

6. So that the jury may follow the evidence, counsel are strongly encouraged to use overhead projectors, laser-disk/computer graphics, poster blow-ups, models or specimens. The United States Marshal requires a court order to allow equipment into the courthouse. For electronic equipment, either know how to fix it or have a technician handy. For overhead projectors, have a spare bulb. Tape extension cords to the carpet for safety. Please take down and store the equipment (in the courtroom) at the end of each court day. Please work with Dawn Toland (415-522-2020) on courtroom-layout issues and contact her to learn how to use the electronic presentation system.

SCHEDULING

7. The normal trial schedule will be 7:30 a.m. to 1:00 p.m. (or slightly longer to finish a witness) with two fifteen-minute breaks and ending before lunch. Counsel must arrive by 7:30 a.m., or earlier as needed for any matters to be heard out of the presence of the jury. The jury will be on-site by 7:45 a.m. Counsel should be prepared to begin jury proceedings as soon as the morning's *in limine* proceedings end, which will normally be by 8:00 a.m. at the latest. Once the jury begins deliberations, it usually stays past 1:00 p.m. The trial week is usually Monday through Friday.

JURY SELECTION

8. On the first day of trial, counsel shall please submit a joint statement of the case to be read to the jury during voir dire. This statement should normally be one page. The Court will usually conduct the voir dire with supplemental questions by counsel at the end. Counsel should not use voir dire to indoctrinate the jury.

9. In civil cases, there are no alternate jurors. To end up with a final jury of eight jurors, we will do the following: Fourteen prospective jurors will be called to fill the jury box and given seat numbers (1 through 14). Others will remain on the public benches. For those

in the jury box, hardship excuses will be considered first and then voir dire will proceed. Some will usually be excused for cause or hardship during voir dire and their seats will be filled as excusals are made. After the panel is passed for cause (or all cause motions are denied), each side may exercise its allotment of peremptory challenges against the fourteen in the jury box. Blind challenges are made simultaneously. Each side writes down the names and seat numbers of those to be stricken. The eight surviving the challenge process become the final jury. For example, if the plaintiff strikes 1, 5 and 7 and the defendant strikes 2, 4 and 9, then 3, 6, 8, 10, 11, 12 13 and 14 become the final jury. If both sides strike one or more of the *same* candidates, then the eight unstruck jurors with the *lowest* seat numbers will be sworn. Once the jury selection is completed, they will be re-seated in the jury box and sworn. The Court may alter the procedure in its discretion. If more than eight jurors (or less) are to be seated, then the starting number will be adjusted. So too if more than a total of six peremptories are allowed.

OPENING STATEMENTS

10. Each side will have a time limit for its opening statement (to be determined at the final pretrial conference). Counsel must cooperate and 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. Be prepared for opening statements as soon as the jury is sworn.

WITNESSES

11. Except for good cause, all counsel are entitled to written firm notice of the order of witnesses for the next court day and the exhibits (including merely illustrative exhibits) to be used on direct examination (other than for true impeachment of a witness). The Court encourages two days notice, *i.e.*, written notice by 2:00 p.m. on the *second* calendar day before the witnesses testify or the exhibit is used. At a minimum, notice must be given no later than 2:00 p.m. on the calendar day *immediately* preceding. If two days written notice is given or two days notice is given that no documents will be used, then all other counsel must give written notice of all other exhibits to be used on cross-examination (except for true impeachment) by 2:00 p.m. on the calendar day immediately preceding the testimony; otherwise, other responding

counsel need not give notice of exhibits they may use. Any exhibit timely noticed by anyone for the witness is usable as if timely noticed by everyone, subject to substantive objections. Similarly, if reference is made to an exhibit during an examination (even if not offered in evidence and even if not noticed for use with the witness), then in any follow-up examination by others, the exhibit may be used to the same extent as if it had been timely noticed, subject to substantive objections. All notices shall be sent by fax or electronically and be time-and-date verifiable. If counsel decides not to call a noticed witness, then prompt written notice of the cancellation must be given. Impeachment exhibits are ordinarily limited to statements signed by or adopted by the witness. Compliance with a two-day notice period, of course, will not satisfy compliance with FRCP 26 or any other disclosure rule.

12. The official tagged exhibit should be shown to witnesses — not supposed copies or notebooks of supposed copies. Before the examination begins, retrieve the official tagged exhibits to be used and have them at the ready. Using copies leads to discrepancies between the exhibit actually introduced into the record (*always* the official tagged exhibit) versus the stray before the witness. The required procedure also helps find any glitches in the official tagged exhibits.

13. Always have your next witness ready and in the courthouse. Failure to have the next witness ready or to be prepared to proceed with the evidence will usually constitute resting. If counsel plans to read in a transcript of a deposition anyway, it is advisable to have a deposition prepared and vetted early on to read "just in case."

14. When there are multiple parties, counsel are responsible for coordination of the cross-examination to avoid duplication. Stand at or near the microphone to ask questions, straying only to point out material on charts or overheads. Please request permission to approach the witness or the bench.

EXPERTS

15. A recurring problem in trials is the problem of expert witnesses trying to go beyond the scope of their expert reports on direct examination. FRCP 26(a)(2) and FRCP 37(c) limit experts to the opinions and bases contained in their timely reports (absent substantial

justification or harmlessness). The Court regularly enforces these rules. FRCP 26(a) also requires that any "exhibits to be used as a summary of or support for the opinions" be included in the report. Accordingly, at trial, the direct testimony of experts will be limited to the matters disclosed in their reports. New matters may not ordinarily be added on direct examination. This means the reports must be complete and sufficiently detailed. Illustrative animations, diagrams, charts and models may be used on direct examination only if they were part of the expert's report, with the exception of simple drawings and tabulations that plainly illustrate what is already in the report, which can be drawn by the witness at trial or otherwise shown to the jury. If cross-examination fairly opens the door, however, an expert may go beyond the written report on cross-examination and/or re-direct examination. By written stipulation, of course, all sides may relax these requirements. Material in a "reply" report must ordinarily be presented in a party's rebuttal (or sur-rebuttal) case *after* the other side's expert has appeared and testified.

16. Another recurring problem is the retained expert who seeks to vouch for the credibility of fact witnesses and/or to vouch for one side's fact scenario. Qualified experts, of course, are always welcome to testify concerning relevant scientific principles, professional standards, specialized facts known within a trade or discipline and the like (so long as it is in the report). They are also welcome to apply those principles and standards to various assumed fact scenarios. This is so even if an opinion is given on the "ultimate issue." But they should not try to vouch for one side's *fact* scenario, *i.e.*, witness believability. It is the jury's responsibility to sort out whose fact scenario is correct, including issues of credibility. An expert, therefore, should give opinions based only on one or more *assumed* fact scenarios.

17. There is an important exception. Experts and doctors who perform scientific tests, site visits, or treat victims, among other possibilities, may testify to their findings within the scope of their firsthand knowledge. This is because they have made personal observations and have reached professional judgments based thereon. Carrying this one step further, even a retained expert may read a financial statement in evidence, watch a video in evidence, listen to a recording in evidence, and so on and offer opinions based on the contents. This is because the contents themselves are clearly defined.

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

USE OF DEPOSITIONS TO IMPEACH AND SHORT READ-INS

19. Depositions can be used at trial to impeach a witness testifying at trial or, in the case of a party deponent, "for any purpose." Please follow the following procedure:

(a) On the first day of trial, be sure to bring the original and clean copies of any deposition(s) for which you are responsible. Any corrections must be readily available. If you are likely to need to use the deposition during a witness examination, then give the Court a copy with any witness corrections at the outset of your examination. This will minimize delay between the original question and the read-ins of the impeaching material. Opposing counsel should have their copy immediately available.

(b) When you wish to read in a passage, simply say, for example: "I wish to read in page 210, lines 1 to 10 from the witness' deposition." A brief pause will be allowed for any objection.

(c) When reading in the passage, state "question" and then read the question exactly. Then state "answer" and then read the answer exactly. Stating "question" and "answer" is necessary so the jury and the court reporter can follow who was talking at the deposition.

(d) The first time a deposition is read, state the deponent's name, the date of the deposition, the name of the lawyer asking the question, and if it was FRCP 30(b)(6) deposition, please say so. The first time a deposition is read, the Court will give an appropriate explanation to the jury about depositions. Please do not embellish on this with follow-on questions.

(e) Please do **NOT** ask, "Didn't you say XYZ in your deposition?" The problem with such a question is that the "XYZ" rarely turns out to be exactly what the deponent said and is part spin. Instead, ask for permission to read in a passage, as above, and read it in exactly, without spin, so that the jury can hear what was actually testified to.

(f) Subject to FRE 403, party depositions may be read in whether or not they contradict (and regardless of who the witness is on the stand). For example, a short party deposition excerpt may be used as foundation for questions for a different witness on the stand.

(g) Rather than reading the passage, counsel are free to play an audiovisual digitized version of the passage but counsel must have a system for immediate display of the precise passage.

DEPOSITION DESIGNATION

20. The following procedure applies only to witnesses who appear by deposition. It does not apply to live witnesses whose depositions are read in while they are on the stand. To save time and avoid unnecessary work, it is not necessary to make all deposition designations before trial (as normally required by FRCP 26(3)(A)(ii)). In the Court's experience, by the time the read-in occurs, the proponent has usually reduced substantially the proposed read-ins. Instead, the following steps should be followed:

(a) To designate deposition testimony, photocopy the cover page, the page where the witness is sworn, and then each page from which any testimony is proffered. Line through or x-out any portions of such pages not proffered. Also, line through objections or colloquy unless they are needed to understand the question. Please make sure any corrections are interlineated and that references to exhibit numbers are conformed to the trial numbers. Such interlineations should be done by hand. The finished packet should then be the actual script and should smoothly present the identification and swearing of the witness and testimony desired. The packet should be provided to all other

parties at least **FIVE CALENDAR DAYS** before it will be used in court. For the rare case of voluminous designations, more lead time will be required. Please be reasonable.

(b) All other parties must then promptly review the packet and highlight in yellow any passages objected to and write in the margin the legal basis for the objections. If any completeness objection is made, the objecting party must insert into the packet the additional passages as needed to cure the completeness objection. A completeness objection should normally be made only if a few extra lines will cure the problem. Such additions shall be highlighted in blue and an explanation for the inclusion shall be legibly handwritten in the margin. Please line out or x-out any irrelevant portions of the additional pages.

(c) The packets, as adjusted, must then be returned to the proffering party, who must then decide the extent to which to accept the adjustments. The parties must meet and confer as reasonable. Counsel for the proffering party must collate and assemble a final packet that covers the proffer and all remaining issues. At least **TWO CALENDAR DAYS** before the proffer will be used, the proponent must provide the Court with the final packet, with any objected-to portions highlighted and annotated as described above. If exhibits are needed to resolve the objections, include copies and highlight and tag the relevant passages. Alert the Court on the record that the packet is being provided and whether any rulings are needed. *Tag all passages that require a ruling.* The Court will then read the packet and indicate its rulings. Ordinarily, argument will not be needed.

(d) Counter designations must be made by providing a packet with the counter-designated passages to the proponent at the same time any objections to the original proffer are returned to the first proffering party, who must then supply its objections in the same manner.

(e) When a witness appears by deposition rather than live, counsel may present it by reading or by video. When reading, it is best — for jury comprehension — to use a "witness" (usually co-counsel, a legal assistant or opposing counsel) to read the answers from the witness stand while counsel reads the questions from the lectern. If the read-in is short, a single attorney can read it all, being careful to say "question" and "answer," as appropriate, so that everyone including the court reporter, will follow exactly who said what. The exhibits, if admitted, may be projected onto the screen during the read-in as they are referenced. In the Court's judgment, this is an effective procedure and avoids the problems of paper-shuffling, background noise, long pauses, difficult accents, and video-quality problems. When showing a videotaped deposition, it is best to scroll the question and answer in text near the bottom of the screen and to show any exhibits on a split screen. The entire length of all designations should never be longer than one hour without prior court clearance. Anything longer is usually counterproductive to jury comprehension. Remember that court reporters do *not* transcribe video excerpts, so counsel must file with the deputy clerk an exact record of what was shown and identify it for the record.

REQUESTS FOR ADMISSIONS AND INTERROGATORIES

21. Please designate responses to requests for admissions and interrogatory answers in the same manner and under the same timetable as depositions.

EXHIBITS

22. As stated, FRCP 26(a)(3) disclosures regarding proposed exhibits must be made at least **THIRTY CALENDAR DAYS** before trial and any objections thereto must be made within **FOURTEEN CALENDAR DAYS** thereafter (or waived unless excused for good cause). The joint list must be filed **SEVEN CALENDAR DAYS** in advance of the final pretrial conference (as per paragraph 2 above). By designating an exhibit, a party waives any objection to authenticity and any reciprocal objection, meaning any objection mutually available to both the designating party and the opposing party if and when offered by one against the other. Therefore, the

non-designating party may offer the exhibit subject only to non-reciprocal objections. For example, if P designates a record from a non-party, such as a telephone company, then D can equally offer the same exhibit save for any objection that would be unique against D. To take a contra example, if P designates D's internal email, it will usually *not* be admissible at the instance of D, there being a non-reciprocal hearsay hurdle when offered by D. If the designating party states that the exhibit is only for a limited purpose, then the waiver extends only to the same limited purpose. Notwithstanding the foregoing, FRE 403 objections are never waived. And, any party may always attempt to lay full foundation to admit any exhibit designated by itself or by any other party without regard to any waiver.

23. Prior to the final pretrial conference, counsel will please meet and confer in person over all exhibit numbers and objections and to weed out duplicate exhibits and confusion over the precise exhibit. Use numbers only, not letters, for exhibits, preferably the same numbers as were used in depositions. Blocks of numbers should be assigned to fit the need 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, just as it should have been marked only once in discovery (if this Court's guidelines were followed). 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. To avoid any party claiming "ownership" of an exhibit, all exhibits shall be marked and referred to as "Trial Exhibit No. _____," not as "Plaintiff's Exhibit" or "Defendant's Exhibit." If an exhibit number differs from that used in a deposition transcript, then the latter 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.

24. The exhibit tag shall be in the following form:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 100

CASE NO. _____

DATE ENTERED_____

BY _____
DEPUTY CLERK

Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The parties must jointly prepare a *single* set of all trial exhibits that will be the official record set to be used with the witnesses, in the jury room, and on appeal. Each exhibit must be tagged and in a separate folder (not in notebooks). Deposit the exhibits with the deputy clerk (Dawn Toland) on the first day of trial.

25. Please move exhibits into evidence as soon as the foundation is laid and it is fresh in the judge's mind. Do not postpone motions and expect the judge to remember the foundation. 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.

26. Any objections ordinarily must have been preserved under FRCP 26(a)(3). However, evidence that is cumulative or excludable under FRE 402–403 may possibly be excluded even if no objection has been preserved under FRCP 26(a)(3).

27. In addition to the official record exhibits, a *single joint* set of bench binders containing copies of the key exhibits only (usually the combined top twenty will do) should 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 say

the exhibit number on the binders. Please use binders thin enough to lift with one arm and with locking rings.

28. Before the closings, counsel must confer with the clerk to make sure the exhibits in evidence are in good order. Counsel should, but are not required to, jointly provide a revised list of 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). This joint list shall go into the jury room to help the jury sort through exhibits in evidence.

OBJECTIONS DURING EXAMINATION

29. Counsel shall stand when making objections and shall not make speaking objections. The one-lawyer-per-witness rule is usually followed but will be relaxed to allow young lawyers a chance to perform. Side bar conferences are discouraged.

30. To maximize jury time, counsel must alert the Court in advance of any problems that will require discussion outside the presence of the jury, so that the conference can be held before the jury enters or after the jury leaves for the day.

STIPULATIONS

31. You must read all stipulations to the jury (slowly) in order for them to become a part of the jury record. They do not go into the jury room in written form.

32. To improve jury comprehension of the evidence, counsel should agree on a non-argumentative posterboard timeline to be ever-present in the courtroom for ready reference by the jury as the evidence comes in. It will provide an undisputed fixed frame of reference about which the jury can organize the disputed issues. It should be large enough to view from across the courtroom, about four by eight feet, and in timeline format. Counsel should also stipulate to the maximum feasible extent as to all facts that in good faith cannot be disputed, so that the jury can concentrate on assessing the issues in play. Some evidence can still be presented on any stipulated point as it is often necessary to do so to tell the story but stipulations allow the jury and counsel to concentrate their time on the points in controversy (and for the jury to appreciate *which* points are in controversy). In a further effort to improve

jury comprehension, the Court will sua sponte invite counsel at various points during the evidence to make short statements to alert the jury to the upcoming items of interest. The Court welcomes other ideas for improving jury comprehension.

TIME LIMITS

33. 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 *in addition to* your examination allocation.

PUNITIVE DAMAGES

34. For punitive damages, the jury will ordinarily be asked in their main deliberations only to determine whether a defendant acted with fraud, malice or oppression. If the jury answers "yes," then (after a fifteen-minute recess) a short supplemental jury proceeding shall be held. The parties may then present evidence of that defendant's financial condition, followed by brief argument by each side. The Court will then give the jury a supplemental instruction on punitives and a special verdict form. For this proceeding, counsel typically stipulate to the financial condition of the defendant. Failing a stipulation, the parties must put on proof in the traditional way. It is the responsibility of counsel to make whatever motions are necessary, in a timely way, to obtain any relevant financial information.

CHARGING CONFERENCE

35. As the trial progresses and the evidence is heard, the Court will fashion a comprehensive set of jury instructions to cover all issues actually being tried. A few days before the close of the evidence the Court will provide a draft final charge to the parties. After a reasonable period for review, one or more charging conferences will be held at which each party may object to any passage, ask for modifications, or ask for additions. Any instruction request must be renewed specifically at the conference or it will be deemed waived, whether or not it was requested prior to trial. One reason for this ground rule is that, before trial, parties usually submit numerous instruction requests that fall away as the evidence is received. The draft charge will omit points of law that appear irrelevant to the Court.

If, however, a party still wishes to request an omitted instruction after reviewing the Court's draft, then it must affirmatively re-request it at the charging conference in order to give the Court a fair opportunity to correct any error. Otherwise, as stated, the request will be deemed abandoned or waived.

SETTLEMENTS AND CONTINUANCES

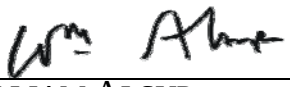
36. Shortly before trial or a final pretrial conference, counsel occasionally wish jointly to advise the clerk that a settlement has been reached and seek to take the setting off calendar (but it turns out later that there was only a settlement "in principle" and disputes remain). Cases, however, cannot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

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

38. The Court strongly encourages lead counsel to permit young lawyers to examine witnesses at trial and to have an important role. It is the way one generation will teach the next to try cases and to maintain our district's reputation for excellence in trial practice.

IT IS SO ORDERED.

Dated: March 5, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE