

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

**PRETRIAL INSTRUCTIONS IN CIVIL CASES
Judge Yvonne Gonzalez Rogers**

1. **PRETRIAL CONFERENCE:** Trials are scheduled to begin Monday mornings at 8:30 a.m. through 1:30 p.m. with two 15-minute breaks. Depending on the Court's calendar, Fridays may be dark. Pretrial Conferences are scheduled on the third Friday preceding the trial at 9:00 a.m. Parties shall comply in all respects with Fed. R. Civ. P 16.

2. **PRETRIAL CONFERENCE STATEMENT:** The parties shall file a joint Pretrial Conference Statement containing the information listed below. To comply with this requirement, trial counsel shall meet and confer at least twenty-one (21) days in advance of the Pretrial Conference. The Statement is due **fourteen (14) days** prior to the Pretrial Conference.

A compliance calendar hearing will be set by the Court to confirm that counsel have timely met and conferred as required by these Pretrial Instructions. Five (5) business days prior to the date of the compliance hearing, the parties shall file a Joint Statement confirming they have complied with this requirement or explaining their failure to comply. If compliance is complete, the parties need not appear and the compliance hearing will be taken off calendar. Telephonic appearances will be allowed if the parties have submitted a Joint Statement in a timely fashion. Failure to do so may result in sanctions.

a. **The Action.**

- i. **Substance of the Action.** A brief description of the substance of claims and defenses which remain to be decided, including a list of the causes of action to be tried.

- ii. **Relief Prayed.** A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

b. **The Factual Basis of the Action.**

- i. **Undisputed Facts.** A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts the parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

- ii. **Disputed Factual Issues.** A plain and concise statement of all disputed factual issues which remain to be decided.
 - iii. **Agreed Statement.** A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
 - iv. **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.
- c. **Disputed Legal Issues.**
- i. **Points of Law.** Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief, citing supporting statutes and decisions setting forth the nature of each party's contentions concerning each disputed point of law, including procedural and evidentiary issues. Supporting statutes and decisions and the parties' contentions regarding the same shall be brief and provided in an outline or bullet point format.
 - ii. **Proposed Conclusions of Law.** If the case is to be tried without a jury, unless otherwise ordered, parties should briefly indicate objections to Proposed Conclusions of Law. *See* Rule 7 below.
- d. **Further Discovery or Motions.** A statement of all remaining discovery and/or pending motions.
- e. **Estimate of Trial Time.** An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.
- f. **List of Motions in Limine.** *See* Rule 4 below. The list shall include only contested non-duplicative motions.
- g. **Juror Questionnaire.** Whether the parties intend to file proposed additional questions for jury selection. *See* Rule 3.h below.
- h. **Trial Alternatives and Options.**
- i. **Settlement Discussion.** A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
 - ii. **Consent to Trial Before a Magistrate Judge.** A statement of whether reference of all or part of the action to a master or magistrate judge is feasible, including whether the parties consent to a court or jury trial

before a magistrate judge, with appeal directly to the Ninth Circuit. The Court will entertain requests for reference to a specific magistrate.

- iii. **Amendments, Dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, claims or defenses and any objections thereto.
- iv. **Bifurcation, Separate Trial of Issues.** A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

3. TRIAL READINESS FILINGS AND BINDER and PROPOSED ORDER

THEREON: The parties shall file each of the documents listed below and deliver to chambers two copies of a JOINT TRIAL READINESS BINDER. To provide the Court with sufficient time to prepare, the documents and binder with said documents are due no less than **seven (7) days** prior to the Pretrial Conference. The Joint Trial Readiness Binders shall contain copies of filed documents *with* the ECF header reflecting the item's docket number and filing date.

It is the responsibility of the parties to provide two copies of revised or updated trial documents to insert into the Court's Trial Readiness Binders. The parties shall provide a labeled tab to identify the document(s) being added to the binder. The parties may also provide updated indexes for the Court, if an index was provided with the original binders.

- a. **Proposed Order Re Trial Stipulations.** During the meet and confer process, the Court expects that the parties will agree to a variety of stipulations regarding the conduct of the trial. A Proposed Order outlining all such stipulations shall be presented to the Court.
- b. **Witness List.** A list of all witnesses likely to be called at trial (other than solely for impeachment or rebuttal), with a brief statement following each name describing the substance of the testimony to be given and a time estimate of the direct and cross examinations. This information shall be presented in chart format and organized by party.
- c. **Expert Witness List.** A list of all expert witnesses with a summary which shall clearly state the expert's theories and conclusions and the basis therefore and shall be accompanied by a curriculum vitae; if the expert has prepared a report in preparation for the testimony, a copy thereof shall be furnished to opposing counsel. Witnesses not included on the list may be excluded from testifying.
- d. **Exhibit Lists Annotated with Stipulations/Objections.** A list of all documents and other items to be offered as exhibits at the trial (other than solely for impeachment or rebuttal) shall be provided with a brief description of each exhibit's contents, and the identity of each sponsoring witness. As applicable, the

Exhibit List shall specify whether the parties stipulate to admit the exhibit or the grounds for any objections to the exhibit. The Exhibit List shall also include an additional column so that the Court can track the date on which each exhibit is admitted. Prior to submitting the list, the parties shall meet and confer and attempt to stipulate as to the admissibility of each exhibit. This information shall be presented in chart format and organized numerically. The parties should consult the Appendix for a suggested format of the Exhibit List.

Parties shall meet and confer and agree on numeric designations for exhibits, such as plaintiffs shall have numbers 1-99, defendant one: numbers 100-199, defendant two: numbers 200-299, etc. The agreed-upon designations shall be noted for the Court.

- e. **List of Discovery Excerpts.** The parties shall list those excerpts from depositions, from interrogatory answers, or from responses to requests for admission (other than those solely for impeachment or rebuttal) likely to be used at trial.

Prior to submitting the list, the parties shall meet and confer and attempt to resolve any disagreements regarding designations or counter-designations. The parties shall (i) identify any remaining legal objections to the excerpts on the list itself, and (ii) attach in a separate appendix copies of the disputed excerpts so that the Court can review the disputed materials. The parties should consult the Appendix for a suggested format of the List of Discovery Excerpts.

The parties shall provide a single proposed order with each disputed designation which will allow the Court to rule whether permission to use each is granted, granted with modification, or denied. The parties should consult the Appendix for a suggested format of a chart to be contained within the Proposed Order Re Discovery Excerpts.

- f. **Jury Instructions.**

- i. **Joint Set of Jury Instructions.**

- (A) The parties shall meet and confer and prepare one Joint Set of Jury Instructions provided to the Court in the logical sequence to be read to the jury. Authority shall be provided for all instructions.
 - (B) The parties shall prepare an index which identifies: (i) whether the parties stipulate or object to each instruction; and (ii) the competing instruction(s) preferred on a given topic such that the Court can readily compare and contrast the same.

- (C) Disputed instructions must be annotated with: (i) the proponent’s authority for seeking the instruction and a brief explanation of how the authority supports the instruction; and (ii) the opponent’s reason for opposition with any applicable authority and a brief explanation why the instruction should not be given. It shall clearly identify which party is proposing each disputed instruction, the nature of the dispute, and any competing instruction.
- (D) Every instruction submitted (whether disputed or stipulated) must include “Date Submitted: [insert date]” or “Date Revised: [insert date]” (as applicable).
- ii. If the parties resolve any disputes prior to the Pretrial Conference, the parties must immediately inform the Court which proposed instructions are withdrawn, and submit the stipulated instruction to the Court.
- iii. If the parties wish to revise any proposed instructions, it must be identified as a “revised” instruction such that the Court can easily identify and remove the previously-proposed instruction, and insert the revised instruction into the Trial Readiness Binders.
- iv. If the parties wish to propose additional instructions, it must be clearly-identified as a “supplemental” instruction. Competing supplemental instructions must be filed jointly such that the Court can readily compare and contrast the same. The parties must identify where in the sequence of previously-submitted instructions the supplemental instructions should be added.
- v. The parties will be required to re-organize and re-submit a complete set of instructions once the Court has resolved all disputes. Clean sets of all jury instructions (without the parties’ arguments and authorities) must be provided to the Court in electronic format (Word) upon request.
- vi. **Substance and Format of Instructions.** The instructions shall cover all substantive issues and other points not covered by the Ninth Circuit Manual of Model Jury Instructions. All instructions submitted to the Court, whether stipulated or disputed, shall contain a table of contents. Each requested instruction shall be typed in full on a separate page with annotations or citations to the authorities upon which the instruction is based included below the instruction. Instructions shall be brief, clear, written in plain English and free of argument. Model Instructions shall be revised to address the particular facts and issues of this case. The parties shall give a brief explanation of its authorities and any revisions to Model Instructions.

- vii. **Routine Instructions.** Absent objection, the Court will give Model Instructions 1.1B, 1.2, 1.3 and/or 1.4, 1.6–1.12, 1.14–1.15, 1.19, and 3.1–3.3 from the Manual of Model Civil Jury Instructions for the Ninth Circuit (2007 Edition). If any party seeks to alter the above-referenced Model Instructions, that party (or parties, if stipulated) shall provide the Court with a redline in Word reflecting the proposed changes to the Model Instructions. The parties should not file this document, but should send an electronic copy to ygrchambers@cand.uscourts.gov and ygrpo@cand.uscourts.gov.
- g. **Preliminary Statement of the Case and Instructions.** The parties shall propose a joint statement of the case to be read to the jury. The parties may also propose additional preliminary instructions where appropriate.
- h. **Jury Selection.**
 - i. Parties are advised that jury selection may occur on the Friday preceding the Monday trial date to allow for a full day of voir dire.
 - ii. The Court will conduct most of the voir dire and will provide additional time for attorney follow-up. Parties may file proposed additional questions for jury voir dire. If any party has advised the Court that it requests a juror questionnaire, the party shall submit a proposed form herewith, not to exceed four pages. To determine whether prospective jurors know any of the parties, attorneys or potential trial witnesses, the parties shall provide the Court with one alphabetical list of all names for distribution to the prospective jurors.
 - iii. Generally, in civil cases, the jury commissioner will summon 20 to 25 prospective jurors. The Court will seat 8 jurors and no alternates.
- i. **Proposed Verdict Forms.** The parties shall meet and confer and prepare a joint proposed Verdict Form with as few questions as possible. If an agreement cannot be reached, each may file their own proposed verdict form.

4. **MOTIONS IN LIMINE.**

- a. Any party wishing to have motions *in limine* heard prior to the commencement of trial must exchange (but not file or serve) the same no later than twenty-eight (28) days prior to the date set for the Pretrial Conference. Each motion may not exceed more than four (4) pages. No more than fifteen (15) motions may be filed, and each motion shall be numbered. The parties shall then meet and confer and attempt to resolve the issues raised in the motions prior to the filing of the Pretrial Statement.

- b. Any motions not resolved shall be filed and served in conjunction with the Pretrial Conference Statement. Any party opposing such a motion *in limine* shall file and serve its opposition papers no later than nine (9) days prior to the Pretrial Conference. Each opposition shall reference the moving party's motion *in limine* number. Reply papers are not permitted.
 - c. The Chambers Copies shall be included in a separate binder entitled MOTIONS *IN LIMINE* and collated with the opposition papers following the motion papers. Said binder shall be delivered no later than **seven (7) days** prior to the Pretrial Conference. The binder shall include copies of the motions and oppositions *with* the ECF header reflecting the item's docket number and filing date.
 - d. One Proposed Order on Motions *in Limine* per side shall be provided briefly identifying the requested relief and the legal basis therefor. Said Order shall be formatted to allow the Court to rule whether the motion is granted, granted with modification, or denied.
5. **ELECTRONIC COPIES OF TRIAL DOCUMENTS.** Parties shall send an electronic copy in **Word** format to ygrchambers@cand.uscourts.gov and ygrpo@cand.uscourts.gov of the following documents listed above: (i) Proposed Order Re Trial Stipulations; (ii) Proposed Order Re Discovery Excerpts; (iii) Joint Set of Jury Instructions; (iv) any revised or supplemental jury instructions; (v) Proposed Juror Questionnaire (if any); (vi) Proposed Verdict Forms; and (vii) Proposed Order(s) on Motions *in Limine*.
6. **EXHIBITS.**
- a. **Copies of Exhibits to Other Parties.** At least twenty-eight (28) days before the Pretrial Conference, the parties shall exchange with every other party one set of all proposed exhibits, charts, schedules, summaries, diagrams, and other similar documentary materials to be used in its case in chief at trial, together with a complete list of all such proposed exhibits. To the extent the parties agree, the parties may exchange the above-referenced documents by providing only a complete list of proposed exhibits through reference to bates labels or other identification. Any party may request that the exchange occur by hard copy documents. Voluminous or lengthy exhibits shall be reduced by the elimination of irrelevant portions and/or through the use of summaries. For particularly lengthy exhibits, the Court may inquire as to why a summary could not have been used as an exhibit. All exhibits which have not been exchanged as required are subject to exclusion.
 - b. **Stipulations re Admissibility.** The parties shall make a good faith effort to stipulate to exhibits' admissibility. If stipulation is not possible, the parties shall make every effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection. NO EXHIBIT may be shown to the jury until it is admitted, included during Opening Statements.

c. **Copies of Exhibits to Court.**

- i. Exhibits shall be provided to the Court on the **Friday prior to the trial date** as follows:
 - (A) One original set is for use in the trial and to be provided to the jurors.
 - (B) The second set is for the Court and shall be provided in binders, marked, tabbed and indexed.
 - (C) If a bench trial, a third set for Court staff which shall also be in binders, marked, tabbed and indexed. If a jury trial, a third set is only required for witnesses if the party will not be using the Court's electronic equipment.
- ii. Exhibits sets may be delivered/mailed directly to Chambers. The parties shall otherwise coordinate with the Courtroom Deputy for other delivery.
- iii. Each exhibit shall be pre-marked with an exhibit tag placed in the top right corner of the first page of a document. Parties are to use a color other than white for the exhibit tags. A page of blank trial exhibit tags can be found on the Court's website.
- iv. If an exhibit is a physical object (rather than a document), a picture should be taken and placed in the binder.
- v. Updated Exhibit Lists shall be included in the binders.

d. **Disposition of Exhibits after Trial.** Upon the conclusion of the trial, each party shall retain its exhibits through the appellate process. It is each party's responsibility to make arrangements with the Clerk of Court to file the record on appeal.

7. **NON-JURY TRIALS.** In non-jury cases, each party shall serve and lodge with the Court **fourteen (14) days** prior to the Pretrial Conference, proposed Findings of Fact and Conclusions of Law on all material issues. Proposed Findings shall be brief, written in plain English and free of pejorative language, conclusions and argument. In addition to the copy in the binder, parties shall send an electronic copy in Word format to ygrchambers@cand.uscourts.gov and ygrpo@cand.uscourts.gov.

8. MISCELLANEOUS.

- a. The Court may take a photograph of each witness prior to the witness' testimony to assist the trier of fact with recalling the testimony. Please advise your witnesses.
- b. If a party wishes to use internet, electronic equipment, or other large items (such as bookshelves), the party must file a request and proposed order with the Court by the second Friday preceding the trial. Equipment not provided by the Court must be tested in the courtroom prior to the day when it will be used. Arrangements may be made with the Courtroom Deputy, Frances Stone, at (510) 637-3540 as to an appropriate time for doing so.
- c. Please **DO NOT** call Chambers. If you need to contact the Courtroom Deputy, please call (510) 637-3540 and leave a message if the Deputy is not available.

IT IS SO ORDERED.

Dated: October 26, 2012


Yvonne Gonzalez Rogers
United States District Court Judge

PRETRIAL INSTRUCTIONS IN CIVIL CASES
Judge Yvonne Gonzalez Rogers
Appendix

When printing and providing these documents to the Court, please use the “portrait” orientation only. (Do not use “landscape” orientation.)

(SAMPLE EXHIBIT LIST)

Ex. No.	Description	Sponsoring Witness	Stipulation to Admit	Objection	Date Admitted

(SAMPLE LIST OF DISCOVERY EXCERPTS)

No.	Form of Excerpt	Designation in Dispute	Legal Objection

(SAMPLE PROPOSED ORDER RE DISCOVERY EXCERPTS)

No.	Form of Excerpt	Designation in Dispute	Court’s Ruling