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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**STANDING ORDER RE FINAL PRETRIAL CONFERENCE – BENCH TRIAL**  
**DISTRICT JUDGE BETH LABSON FREEMAN**

**A. MEET AND CONFER**

At least 21 days before the final Pretrial Conference, lead counsel who will try the case shall meet and confer with respect to:

1. Settlement of the Case;
2. Preparation of the Joint Pretrial Statement and Order;
3. Preparation and exchange of pretrial materials to be filed pursuant to Federal Rule of Civil Procedure 26(a)(3); and
4. Clarification and narrowing of the contested issues for trial.

**B. JOINT PRETRIAL STATEMENT AND ORDER**

At least 14 days before the final Pretrial Conference, unless otherwise ordered, the parties shall file a Joint Pretrial Statement and Order containing the following information:

1. **The Action.**
  - a. **The Parties.** A list of the parties who have been served and have appeared.  
All parties not identified in the Joint Pretrial Statement and Order will be

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deemed to have been dismissed.

- b. Substance of the Action. A concise statement identifying the claims and defenses that remain to be decided; the elements of each claim and defense; and the pleading in which each claim and defense is pled. In accordance with Federal Rule of Civil Procedure 16(c), parties will be precluded from presenting claims or defenses not set forth in the Joint Pretrial Statement and Order.
- c. Relief Sought. A statement of all relief sought, itemizing all elements of damages claimed.
- d. Federal Jurisdiction and Venue. A statement of the bases for federal jurisdiction and venue.

**2. Factual Basis of the Action.**

- a. Undisputed Facts. A concise statement of all facts that may be incorporated into the trial record by stipulation of the parties.
- b. Disputed Facts. A concise statement of all facts that are disputed and will be litigated at trial.

**3. Disputed Legal Issues.** A concise statement of each disputed point of law, citing relevant statutes and decisions.

**4. Estimate of Trial Time.** An estimate of the total number of hours or days needed for trial.

**5. Trial Alternatives and Options.**

- a. Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
- b. Amendments or Dismissals. A statement of proposed amendments to the pleadings or dismissals of parties, claims, or defenses.
- c. Bifurcation or Separate Trial of Issues. A statement whether bifurcation or a separate trial of specific issues is feasible and desired.

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6. **Binding Effect of the Joint Pretrial Statement and Order.** The Joint Pretrial Statement and Order shall recite, directly above the signature lines of each party, the following:

*The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of trial of this action, unless modified to prevent manifest injustice.*

Date and signature lines for the Court shall appear immediately following the signature lines of the parties.

C. **PREPARATION FOR TRIAL**

1. **Witnesses.**

a. **Appendix.** *The following information shall be provided as an appendix to the Joint Pretrial Statement and Order.* For each party, a list of all witnesses likely to be called at trial, including those appearing by deposition. For each witness, there should be a short statement of the substance of his or her testimony and an estimate regarding the length of testimony (including direct and cross-examination). If the witness is an expert witness, please state the expert's theories and conclusions and the bases therefor. Attach the expert's curriculum vitae and report (if any).

b. **Consequence of Nondisclosure.** No party shall be permitted to call a witness in its case in chief who is not disclosed in the Joint Pretrial Statement and Order without leave of the Court for good cause shown.

2. **Exhibits.**

a. **Appendix.** *The following information shall be provided as an appendix to the Joint Pretrial Statement and Order.* A joint exhibit list in tabular form, with (a) a column identifying the exhibit number consistent with the pre-marking requirement of paragraph C.2.b., below; (b) a column briefly describing the exhibit; (c) a column describing the purpose for which the exhibit is offered

1 and identifying its sponsoring witness; (d) a column stating any objections to  
2 the exhibit; (e) a column responding to the objections; and (f) a blank column  
3 for the Court's use. Before this list is filed with the Court, counsel shall meet  
4 and confer, in person, to consider exhibit numbers, eliminate duplicate  
5 exhibits and confusion over exhibits, and make a good faith effort to stipulate  
6 to admissibility. If stipulation is not possible, the parties shall make every  
7 effort to stipulate to authenticity and foundation absent a legitimate (not  
8 tactical) objection.

9 b. Pre-Marked. The parties shall submit 1 original set of exhibits, pre-marked  
10 for identification with numbers (not letters) by means of exhibit tags affixed  
11 to the *back* of the last page of each exhibit. Sample tags are attached as  
12 Exhibit A hereto. Plaintiff's exhibit tags shall be yellow, and Defendant's  
13 exhibit tags shall be green. In addition, the parties shall submit 2 complete  
14 copies of the original set of exhibits for use by the Judge and chambers staff.  
15 The 2 copy sets of exhibits need not be tagged, but the exhibits contained  
16 therein must be labeled clearly. All 3 sets of exhibits – the original and both  
17 copies – shall be in three-ring binders with the exhibits separated by tabs  
18 denoting the exhibit numbers.

19 c. Delivery to Court. Unless otherwise ordered, on the Thursday prior to  
20 commencement of trial, the parties shall deliver the 3 sets of exhibits to  
21 Tiffany Salinas-Harwell, Courtroom Deputy to Judge Freeman.

22 d. Consequence of Nondisclosure. No party shall be permitted to offer any  
23 exhibit at trial that is not disclosed in the Joint Pretrial Statement and Order  
24 without leave of the Court for good cause shown, unless it is offered solely  
25 for impeachment or rebuttal.

26 **3. Discovery Responses.**

27 a. Appendix. *The following information shall be provided as an appendix to the*  
28 *Joint Pretrial Statement and Order*. Excerpts of interrogatory responses,

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responses to requests for admission, and deposition testimony (with specific line references identified) that each party intends to present at trial.

b. **Objections.** If there are objections to the use of written responses, the parties should include a joint memorandum that states the objecting party’s objection and the opposing party’s response. If there is an objection to the general subject matter of a deponent’s testimony, the objection should be made through a motion *in limine*. If specific objections were made during the deposition that are still in need of a Court ruling, the parties should include a joint memorandum that identifies the deposition testimony at issue and that briefly states the objecting party’s objection (including any counter-designation) and the opposing party’s response (including any counter-designation). The Court expects the parties to meet and confer in good faith in an attempt to resolve specific objections regarding deposition testimony before any memoranda regarding objections are filed.

4. **Motions in Limine.** Unless otherwise ordered, the parties shall file and serve any motions *in limine* at least 14 days before the final Pretrial Conference, and any opposition thereto at least 7 days before the final Pretrial Conference. Reply briefs are not permitted. Unless otherwise ordered by the Court, motions in limine will be deemed submitted without oral argument. Each motion shall be presented in a separate document and shall be numbered as, for example, “Plaintiff’s Motion *in Limine* No. 1 to Exclude. . . .” Usually 5 or fewer motions per side are sufficient (without prejudice to raising matters as the trial progresses). Briefing on each motion shall not exceed 5 pages per side.

5. **Proposed Findings of Fact and Conclusions of Law.** At least 7 days prior to the final Pretrial Conference, each party shall file and serve proposed findings of fact and conclusions of law. The findings of fact shall set forth in simple declarative sentences, separately numbered, all factual contentions relied upon by a party in support of its claims or defenses and shall be free of pejorative language and

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argument. Conclusions of law shall be supported by appropriate citation to legal authority. The proposed findings of fact and conclusions of law shall be submitted in hard copy as well as in word processing format via e-mail to BLFpo@cand.uscourts.gov.

- 6. **Trial Briefs.** Each party shall submit a trial brief, not to exceed 15 pages, at least 7 days prior to the commencement of trial. A trial brief is most helpful to the Court when it summarizes the party’s theory of the case, identifies key evidence, and provides summary briefing on any controlling issues of law.
- 7. **Stipulations.** A statement of proposed stipulations that will expedite the presentation of evidence. Any stipulations submitted before or during trial shall be in writing and signed by all parties.
- 8. **Time Limits.** Ordinarily, the Court will set fixed trial time limits at the final Pretrial Conference. Each party may allocate its time as it wishes, but *all* of a party’s examination time (whether direct, cross, re-direct, or re-cross) for all witnesses must fit within its time limit. Opening and closing time limits are in addition to examination time.

**D. SCHEDULING**

Trials are scheduled to commence Monday mornings at 9:00 a.m. Trial will proceed each day except Thursday.  
Final Pretrial Conferences will be scheduled approximately 2 weeks before trial.

IT IS SO ORDERED.

Dated: April 10, 2014

  
BETH LABSON FREEMAN  
UNITED STATES DISTRICT JUDGE

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# Exhibit A

**Plaintiff's Exhibit Markers**

**π PLAINTIFF π**

United States District Court  
Northern District of California

Case No. \_\_\_\_\_  
Case Title \_\_\_\_\_  
Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_

By: \_\_\_\_\_, Deputy Clerk  
Richard W. Wieking, Clerk

**Defendant's Exhibit Markers**

**Δ DEFENDANT Δ**

United States District Court  
Northern District of California

Case No. \_\_\_\_\_  
Case Title \_\_\_\_\_  
Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_

By: \_\_\_\_\_, Deputy Clerk  
Richard W. Wieking, Clerk

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By: \_\_\_\_\_, Deputy Clerk  
Richard W. Wieking, Clerk

Exhibit markers should be placed on the back of the last page of each exhibit. Exhibits should be in binders, separated by tabs denoting the exhibit numbers.