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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 CHARLES R. BREYER**  
**FINAL PRETRIAL CONFERENCE**

1. Please do not prepare a joint pretrial conference statement. Nor should counsel invest time on deposition designations or extracts from interrogatories or requests for admissions at the pretrial conference stage. Instead, please file **seven** calendar days in advance of the final pretrial conference the following:

(a) In lieu of preparing a joint pretrial conference statement, the parties shall meet and confer and prepare a joint proposed final pretrial order 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, (v) a joint exhibit list in numerical order, including a brief description of the exhibit, 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 short statement of the substance of his/her testimony and, separately, what, if any, non-cumulative testimony the witness will give. If non-cumulative testimony is not spelled out, then the Court will presume the witness is cumulative. For each witness, state an hour/minute time estimate for the direct examination (only). Items (v) and (vi) should be appendices to the proposed order. The objective is to convert the proposed order to a final order with the benefit of any discussion at the final pretrial conference.

1 (b) Each side’s proposed findings of fact and conclusions of law.

2 (c) Each side’s trial brief.

3 (d) Any motion *in limine*, with the opposition, filed as follows: At least **twenty** calendar  
4 days before the conference, serve, but do not file, the moving papers. At least **ten** calendar days  
5 before the conference, serve the oppositions. When the oppositions are received, the moving party  
6 should collate the motion and the opposition together, back to back, and then file each paired sets as  
7 one document at least **seven** calendar days before the conference. Each motion should be presented  
8 in a separate memo and numbered, as in, for example, “Plaintiff’s Motion in Limine No. 1 to  
9 Exclude...”. **Please** be sure to three hole punch the chambers copies so they can go into a trial  
10 notebook. For bench trials, motions *in limine* are rarely needed or useful.

11 2. The joint proposed final pretrial order and the proposed findings of fact and conclusions  
12 of law shall be submitted on a CD Word format, as well as in hard copies. All hard-copy  
13 submissions should be three-hole punched on the left, so the chambers’ copy can be put in binders.

14 3. At the final pretrial conference, the above submissions shall be considered and argued.  
15 The parties must take notes on rulings and submit a joint summary of all rulings in proposed order  
16 format.

### 17 PRETRIAL ARRANGEMENTS

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

21 5. During trial, counsel may wish to use overhead projectors, laser-disk/computer graphics,  
22 poster blow-ups, models or specimens of devices. The Courtroom is set up with equipment which  
23 allows evidence presentation. If equipment is necessary the United States Marshal requires a court  
24 order to allow equipment into the courthouse. If video equipment is used, equipment capable of  
25 instantly accessing the relevant portions of transcripts and graphics should be used (rather than, for  
26 example, raw video tapes made at depositions which take time to forward or to rewind). For  
27 electronic equipment, either know how to fix it or have a technician handy at all times. Tape  
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1 extension cords to the carpet for safety. Please take down and store the equipment (in the  
2 courtroom) at the end of each court day. Please work with Barbara Espinoza (415-522-2062) on  
3 courtroom-layout issues.

#### 4 **SCHEDULING**

5 6. The normal trial schedule is Monday through Thursday except for any Wednesday  
6 afternoon and all federal court holidays. Trial will commence at 9:00 a.m. and go until 4:00 p.m.  
7 with two fifteen-minute breaks and thirty minutes to one hour for lunch. Counsel must be present  
8 at least fifteen minutes prior to trial commencing.

#### 9 **OPENING STATEMENTS**

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

#### 14 **WITNESSES**

15 8. Throughout the trial, all counsel are entitled to know a firm order of witnesses for the  
16 next two full court days and the exhibits that will be used on direct examination (other than for  
17 impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall provide  
18 any objections to such exhibits and shall provide a list of all exhibits to be used with the same  
19 witness on cross-examination (other than for impeachment). This requires that the first such notice  
20 be provided before trial actually begins. All such notice should be provided in writing.

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

25 10. A witness or exhibit not listed in the joint pretrial statement may not be used without  
26 good cause. This rule does not apply to rebuttal witnesses (other than experts).

27 11. When there are multiple parties, counsel are responsible for coordination of  
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1 the cross-examination to avoid duplication.

2 12. Stand at or near the podium to ask questions, straying only to point out material on  
3 charts or overheads. Please request permission to approach the witness or the bench.

4 13. On the first day of trial, be sure to bring the original and clean copies of any  
5 deposition(s) for which you are responsible. Any corrections must be readily available. If you are  
6 likely to need to use the deposition during a witness examination, then give the Court and the  
7 witness a copy with any corrections at the outset of the examination.

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

#### 11 **DEPOSITION DESIGNATION**

12 15. The following procedure applies only to witnesses who appear by deposition. It does not  
13 apply to live witnesses whose depositions are read in while they are on the stand. To save time and  
14 avoid unnecessary work, it is not necessary to make all deposition designations before trial. Instead,  
15 the following steps should be followed.

16 (a) To designate deposition testimony, photocopy the cover page, the page where the  
17 witness is sworn, and then each page from which any testimony is proffered. Line through or x-out  
18 any portions of such pages not proffered. Also, line through objections or colloquy unless they are  
19 needed to understand the question. Please make sure any corrections are inter-lineated and that  
20 references to exhibit numbers are conformed to the trial numbers. Such inter-lineations should be  
21 done by hand. The finished packet should then be the actual script and should smoothly present the  
22 identification and swearing of the witness and testimony desired. The packet should be provided to  
23 all other parties at least five calendar days before it will be used in court. For the rare case of  
24 voluminous designations, more lead time will be required. Please be reasonable.

25 (b) All other parties must then promptly review the packet and highlight in yellow any  
26 passages objected to and write in the margin the legal basis for the objections. If any completeness  
27 objection is made, the objecting party must insert into the packet the additional passages as needed

1 to cure the completeness objection. A completeness objection should normally be made only if a  
2 few extra lines will cure the problem. Such additions shall be highlighted in blue and an  
3 explanation for the inclusion shall be legibly handwritten in the margin. Please line out or x-out any  
4 irrelevant portions of the additional pages.

5 (c) The packets, as adjusted, must then be returned to the proffering party, who must then  
6 decide the extent to which to accept the adjustments. The parties must meet and confer as  
7 reasonable. Counsel forth proffering party must collate and assemble a final packet that covers the  
8 proffer and all remaining issues. At least two calendar days before the proffer will be used, the  
9 proponent must provide the Court with the final packet, with any objected-to portions highlighted  
10 and annotated as described above. If exhibits are needed to resolve the objections, include copies  
11 and highlight and tag the relevant passages. Alert the Court on the record that the packet is being  
12 provided and whether any rulings are needed. If so, the Court will then read the packet and indicate  
13 its rulings in the margin in a distinctive manner. Ordinarily, argument will not be needed.

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

17 (e) When the packet is read in court, the examiner reads the questions (and any relevant  
18 colloquy) from the lectern and a colleague sits in the witness stand and reads the answers. When a  
19 video-taped deposition is to be played instead, the packets must still be prepared, as above, in order  
20 to facilitate rulings on objections. The video should omit any dead time, long pauses, and  
21 objections/colloquy not necessary to understand the answers. The Court may decide, instead, to  
22 take the designations under submission and simply read them.

### 23 **REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

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

### 26 **EXHIBITS**

27 17. Prior to the final pretrial conference, counsel must meet and confer in person over all  
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1 exhibit numbers and objections and to weed out duplicate exhibits. Please be reasonable.

2 18. Use numbers only, not letters, for exhibits, preferably the same numbers as were used in  
3 depositions. Blocks of numbers should be assigned to fit the need of the case (*e.g.*, Plaintiff has 1 to  
4 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single exhibit should be  
5 marked only once. If the plaintiff has marked an exhibit, then the defendant should not re-mark it.  
6 Different versions of the same document, *e.g.*, a copy with additional handwriting, must be treated  
7 as different exhibits. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be  
8 marked and referred to as “Trial Exhibit No. \_\_\_\_\_,” not as “Plaintiff’s Exhibit” or “Defendant’s  
9 Exhibit.” If an exhibit number differs from that used in a deposition transcript, however, then the  
10 latter must be conformed to the new trial number if and when the deposition testimony is used (so  
11 as to avoid confusion over exhibit numbers).

12 19. The exhibit tag shall be in the following form:

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 **TRIAL EXHIBIT 100**

16 CASE NO. \_\_\_\_\_

17 DATE ENTERED \_\_\_\_\_

18 BY \_\_\_\_\_

19 DEPUTY CLERK

20 Counsel preferably will make the tag up in a color that will stand out (yet still allow for  
21 photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or, if a  
22 photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. Deposit  
23 your exhibits with the deputy clerk (Barbara Espinoza) on the first day of trial. The tags can be  
24 adhesive or stapled on.

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



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

8 **CHANGE OF TRIAL DATE**

9 27. Because of scheduling conflicts with other cases on the docket, the Court retains the  
10 discretion to change the trial date, either by way of advancement or continuance. In the event the  
11 trial date is changed, the parties may seek adjustment of the time limits for compliance with the  
12 requirements of this order, which shall be effective only upon Court approval.

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14 **IT IS SO ORDERED.**

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18 CHARLES R. BREYER,  
19 UNITED STATES DISTRICT JUDGE  
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