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

STANDING ORDER RE PRETRIAL
PREPARATION

I. REQUIREMENTS PRIOR TO THE PRETRIAL CONFERENCE

Prior to the pretrial conference, counsel (or parties appearing *pro se*) shall comply in all respects with the following requirements:

(A) Required Meet and Confer Prior to Pretrial Conference.

At least twenty (20) days before the Pretrial Conference, lead counsel who will try the case shall meet and confer with respect to:

- (1) preparation and content of the joint pretrial conference statement;
- (2) preparation, exchange and lodging of pretrial materials discussed in this order; and
- (3) settlement of the action.

(B) Pretrial Conference Statement.

Unless otherwise ordered, not less than fourteen (14) days prior to the Pretrial Conference, the parties shall file a joint pretrial conference statement containing the following

1 information:

2 (1) The Action.

3 (a) Substance of the Action. A brief description of the substance of the issues that
4 remain to be decided.

5 (b) Relief Sought. For civil actions, a detailed statement of all the relief sought,
6 particularly itemizing all elements of damages claimed as well as witnesses,
7 documents or other evidentiary material to be presented concerning the amount of
8 such damages.

9 (2) The Factual Basis of the Action.

10 (a) Undisputed Facts. A plain and concise statement of all relevant facts not
11 reasonably disputable, as well as facts to which parties will stipulate for
12 incorporation into the trial record without the necessity of supporting testimony or
13 exhibits.

14 (b) Disputed Factual Issues. A plain and concise statement of all disputed factual
15 issues that remain to be decided.

16 (c) Agreed Statement. A statement assessing whether all or part of the action may
17 be presented upon an agreed statement of facts.

18 (d) Stipulations. A statement of stipulations requested or proposed for pretrial or
19 trial purposes.

20 (3) Disputed Legal Issues.

21 (a) Points of Law. Without extended legal argument, a concise statement of each
22 disputed point of law concerning liability or relief, citing supporting statutes and
23 decisions. Unless otherwise ordered, parties should cite to briefs served and
24 lodged with the Court setting forth briefly the nature of each party's contentions
25 concerning each disputed point of law, including procedural and evidentiary
26 issues.

27 (b) Proposed Conclusions of Law. If the case is to be tried without a jury, unless
28 otherwise ordered, parties should provide proposed conclusions of law.

1 **(C) Trial Preparation.**

2 (1) Witnesses to be Called. A list of all witnesses likely to be called at trial, other than
3 solely for impeachment or rebuttal, together with a brief statement following each name
4 describing the substance of the testimony to be given.

5 (2) Exhibits, Schedules and Summaries. A list of all documents and other items to be
6 offered as exhibits at trial, other than solely for impeachment or rebuttal, with a brief
7 statement following each, describing its substance or purpose and the identity of the
8 sponsoring witness. Unless otherwise ordered, parties should indicate any objections to
9 the receipt in evidence of exhibits and materials lodged with the Court and that counsel
10 have conferred with respect to such objections. Three sets of premarked, joint exhibits,
11 numbered consecutively starting with number one (1), shall be delivered to the
12 Courtroom Deputy Clerk on or before the date of the Pretrial Conference. (In cases
13 involving a large number of exhibits, exhibits should be placed in binders).

14 (3) Unless otherwise ordered, if the trial is to be a jury trial, proposed jury instructions,
15 and proposed content of a jury questionnaire and proposed voir dire questions should be
16 submitted to the Court not later than ten (10) days prior to trial. If the parties cannot
17 agree as to these materials, counsel shall state that they have met and conferred for the
18 purpose of resolving their differences.

19 (4) Estimate of Trial Time. An estimate of the number of court hours in fractions thereof
20 for the direct examination and cross-examination of each witness identified in the witness
21 list submitted.

22 (5) Use of Discovery Responses. A statement as to any intended use, other than solely for
23 impeachment or rebuttal, of excerpts from depositions, interrogatory answers, or
24 responses to requests for admission. Counsel shall indicate any objections to use of such
25 materials and that they have conferred with respect to such objections.

26 (6) Further Discovery and Motions *In Limine*. A statement of all remaining discovery or
27 any motions *in limine* shall be filed not later than seven (7) days prior to the Pretrial
28 Conference.

1 **(D) Trial Alternatives and Options.**

2 (1) Settlement. Without revealing the substance of the parties' settlement positions, a
3 statement summarizing the status of settlement negotiations and indicating whether
4 further negotiations are likely to be productive.

5 (2) Consent to Trial Before a Magistrate Judge. A statement as to whether reference of
6 all or part of the action to a master or magistrate judge is feasible, including whether the
7 parties consent to a court or jury trial before a magistrate judge, with appeal directly to the
8 Ninth Circuit.

9 (3) Amendments and Dismissals. A statement of requested or proposed amendments to
10 pleadings or dismissals of parties, claims or defenses.

11 **II. AGENDA FOR THE PRETRIAL CONFERENCE**

12 At the pretrial conference, the Court will:

13 (1) Set a schedule for the receipt of opposition to and determination of any contested
14 motions *in limine* or other pretrial motions;

15 (2) Allocate a fixed number of hours to each side for the direct examination and cross-
16 examination of witnesses;

17 (3) Set specific dates and times when the trial will be in session;¹

18 (4) For jury trials, determine the number of prospective jurors to be summoned, the
19 number of jurors to be seated and whether a jury questionnaire will be used to assist in
20 jury selection;

21 (5) Consider any other trial management matter which is likely to promote fair and
22 efficient resolution of the case.

23
24 DATED: 1/19/2010

25 
26 JEREMY FOGEL
United States District Judge

27
28 ¹ Jury selection normally commences at 1:30 p.m. on the Friday on which the trial is set. The Court normally conducts trials between 9:00 a.m. and 4:30 p.m. on Monday, Tuesday and Thursday, and between 10:00 a.m. and 4:30 p.m. on Wednesday.