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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**GUIDELINES FOR FINAL PRETRIAL CONFERENCE IN JURY TRIALS
BEFORE DISTRICT JUDGE LUCY H. KOH**

- A. Meeting and Disclosure Prior to Pretrial Conference:** At least 21 days¹ 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;
 3. Preparation and exchange of pretrial materials to be served and lodged pursuant to Federal Rule of Civil Procedure 26(a)(3); and
 4. Clarifying and narrowing the contested issues for trial in order to achieve a just, speedy, and efficient determination of the case.
- B. Joint Pretrial Statement and Order:** At least 14 days before the Pretrial Conference, unless otherwise ordered, the parties shall lodge and serve a Joint Pretrial Statement and Proposed Order containing the following information:
1. Substance of the Action. A brief description of the parties, the substance of claims and defenses that remain to be decided, and the operative pleadings that raise the issues;

¹ Time shall be computed according to Federal Rule of Civil Procedure 6(a).

- 1 2. Relief Sought. A detailed statement of all relief claimed, particularly itemizing all
2 elements of damages claimed as well as witnesses, documents, or other evidentiary
3 material to be presented concerning the amount of damages;
- 4 3. Undisputed Facts. A plain and concise statement of all relevant facts to which the
5 parties will stipulate for incorporation into the trial record without the necessity of
6 supporting testimony or exhibits;
- 7 4. Disputed Factual Issues. A plain and concise list of the issues of fact that are
8 contested and remain to be litigated at trial;
- 9 5. Agreed Statement. A statement assessing whether all or part of the action may be
10 presented upon an agreed statement of facts;
- 11 6. Stipulations. A statement of proposed stipulations or agreements that will expedite
12 the presentation of evidence;
- 13 7. Witnesses to be Called. A list of witnesses likely to be called at trial, other than
14 solely for impeachment or rebuttal, together with a brief statement following each
15 name describing the substance of the testimony to be given. No party shall be
16 permitted to call any witness in its case in chief who is not disclosed in its Joint
17 Pretrial Statement without leave of the Court for good cause;
- 18 8. Exhibits, Schedules, Summaries. A list of all documents and other items to be
19 offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a
20 brief statement following each, describing its substance or purpose and the identity
21 of the sponsoring witness;
- 22 9. Disputed Legal Issues. Without extended legal argument, a concise statement of
23 each disputed point of law concerning liability or relief, citing supporting statutes
24 and decisions;
- 25 10. Further Discovery or Motions. A statement of all remaining discovery, if any, or
26 any motions or matters that must be resolved prior to trial, including motions in
27 limine;
- 28

1 11. Disputed Evidentiary Issues. A concise statement of each disputed evidentiary issue
2 (even if a motion in limine will not be filed on that issue), citing supporting statutes
3 and decisions or referring to the appropriate motion in limine;

4 12. Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a
5 separate trial of specific issues is feasible and desired;

6 13. Estimate of Trial Time. An estimate of the total number of hours or days needed for
7 the trial; and

8 14. Miscellaneous. Any other matters that will facilitate the just, speedy and efficient
9 determination of the action.

10 **C. Binding Effect of the Joint Pretrial Statement and Order:** The Joint Pretrial
11 Statement and Order described above shall recite, directly above the signature lines of
12 each party, the following:

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

17 **D. Preparation for Trial**

18 1. Exhibits:

19 a) At least 14 days before the final Pretrial Conference, the parties shall exchange
20 copies of all exhibits, summaries, charts, and diagrams to be used at trial other
21 than solely for impeachment or rebuttal.

22 b) Each exhibit shall be pre-marked for identification. Counsel shall meet and
23 confer and reach agreement upon a method for marking exhibits (for example,
24 Plaintiff shall use numbers and Defendant shall use letters, or Plaintiff shall use
25 numbers 100-199 and Defendant shall use numbers 200-299, etc.).

26 c) Unless otherwise ordered, at least 7 days prior to the commencement of trial, the
27 parties shall deliver three sets of all pre-marked exhibits contained in three ring
28 binders to Martha Parker Brown, Courtroom Deputy to Judge Koh.

1 d) No party shall be permitted to offer any exhibit at trial that is not disclosed in its
2 Joint Pretrial Statement without leave of the Court for good cause, unless it is
3 offered solely for impeachment or rebuttal.

4 2. Motions in Limine. Unless otherwise ordered, the parties shall file and serve any
5 motions in limine at least 14 days before the final Pretrial Conference, and any
6 opposition thereto at least 10 days before the final Pretrial Conference. Ordinarily,
7 these motions will be deemed submitted without oral argument. Each motion
8 should be presented in a separate memo and numbered as, for example, “Plaintiff’s
9 Motion in Limine No. 1 to Exclude” Please limit motions in limine to
10 circumstances that actually require a ruling in advance of trial. Usually five or
11 fewer motions per side are sufficient at the Pretrial Conference stage (without
12 prejudice to raising matters as the trial progresses). Each motion should address a
13 single topic, be separate, and contain no more than seven pages of briefing per side.

14 3. Deposition and Discovery Designations: Unless otherwise ordered, at least 14 days
15 before the commencement of trial, the parties shall file and serve any excerpts of
16 deposition testimony or other discovery to be offered at trial, other than solely for
17 impeachment or rebuttal. (A hard copy of the designated deposition testimony with
18 page and line references, or the interrogatory response or admission shall be
19 provided.) Any objections to the use of designated excerpts and any counter-
20 designations of deposition testimony shall be filed and served at least 10 days prior
21 to the commencement of trial.

22 4. Jury Materials:

23 a) Unless otherwise ordered, at least 7 days prior to the final Pretrial Conference,
24 the parties shall file and serve:

- 25 1) Jury Voir Dire Questions
 - 26 2) Proposed Jury Instructions
 - 27 3) Proposed Jury Verdict Forms
- 28

1 b) Ordinarily, the Court will give the standard preliminary jury instructions
2 contained in the Model Jury Instructions of the Ninth Circuit prior to opening
3 statements and will give the standard closing instructions in the Model Jury
4 Instructions of the Ninth Circuit before closing arguments.

5 c) As to substantive case-specific instructions, the parties shall meet and confer
6 and submit jointly an agreed set of instructions, using the Model Jury
7 Instructions of the Ninth Circuit where appropriate. In the event the parties are
8 unable to agree to the language of a particular instruction, the objecting party
9 shall submit a written objection or an alternative proposed instruction placed in
10 sequence immediately following the disputed instruction. The joint set of jury
11 instructions shall be submitted in hard copy as well as word processing format
12 via e-mail to LHKpo@cand.uscourts.gov.

13 5. Trial Briefs: Trial briefs are optional, but any party wishing to file a trial brief must
14 do so not less than 7 days prior to the commencement of trial.

15 6. Time Limits: Ordinarily, the Court shall set fixed time limits at the final Pretrial
16 Conference. All of your examination time (whether direct, cross, re-direct, or re-
17 cross) for all witnesses must fit within your time limit and you may allocate the time
18 as you wish. Opening and closing time limits are *in addition* to your examination
19 time.

20 **E. Scheduling**

21 The normal trial schedule will be 9:00 a.m. to 4:30 p.m., with a lunch break from 12:00
22 p.m. to 1:30 p.m., on Monday, Tuesday, and Friday, and from 9:00 a.m. to 12:00 p.m.
23 on Thursday.

24 **F. Settlement and Continuances**

25 Shortly before trial or a final Pretrial Conference, counsel occasionally wish to jointly
26 advise the Court that a settlement has been reached and seek to take the matter off
27 calendar based on a settlement “in principle” with disputes remaining. Cases, however,
28 cannot be taken off calendar in this manner. Unless and until a stipulated dismissal is

1 filed or placed on the record, all parties must be prepared to proceed as scheduled. Only
2 an advance continuance *expressly approved by the Court* will release counsel and the
3 parties from their obligation to proceed. If counsel expect that a settlement will be final
4 by the time of the Pretrial Conference or trial, they should notify the Court immediately
5 in writing, or, if settlement occurs over the weekend, by voice mail to Martha Parker
6 Brown, Courtroom Deputy to Judge Koh. The Court will attempt to confer with
7 counsel promptly to determine whether a continuance is in order. Pending such a
8 conference, however, counsel must prepare and make all filings and be prepared to
9 proceed with the trial.

10 **G. Opportunities for Junior Lawyers**

11 The Court strongly encourages parties to permit less experienced lawyers to examine
12 witnesses at trial and to have an important role at trial. Counsel should be prepared to
13 discuss such opportunities at the Pretrial Conference.

14 **IT IS SO ORDERED.**

15
16 Dated: January 3, 2011

17 
18 LUCY H. KOH
19 United States District Judge