

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STANDING ORDER RE PRETRIAL PREPARATION
MAGISTRATE JUDGE VIRGINIA K. DEMARCHI
Effective February 7, 2022

1. General

The following requirements, deadlines, and procedures shall apply in all cases scheduled for trial before Magistrate Judge Virginia K. DeMarchi, unless the Court specifically orders otherwise.

2. Exchange of Pretrial Materials

At least *21 days prior to the Pretrial Conference*, the parties shall serve (but not file) the following materials:

- a. Witness list. Each party shall provide a list identifying each witness the party intends to call at trial, other than solely for impeachment. For each such witness, the party shall indicate whether the witness will testify live or by deposition, whether the witness will provide fact testimony, expert testimony, or both, and whether the party will call the witness or may call the witness only if the need arises.
- b. Deposition designations. For any witness to be called by deposition, the party listing the witness shall provide a table identifying by page and line number the specific testimony the party intends to offer at trial. The table should include columns for the opposing party(ies) to state objections and counter-designations, and for the Court to note any rulings (see attached form).
- c. Exhibit list. Each party shall provide a list of all documents, summaries and other items to be offered as exhibits at trial, other than *solely* for impeachment. Any summaries a party intends to offer must comply with Fed. R. Evid. 1006. Each item on the list shall be identified by an exhibit number followed by a short description of the item. The list should include columns for the opposing party(ies) to state objections, and for the Court to note any rulings (see attached form).
- d. Proposed juror questionnaires (jury trials only). Each party seeking to use juror questionnaires shall provide their proposed questionnaire.
- e. Proposed voir dire questions (jury trials only). Each party should provide a set of proposed voir dire questions that it wishes the court to ask. As indicated below, the court will question prospective trial jurors.
- f. Proposed jury instructions (jury trials only). Each party shall provide a set of proposed substantive instructions that includes the text of the instruction, its source (*e.g.* Model Jury Instructions of the Ninth Circuit), and authority supporting the

instruction. If the source of the instruction is a model instruction, any deviations from the model must be clearly indicated (*e.g.* using strikeout and underlining to show deletions and additions). As indicated below, the parties need not exchange proposed jury instructions that cover standard preliminary instructions or standard closing instructions.

- g. Proposed form of verdict (jury trials only). Each party shall provide the form of verdict it wishes the court to use.

At least *14 days prior to the Pretrial Conference*, the parties shall serve (but not file) the following materials:

- a. Objections to witnesses. Each party shall state its objections, and the bases therefor, to the testimony of any witnesses identified by the opposing party(ies).
- b. Objections/counter-designations. Each party shall indicate its objections, and the bases therefor, and any counter-designations to the deposition testimony designated by the opposing party(ies).
- c. Objections to exhibits. Each party shall state its objections, and the bases therefor, to the exhibits identified by the opposing party(ies).
- d. Objections to voir dire questions (jury trials only). Each party shall state its objections, and the bases therefor, to the voir dire questions of the opposing party(ies).
- e. Objections to jury instructions (jury trials only). Each party shall state its objections, and the bases therefor, to the jury instructions of the opposing party(ies), together with any alternative proposed instruction and the authority supporting the alternative instruction.

The parties should agree on a format for the exchange of pretrial materials that facilitates review, discussion, and the communication of any objections.

3. Joint Pretrial Statement

At least *7 days prior to the Pretrial Conference*, the parties shall file a Joint Pretrial Statement that includes the materials described below. Counsel for the parties (and any parties appearing pro se) shall confer in person, by telephone or by videoconference to discuss preparation of the Joint Pretrial Statement sufficiently in advance of the filing deadline to ensure the statement is timely filed. The conference of counsel must include discussion of any objections to evidence (witness testimony, deposition designations, exhibits) that a party proposes to offer at trial.

The Joint Pretrial Statement is a *joint* submission, which shall include:

- a. Neutral statement of the case. A brief description of what the case is about. For jury trials, the statement should be suitable for reading to the jury as part of the court's preliminary jury instructions.

- b. Claims and defenses. A statement of the pending claims and defenses to be tried.
- c. Relief. A statement of the relief sought by each party with a claim for relief.
- d. Undisputed facts. A statement of (i) all relevant facts not reasonably in dispute, and (ii) any facts to which the parties will stipulate for purposes of trial without the need for supporting testimony or exhibits, in a form that may be read to the jury if the matter is to be tried to a jury.
- e. Disputed facts. A concise statement of the material disputed facts that must be decided.
- f. Legal issues. Without extended legal argument, a concise statement of each disputed point of law concerning liability, relief, procedure, or evidence that must be decided.
- g. Proposed findings of fact and conclusions of law (non-jury trials only). For matters tried to the court without a jury, each party shall file proposed findings of fact and conclusions of law, with citations as appropriate to evidence proposed to be offered at trial.
- h. Witnesses. A list identifying each witness the parties intend to call at trial, other than *solely* for impeachment. For each such witness, the parties shall provide a very brief description of the subject matter of the witness's anticipated testimony. The parties shall also indicate whether the witness will testify live or by deposition, whether the witness will provide fact testimony, expert testimony, or both, and whether the party who is the proponent of the witness *will* call the witness or *may* call the witness only if the need arises. Objections to a witness's testimony that have not been resolved must be noted.
- i. Deposition designations. For any witness testifying by deposition, a table identifying by page and line number the specific testimony to be offered at trial, any objections that have not been resolved, and any counter-designations. The deposition designations should include the information in the form attached to this order.
- j. Exhibits. A list of all documents, summaries and other items to be offered as exhibits at trial, other than *solely* for impeachment. The parties must use a sequential numbering system for exhibits to be offered at trial. Ideally, for exhibits previously marked in deposition, the trial exhibit numbers will match the deposition exhibit numbers. *See* Civil L.R. 30-2(b)(1). In any event, the numbering system for trial exhibits must not assign the same exhibit number to multiple different documents and must not assign different exhibit numbers to the same document. Objections to exhibits that have not been resolved must be noted. The exhibit list should include the information in the form attached to this order. (Copies of the exhibits shall be lodged with the Court, according to the instructions below.)

- k. Estimated time for trial. A carefully reasoned estimate of the number of hours needed for the presentation of each party's case, including cross-examination of opposing witnesses.
- l. Stipulations. Any stipulations requested or proposed for pretrial or trial purposes, other than stipulations of fact.
- m. Proposed juror questionnaires (jury trials only). A proposed juror questionnaire to be provided to prospective jurors before voir dire begins. If the parties are unable to agree on specific questions, they shall indicate their respective proposals.
- n. Proposed voir dire questions (jury trials only). A set of proposed voir dire questions the parties wish the court to ask, and if the parties do not agree as to all questions, a short statement of their respective positions on which questions should and should not be asked. The examination of prospective jurors will be conducted by the Court, but the court will consider questions proposed by the parties.
- o. Proposed jury instructions (jury trials only). A set of proposed substantive instructions. Each instruction shall begin at the top of a page, and shall include the text of the instruction, followed by its source (*e.g.* Model Jury Instructions of the Ninth Circuit), the authority supporting the instruction, any unresolved objections, any alternative instruction, and the source of such alternative instruction. If the source of the instruction is a model instruction, any deviations from the model must be clearly indicated (*e.g.* using strikeout and underlining to show deletions and additions). The Court intends to use the Model Jury Instructions of the Ninth Circuit, modified and supplemented as necessary, as the starting point for jury instructions, including preliminary instructions and closing instructions. The parties should not submit proposed jury instructions that cover standard preliminary instructions or standard closing instructions.
- p. Proposed form of verdict (jury trials only). A proposed form of verdict, or if the parties do not agree, their respective proposed forms of verdict.
- q. Settlement. A statement indicating whether further settlement discussions would likely be productive.
- r. Miscellaneous. Any other matters relevant to the trial of this action or material to its just, speedy and inexpensive resolution.

4. Motions in Limine

At least *14 days prior to the Pretrial Conference*, the parties shall file any motions in limine. Motions in limine may not exceed 10 pages. Parties may not file *Daubert* motions as motions in limine. *Daubert* motions generally will be heard at the same time as dispositive motions, unless the Court orders otherwise.

At least *7 days prior to the Pretrial Conference*, the parties shall file oppositions, or

statements of non-opposition, to the motions in limine filed by the opposing party(ies).

No replies are permitted.

5. Chambers' Copies of Motion in Limine Papers and Joint Pretrial Statement Materials

The parties shall deliver *two* paper copies of (1) the Joint Pretrial Statement to Judge DeMarchi's chambers no later than noon on the court day following the day that the Joint Pretrial Statement is filed and (2) motion in limine papers no later than noon on the court day following the day that the parties' respective opening and responding papers are filed. Chambers copies must be double-sided and 3-hole punched along the left margin of the paper.

The parties shall email a copy of their jointly filed Exhibit List and Deposition Designations in Microsoft Word or Excel format to vkdp@cant.uscourts.gov. The parties shall email a copy of their jointly filed Jury Instructions in Microsoft Word format to vkdp@cant.uscourts.gov.

6. Lodging Exhibits with Court

At least *7 days prior to the Pretrial Conference*, the parties shall lodge with the Court all proposed trial exhibits. The exhibits should be exhibit-numbered, tabbed and placed in 3-ring binders. If it is not feasible to include a particular exhibit in a binder, place a slip sheet in the binder and separately lodge the exhibit. The parties shall also deliver to chambers electronic media (e.g., thumb drive) containing an electronic copy of all exhibits.

7. Pretrial Conference

Lead counsel for the parties must appear in person for the pretrial conference.

8. Trial Preparation and Conduct

The Court's usual trial schedule is Monday-Fridays, 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:00 p.m., with short morning and afternoon breaks. Counsel may need to arrive earlier or stay later to address any matters that must be heard out of the presence of the jury.

The Court's usual practice is to set fixed time limits for presentation of each party's evidence, including direct and cross examination. Time limits for opening statement and closing argument will be set separately. The Courtroom Deputy will track each party's time, but the parties are encouraged to track their own time and consult with the Courtroom Deputy at the end of each day to avoid discrepancies.

If any party requires daily or real-time transcripts, please consult with Judge DeMarchi's Courtroom Deputy about how to make arrangements for this service.

If the parties wish to bring trial presentation equipment into the courtroom, please contact Judge DeMarchi's Courtroom Deputy to discuss arrangements. The U.S. Marshal will not permit equipment to be brought into the courthouse without a court order.

The parties are expected to provide each other notice of the order and timing of witnesses to be called at trial (live or by deposition), the exhibits to be used with each witness (other than for impeachment), and demonstratives to be used with witnesses, in opening statements and in closing arguments. The parties must confer in advance of trial on the manner and timing of such notices so that objections may be raised with and resolved by the Court without delaying the conduct of the trial.

9. Other Matters

All prospective jurors will be shown the Northern District of California's *Unconscious Bias* video, unless the Court sustains an objection to the video. The video is available for viewing on the court's website at <https://www.cand.uscourts.gov/attorneys/unconscious-bias-video-for-potential-jurors/>.

In patent cases, empaneled jurors will be shown the Federal Judicial Center's *The Patent Process: An Overview for Jurors* video, unless the Court sustains an objection to the video. The video is available for viewing on the FJC's website at <https://www.fjc.gov/publications/patent-process-overview-jurors>.

IT IS SO ORDERED.

Dated: February 7, 2022



VIRGINIA K. DEMARCHI
United States Magistrate Judge

FORM: DEPOSITION DESIGNATIONS

Case Name: _____

Case No.: _____

Witness name

| Designated testimony | Objections | Counter-designations | Court |
|-----------------------------|-------------------|-----------------------------|--------------|
| Page:line – page:line | | | |
| | | | |

FORM: EXHIBIT LIST¹

Case Name: _____

Case No.: _____

| Exhibit No. | Description | Objections | Court |
|--------------------|--------------------|-------------------|--------------|
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| | | | |

Plaintiff's Exhibits

| Exhibit No. | Description | Objections | Court |
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Defendant's Exhibits

| Exhibit No. | Description | Objections | Court |
|--------------------|--------------------|-------------------|--------------|
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¹ Exhibits should be numbered sequentially. Gaps in the sequence are permitted. If exhibits are disputed, the parties may indicate in the chart that an exhibit or set of exhibits is proposed to be offered by one party or the other.

