

1 (11/2023)

2 **PRETRIAL INSTRUCTIONS**
3 **Honorable Susan Illston**

4 **COUNSEL SHALL MEET AND CONFER IN GOOD FAITH IN ADVANCE OF**
5 **COMPLYING WITH THE FOLLOWING PRETRIAL REQUIREMENTS.**

6 **1. PRETRIAL CONFERENCE and STATEMENT**

7 The parties shall comply in all respects with Fed. R. Civ. P. 16. The statement is due
8 **fourteen days** prior to the Pretrial Conference. The parties shall file a joint pretrial
9 conference statement containing the following information:

10 **a. The Action**

11 **1. Substance of the Action.** A brief description of the substance of
12 claims and defenses which remain to be decided.

13 **2. Relief Prayed.** A detailed statement of all the relief claimed,
14 particularly itemizing all elements of damages claimed as well as witnesses, documents
15 or other evidentiary material to be presented concerning the amount of those damages.

16 **b. The Factual Basis of the Action**

17 **1. Undisputed Facts.** A plain and concise statement of all relevant
18 facts not reasonably disputable, as well as which facts parties will stipulate for
19 incorporation into the trial record without the necessity of supporting testimony or
20 exhibits.

21 **2. Disputed Factual Issues.** A plain and concise statement of all
22 disputed factual issues which remain to be decided.

23 **3. Agreed Statement.** A statement assessing whether all or part of the
24 action may be presented upon an agreed statement of facts.

25 **4. Stipulations.** A statement of stipulations requested or proposed for
26 pretrial or trial purposes.

27 **c. Disputed Legal Issues**

28 **1. Points of Law.** Without extended legal argument, a concise
statement of each disputed point of law concerning liability or relief, citing supporting
statutes and decisions setting forth briefly the nature of each party's contentions
concerning each disputed point of law, including procedural and evidentiary issues.

2. Proposed Conclusions of Law. If the case is to be tried without a
jury, unless otherwise ordered, parties should briefly indicate objections to proposed

1 conclusions of law.

2 **d. Trial Preparation**

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

6 **2. Exhibits, Schedules and Summaries.** A list of all documents and
7 other items to be offered as exhibits at the trial, other than solely for impeachment or
8 rebuttal, with a brief statement following each, describing its substance or purpose and
9 the identity of the sponsoring witness. Unless otherwise ordered, parties will indicate
10 their objections to the receipt in evidence of exhibits and materials lodged and that
11 counsel have conferred respecting such objections.

12 **3. Estimate of Trial Time.** An estimate of the number of court days
13 needed for the presentation of each party's case, indicating possible reductions in time
14 through proposed stipulations, agreed statements of facts, or expedited means of
15 presenting testimony and exhibits.

16 **4. Use of Discovery Responses.** Counsel shall cite possible
17 presentation at trial of evidence, other than solely for impeachment or rebuttal, through
18 use of excerpts from depositions, from interrogatory answers, or from responses to
19 requests for admission. Counsel shall indicate any objections to use of these materials
20 and that counsel has conferred respecting such objections.

21 **5. Further Discovery or Motions.** A statement of all remaining
22 discovery or motions, including motions in limine.

23 **e. Trial Alternatives and Options**

24 **1. Settlement Discussion.** A statement summarizing the status of
25 settlement negotiations and indicating whether further negotiations are likely to be
26 productive.

27 **2. Consent to Trial Before a Magistrate Judge.** A statement whether
28 reference of all or part of the action to a master or magistrate judge is feasible, including
whether the parties consent to a court or jury trial before a magistrate judge, with appeal
directly to the Ninth Circuit.

3. Amendments, Dismissals. A statement of requested or proposed
amendments to pleadings or dismissals of parties, claims or defenses.

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

1 **2. WITNESSES**

2 **a. Jury Trials**

3 The Pretrial Conference Statement shall include the witness list required in part by
4 1(d)(1) above. In addition, in the case of expert witnesses, the summary shall clearly
5 state the expert's theories and conclusions and the basis therefore and shall be
6 accompanied by a curriculum vitae; if the expert has prepared a report in preparation for
7 the testimony, a copy thereof shall be furnished to opposing counsel. Witnesses not
8 included on the list may be excluded from testifying.

9 **b. Non-Jury Trials**

10 In non-jury cases, any party may serve and lodge with the Court a written narrative
11 statement of the proposed direct testimony of each witness under that party's control in
12 lieu of a summary. Each statement shall be marked as an exhibit and shall be in a form
13 suitable to be received into evidence.

14 **3. JURY INSTRUCTIONS**

15 **a. Joint Set of Instructions**

16 The parties shall prepare and e.file a joint set of jury instructions **fourteen days**
17 prior to the Pretrial Conference. The submission shall contain both agreed upon
18 instructions (which shall be so noted), and contested instructions, all in the order in which
19 they should be read to the jury. Where contested instructions are included, they should
20 be annotated both with the proponent's authority for seeking the instruction and the
21 opponent's reason for opposition. In addition to delivering a paper courtesy copy of the
22 joint jury instructions (see § 7(c), below), Counsel shall email a copy in Word format to
23 SIPO@cand.uscourts.gov.

24 **b. Substance and Format of Instructions**

25 The instructions shall cover all substantive issues and other points not covered by
26 the Ninth Circuit Manual of Model Jury Instructions. Each requested instruction shall be
27 typed in full on a separate page and citations to the authorities upon which the instruction
28 is based shall be included. Instructions shall be brief, clear, written in plain English and
29 free of argument. Pattern or form instructions shall be revised to address the particular
30 facts and issues of this case.

31 **c. Preliminary Statement and Instructions**

32 If the parties wish to have a preliminary statement read to the jury, and/or
33 preliminary instructions given to the jury, they shall jointly prepare and submit to the
34 Court, fourteen days prior to the pretrial conference, the text of the statement and
35 instructions, clearly marked.

36 **d. Voir Dire and Verdict Forms**

37 Each party shall serve and file proposed questions for jury voir dire and a
38 proposed Form of Verdict not later than fourteen days prior to the Pretrial Conference.

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4. FINDINGS OF FACT and CONCLUSIONS OF LAW

In **non-jury cases**, each party shall file with the Court **fourteen days** prior to the Pretrial Conference, proposed Findings of Fact and Conclusions of Law on all material issues. Proposed Findings shall be brief, written in plain English and free of pejorative language, conclusions and argument. In addition to delivering a paper courtesy copy of the proposed Findings of Fact and Conclusions of Law (see § 7(c), below), Counsel shall email a copy in Word format to SIPO@cand.uscourts.gov.

5. EXHIBITS

a. Provide Copies of Exhibits to Court, Witness Stand and Other Parties

Each party shall provide every other party with one set of all proposed exhibits, charts, schedules, summaries, diagrams and other similar documentary materials to be used in its case in chief at trial, together with a complete list of all such proposed exhibits. Voluminous exhibits shall be reduced by elimination of irrelevant portions or through the use of summaries. Each item shall be pre-marked with a trial exhibit sticker (***not deposition exhibit label***), defendant's exhibit numbers shall be sequenced to begin after plaintiff's exhibit numbers. If there are numerous exhibits, they should be provided in three-ring binders with marked tab separators. All exhibits which have not been provided as required are subject to exclusion. All exhibits shall be in binders no larger than three inches and shall include an identifying label on the spine of each binder as well as the cover of each binder.

b. Stipulations re Admissibility

Fourteen days prior to the Pretrial Conference, the parties shall make a good faith effort to stipulate to exhibits' admissibility. If stipulation is not possible, the parties shall make every effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection.

c. Objections to Exhibits

In addition to the exhibit list, counsel shall confer with respect to any other objections to exhibits in advance of the Pretrial Conference. Each party shall file and serve a statement briefly identifying each item objected to, the grounds for the objection and the position of the offering party fourteen days prior to the date set for the Pretrial Conference.

d. Provide Copies of Exhibits to Court

Three sets of exhibits shall be provided to the Court on the Friday prior to the trial date. Each set shall be in binders, marked, tabbed and indexed and shall be delivered/mailed directly to Chambers. Parties are to comply with Local Rule 16-10(b)(7).

e. Disposition of Exhibits after Trial

Upon the conclusion of the trial, each party shall retain its exhibits through the appellate process. It is each party's responsibility to make arrangements with the Clerk of Court to file the record on appeal.

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6. MOTIONS IN LIMINE

Any party wishing to have motions in limine heard prior to the commencement of trial must file and serve same no later than **fourteen days** prior to the date set for the Pretrial Conference. Any party opposing such a motion in limine shall file and serve its opposition papers no later than **seven days** prior to the Pretrial Conference. Reply papers are not required. The motions will be heard at the Pretrial Conference or at such other time as the Court may direct. Nothing in this provision prevents a party from noticing its motions in limine regularly for hearing on or prior to the final date for hearing dispositive motions. **NO LEAVE TO FILE UNDER SEAL WILL BE GRANTED WITH RESPECT TO MOTIONS IN LIMINE.**

7. OTHER PRETRIAL MATTERS

a. Status/Discovery Conferences

Any party desiring to confer with the Court may, upon notice to all other parties, arrange a conference through the Courtroom Deputy at (415) 522-2028 or SICRD@cand.uscourts.gov.

b. Settlement Conferences

Any party wishing to arrange a settlement conference before another judge or Magistrate Judge may do so by contacting the courtroom deputy.

c. Paper Courtesy Copies

Two sets of paper courtesy copies (“chambers copies”) are required for all pretrial conference filings. See Judge Illston’s Standing Order for instructions regarding the proper formatting and deadlines for delivery of courtesy copies.

d. Daily Transcripts/Realtime Reporting

If a daily transcript and/or realtime reporting is needed, the parties shall make arrangements with Kristen Melen, Court Reporter Supervisor, at (415) 522-2079 or Kristen_Melen@cand.uscourts.gov, at least fourteen days before trial commences. If transcripts will be requested immediately after trial, arrangements must be made with the court reporter at least fourteen days before trial commences.

e. Less Experienced Lawyers, Lawyers from Underrepresented Groups

The Court strongly encourages parties to permit less experienced lawyers (five or fewer years out of law school) and lawyers from groups that have been historically underrepresented in the legal profession to examine witnesses at trial and to have an important role at trial. Counsel should be prepared to discuss such opportunities at the Pretrial Conference.

8. MISCELLANEOUS

a. The Court takes a photograph of each witness prior to the witness's testimony.

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b. Please **DO NOT** call Chambers. If you need to contact the courtroom deputy, please call the number above (415-522-2028) and leave a message if the deputy is not available.