

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**GUIDELINES FOR FINAL PRETRIAL CONFERENCES IN BENCH 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: At least 14 days before the final Pretrial Conference, the parties shall lodge and serve a Joint Pretrial Statement 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 *govern the course of trial of this action, unless modified to prevent manifest injustice.*

16 **D. Preparation for Trial**

17 1. Joint and Parties' Exhibits:

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

21 b) The parties shall meet and confer and create a list of joint exhibits.

22 c) 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 d) At least 7 days before trial, the parties shall deliver three sets of the pre-marked,
27 double-sided joint exhibits and parties' exhibits in three ring binders to
28 Cassandra Dibble, Courtroom Deputy to Judge Koh.

1 e) 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.

3 2. Motions in Limine: Each side may file up to three motions in limine. Each motion
4 in limine and each opposition shall not exceed three pages. No replies are
5 permitted. Motions in limine shall be filed at least 14 days before the final Pretrial
6 Conference. Oppositions thereto shall be filed at least 10 days before the final
7 Pretrial Conference. Each motion should be presented in a separate memo and
8 numbered as, for example, “Plaintiff’s Motion in Limine No. 1 to Exclude”
9 Please limit motions in limine to circumstances that actually require a ruling in
10 advance of trial. Each motion should address a single topic. These motions
11 generally will be decided without oral argument.

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

19 4. Proposed Findings of Fact and Conclusions of Law. At least 7 days before the final
20 Pretrial Conference, each party shall file and serve proposed findings of fact and
21 conclusions of law. The findings of fact shall set forth in simple declarative
22 sentences, separately numbered, all factual contentions relied upon by the party in
23 support of its claims or defenses and shall be free of pejorative language and
24 argument. Conclusions of law shall be supported by appropriate citation to legal
25 authority. The proposed findings of fact and conclusions of law shall be delivered
26 in hard copy to Chambers as well as emailed in Microsoft Word to
27 LHKpo@cand.uscourts.gov.
28

1 5. Trial Briefs: Trial briefs are optional, but any party wishing to file a trial brief must
2 do so not less than 7 days before trial.

3 6. Time Limits: At or before the final Pretrial Conference, the Court will set time
4 limits on opening statements (if any), evidence, and closing arguments (if any). All
5 examination (direct, cross, re-direct or re-cross) time and all time introducing
6 exhibits must fit within your evidence time limit.

7 **E. Scheduling**

8 The normal trial schedule will be 9:00 a.m. to 4:30 p.m., with a lunch break from 12:00
9 p.m. to 1:00 p.m., on Mondays, Tuesdays, and Fridays.

10 **F. Settlement and Continuances**

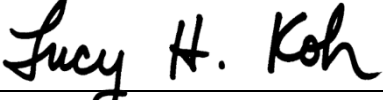
11 The Court will not vacate pretrial conferences or trials until the parties file a stipulation
12 of dismissal. If the parties are not prepared to file a stipulation of dismissal with
13 prejudice, they may file a stipulation of dismissal without prejudice then file a
14 stipulation of dismissal with prejudice after all actions required by the settlement have
15 been completed.

16 **G. Opportunities for Less Experienced Lawyers**

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

20 **IT IS SO ORDERED.**

21
22 Dated: August 28, 2019

23 
24 _____
25 LUCY H. KOH
26 United States District Judge
27
28