SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

, **Plaintiff,** **v.** **, *et al*.** **Defendants.**	Case No. **PRETRIAL ORDER** **Pretrial Conf.: at 2:00 p.m.** **MSC: at 9:00 a.m.** **Trial Date: at 9:00 a.m.**

WHEREAS the San Mateo County Superior Court switched to a direct calendar system for all civil cases beginning on January 1, 2021;

WHEREAS the Court wishes to ensure that the Court, the parties, and the witnesses in all civil cases are prepared to begin the trial on the actual date that the trial is scheduled; and

WHEREAS the Court wishes to establish clear and uniform requirements for pretrial conferences and trials in all civil cases;

Pursuant to the Court's inherent authority, IT IS HEREBY ORDERED THAT:

INTRODUCTION

1. A summary of the deadlines established by this order is provided below:

SUMMARY TABLE OF DEADLINES

PRETRIAL CONFERENCE

EVENT	DEADLINE
Serve (but not file): 1. Proposed motions in limine; 2. Proposed jury instructions; 3. Proposed verdict form(s); 4. Proposed witness lists; and 5. Proposed exhibit lists	At least 42 days before the Pretrial Conference
Meet and confer regarding pretrial conference – including motions in limine, proposed jury instructions, proposed juror questionnaire (if any), proposed verdict forms, proposed statement of the case, and witness and exhibit lists	At least 35 days before the Pretrial Conference
File and serve motions in limine and oppositions to motions in limine	At least 21 days before the Pretrial Conference
File joint pretrial conference statement with: 1. Proposed jury instructions; 2. Proposed verdict form(s); 3. Proposed voir dire and juror questionnaire (if any); 4. Proposed statement of the case; 5. Witness lists; 6. Exhibit lists, including any disputed exhibits; and 7. Binders with motions in limine, oppositions, and supporting declarations or requests for judicial notice 8. Deposition designations and objections	At least 14 days before the Pretrial Conference
Pretrial Conference	At least 14 days before the Trial Date
Deliver set of trial exhibits in binders and on thumb drive to the Court	At least 7 days before the Trial Date

2. The parties must make every effort to raise and, if possible, resolve pretrial and trial issues early. While the Court understands that trial is not entirely predictable, the parties must frontload all evidentiary and legal disputes to the extent possible. Issues that surface unnecessarily on the eve of trial or during trial waste the jury's time and are strongly disfavored. With this understanding, **ALL DEADLINES AND REQUIREMENTS IMPOSED BY THIS ORDER ARE SUBJECT TO MODIFICATION AT THE DISCRETION OF THE COURT**.

MOTIONS IN LIMINE

3. The parties are encouraged to resolve as many trial issues by stipulation as possible. The parties shall meet and confer no later than 35 days before the Pretrial Conference to determine whether any evidentiary issues may be resolved by stipulation. No party may file a motion in limine without first making a good faith effort to resolve the evidentiary issue with the opposing party. Judge Fineman's webpage has motion in limine orders she has issued.

4. Motions in limine and their oppositions must be filed no later than 21 days before the Pretrial Conference. No replies will be permitted without leave of the Court.

5. Each party must submit a tabbed binder with its motions in limine in numerical order with the opposition immediately behind the motion within the same tab. Any declarations or requests for judicial notice submitted by the parties in support of or in opposition to the motions in limine along with any attached exhibits must be submitted in a separate tabbed binder. The binders must be submitted to the Court with the Joint Pretrial Conference Statement.

6. Each motion in limine should address a single, separate topic and shall be limited to five (5) pages in length unless otherwise permitted by the Court. Each motion should be clearly identified as "_____'s Motion in Limine No. ___ Re: _____."

7. Each opposition is also limited to five (5) pages in length unless otherwise permitted by the Court.

8. Each party shall file only one (1) declaration and/or one (1) request for judicial notice to support all motions in limine and one (1) declaration and/or one (1) request for judicial notice to support all oppositions to motions in limine. The parties do not have to include a copy of the operative complaint.

9. Each party shall also submit a hard copy and a Word version of all proposed orders. Each proposed order must provide enough specificity so that a witness will be able to understand what testimony is prohibited.

10. The motions shall be heard at the Pretrial Conference or at such other time as the Court may direct.

JURY INSTRUCTIONS

11. The parties shall file a joint set of proposed jury instructions, arranged in the order the parties propose the Court give the instructions, with the Joint Pretrial Conference Statement.

12. The parties are invited to use the Judicial Council of California Civil Jury Instructions (CACI). Any modifications made to a form instruction must be plainly identified.

13. Instructions upon which the parties agree shall be identified as "Stipulated Instruction No. ___ Re: _____," with blanks filled in as appropriate.

14. If the parties disagree on an instruction, each party's proposed version of the disputed instruction shall be provided and identified as "Disputed Instruction No. ___ Re: _____ Offered by _____," with blanks filled in as appropriate. All proposed versions of the same instruction shall bear the same number. Following each disputed instruction, each party shall explain, in no more than one page, why the Court should give that party's proposed instruction or why the instruction should or should not be given.

15. Any changes to the proposed jury instructions ordered by the Court must be made by the parties and submitted to the Court by the deadline set by the Court at the Pretrial Conference or by any other deadline set by the Court.

VERDICT FORM(S)

16. The parties shall file either joint proposed verdict form(s) or, if they disagree, separate proposed verdict forms with the Joint Pretrial Conference Statement.

17. Any changes to the proposed verdict form(s) ordered by the Court must be made by the parties and submitted to the Court in Word format by the deadline set at the Pretrial Conference or by any other deadline set by the Court.

VOIR DIRE AND JURY QUESIONNAIRE (IF ANY)

18. The Court will conduct the initial voir dire guided by the Standards of Judicial Administration § 3.25(c). If the parties want the Court to ask any particular questions from those Standards or any additional questions, they should jointly submit those questions (and any objections) with the Joint Pretrial Conference Statement.

19. If the parties wish to use a jury questionnaire, the parties must file a joint proposed jury questionnaire or, if they disagree, separate proposed jury questionnaires with the Joint Pretrial Conference Statement. The Court's preference is not to have a questionnaire.

PROPOSED STATEMENT OF THE CASE

20. The parties must file a joint proposed statement of the case to be read to the jury during voir dire with the Joint Pretrial Conference Statement. Unless the case is very complex, this statement should not exceed one-page double spaced. The statement should be neutral rather than argumentative. The parties shall also include the names of attorneys and witnesses to be read to the jury. See Standards of Judicial Administration § 3.25(b).

WITNESS LISTS

21. Each party must file a joint list of all the witness that the party intends to call at trial with the Joint Pretrial Conference Statement.

22. The joint witness list must be in tabular form and contain the following:

a. Name of the witness;

b. Title of the witness, if any;

c. Brief description of the subject matter of the witness' anticipated testimony; and

d. Estimated length of the direct examination, cross-examination, redirect, and cross-redirect.

e. The parties shall also submit their deposition designations and objections with the Joint Pretrial Conference Statement. They shall jointly submit one binder with a joint pleading that has the designations, objections and responses followed by tabs for each witness with the designation highlighted in yellow and any objections bracketed in red. The designating party shall provide the opposing parties the designation(s) and highlighted sections two weeks before the statement is due. The parties shall then meet-and-confer about any objections at least five days before the binder is due. Unless a party can demonstrate good cause, the deposition of each witness shall be introduced only once, *i.e.*, all parties' designations will be presented together rather than in each party's case.

23. Any witness who is not identified on a party's witness list is subject to exclusion in the reasonable exercise of the Court's discretion.

TRIAL EXHIBITS

24. Each trial exhibit shall be clearly pre-marked with the trial exhibit number. The defendant's exhibit numbers shall be sequenced to begin after the plaintiff's exhibit numbers.

25. Exhibits shall be numbered. NO letters may be used. The parties must agree on a block of numbers to fit the needs of the case (e.g., the plaintiff has exhibits 1-100; the defendant has exhibits 101-200), and make a good faith effort to avoid marking the same exhibit in their respective blocks. If the exact same exhibit is marked by more than one party, then the defendant shall withdraw the duplicative exhibit (but should not renumber its portion of the exhibit list). If there is any dispute over which portions of an overlapping exhibit should be introduced into evidence, the parties shall meet and confer in an attempt to informally resolve the issue. If the parties are unable to informally resolve the dispute, then each party shall submit its disputed exhibit with the Joint Pretrial Conference Statement and explain, in no more than one double-spaced page, why the Court should use its proposed exhibit.

26. To avoid any party claiming "ownership" of an exhibit, all exhibits shall be marked and referred to as "Trial Exhibit No. ___" – and NOT as "Plaintiff's Exhibit" or "Defendant's Exhibit."

27. The parties must file a joint exhibit list identifying all the exhibits that the party intends to introduce at trial with the Joint Pretrial Conference Statement.

28. The joint exhibit list must be in tabular form and contain the following:

a. Exhibit number;

b. Brief description of the exhibit (with any bates numbers if they exist);

c. Sponsoring witness;

d. Date marked for identification (left blank); and

e. Date admitted into evidence (left blank).

29. Each party must provide the Court with a complete set of exhibits that the party intends to introduce at trial in both hard copy in tabbed binders and on a thumb drive at least seven (7) days before the Trial Date. Each party will be expected to place the official exhibit stamp on each document; the exhibit tabs may be obtained from the courtroom clerk. The Court may require additional copies of those exhibits for trial, including separate exhibit binders for each witness.

30. Any exhibit that is not identified on a party's exhibit list is subject to exclusion in the reasonable exercise of the Court's discretion.

MEET AND CONFER

31. Each party must serve (but NOT file) at least 42 days before that Conference its proposed motions in limine, proposed jury instructions, proposed verdict form(s), proposed witness list, and proposed exhibit list. Anything that is not included in these served documents – i.e., motions in limine,

witnesses, or exhibits – may be subject to denial or exclusion in the reasonable exercise of the Court's discretion.

32. All parties must meet and confer regarding motions in limine, jury instructions, verdict form(s), jury questionnaire (if any), a statement of the case, witness and exhibit lists, a pretrial conference statement (if required), and any other issues that may arise at trial no later than 35 days before the Pretrial Conference. The meet and confer must include discussions in person or by videoconference. If the parties wish to meet and confer by telephone, they must obtain permission from the Court. The Court expects meaningful meet and confer in accordance with the following guidelines available at http://www.calbar.ca.gov/Portals/0/documents/ethics/Civility/Atty-Civility-Guide-Revised_Sept-2014.pdf.

33. During the meet and confer, the parties must engage in a good faith effort to:

a. Resolve any issues raised in the motions in limine;

b. Resolve any disputes over the jury instructions;

c. Resolve any disputes over the verdict form(s);

d. Agree on a proposed jury questionnaire (if any);

e. Agree on a proposed statement of the case to be read to the jury during voir dire;

f. Resolve any disagreements over witnesses and exhibits to be introduced at trial; and

g. Stipulate to any relevant facts that can be incorporated into the record without supporting testimony or exhibits.

34. Wherever possible, the parties shall stipulate to the admissibility of any exhibits. If a stipulation is not possible, then the parties shall make every effort to stipulate to the authenticity and foundation for an exhibit absent a legitimate objection.

PRETRIAL CONFERENCE STATEMENT

35. The parties shall file a Joint Pretrial Conference Statement at last 14 days before the Conference that contains the following:

a. Substance of the Action: A brief description of the parties, the claims and defenses that remain to be decided (including whether any issues are for the Court to decide rather than the jury), and the operative pleading, including the date of filing, that raises these claims and defenses.

b. Relief Requested: A detailed statement of all requested relief that itemizes all elements of damages that are claimed.

c. Undisputed Facts: A plain and concise statement of all relevant facts to which the parties will stipulate for incorporation into the record without supporting testimony or exhibits or that are undisputed.

d. Settlement Discussions: A brief description of the efforts the parties have made to settle the case and a brief statement about whether the parties believe that further negotiations are likely to be productive and what, if anything, would facilitate settlement.

e. Estimate of Trial Length: An estimate of the number hours needed for the presentation of each party's case.

d. Miscellaneous: Any other matters that will facilitate the just, speedy, and efficient resolution of the case.

36. The parties shall include the following documents in accordance with this order with their Joint Pretrial Conference Statement and provide courtesy copies to the Court delivered to Central Courthouse, Department G, 800 North Humboldt St., San Mateo, CA 94401:

a. Proposed jury instructions

b. Proposed verdict form(s)

c. Proposed jury questionnaire (if any)

d. Proposed statement of the case

e. Joints witness list;

f. Joint deposition designation binders

g. Joint exhibit list, including any disputed exhibits; and

h. Binders container the party's motions in limine, any oppositions, and any supporting declarations or requests for judicial notice in support of or opposition to the motions.

37. The parties shall also email the proposed jury instructions, proposed verdict form(s), proposed jury questionnaire (if any), proposed statement of the case, and proposed orders in Word format to the Court.

PRETRIAL CONFERENCE

38. A Pretrial Conference is scheduled for _____ at 2:00 p.m. Lead trial counsel for each party must attend in person.

39. The Pretrial Conference is deemed to be the commencement of trial for all purposes, including but not limited to discovery and motion cutoff, disclosure of witnesses and expert witnesses, and commencement of all trial-related fees, such as jury and court reporter fees.

40. At the Pretrial Conference, each party should be prepared to argue and discuss:

a. Motions in limine;

b. Jury instructions;

c. Voir dire;

d. Jury questionnaire (if any);

e. Verdict form(s);

f. Proposed statement of the case;

g. Witnesses, including objections to deposition designations;

h. Exhibits;

i. Stipulations; and

j. Any other issues relating to the trial.

TRIAL AND MSC

41. An in-person jury trial is set for _____ at 9:00 a.m. and will occur on Wednesdays, Thursdays, and Fridays, and such other days as set by the Court. The intent is that jury selection will begin on _____.

42. A Mandatory Settlement Conference is set for _____ at 9:00 a.m. with a judge to be determined. See attached instructions, which are incorporated by reference. Check the website regularly for updates re mandatory settlement conferences.

43. The purpose of this Order is to have the case ready for trial so that the jury can be selected on the first day set for jury trial and that trial proceed as efficiently as possible. If the parties wish to modify the schedule because of the specific facts of their case, they may do so. If they wish to change any of the dates that documents are due to the Court, they should submit a proposed order specifying the reasons why they want to change the deadlines. The Court needs sufficient time to review the submissions. Therefore, the Court suggests that if the parties seek to change a deadline of when documents are submitted to the Court, they only seek to extend the deadlines for specific documents. For example, if there is an issue regarding certain expert(s), the parties should seek to only seek to extend the deadline to file and oppose the specific expert motion(s) in limine and then file the other motions in limine based on the deadlines set in this Order. For further information about the

procedures in Judge Fineman's courtroom, look at her webpage at https://www.sanmateo.courts.ca.gov/dept4

COURT REPORTERS

44. The Court has changed its policy regarding providing court reporters for Pretrial Conferences and Trials. Check Judge Fineman's webpage and the Court's website for further information.

Dated:

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NANCY L. FINEMAN
Judge of the Superior Court