

DEPARTMENT 36 PRE-TRIAL ORDER

A. Pre-Trial Preparation:

Please comply with Contra Costa County Superior Court's Local Rule 3.11 regarding the Issue Conference.

This Pre-Trial Order supplements rather than supplants the local rules.

1. Witness Lists:

Both sides are to exchange a list of the witnesses they expect to call. Plaintiff shall prepare for the Court a joint witness list setting forth the time estimates for the examination of each witness. **The purpose of the list is for examination of prospective jurors and to estimate the length of trial; for that reason, it should only include those that will probably be testifying.** Omitting a name in good faith will not bar the witness from being used; this is not a discovery mechanism. The parties should meet and confer and add any names of persons not expected to testify but whose names might come before the jury and those names should be added into the list. The list should begin with the first witness to be called starting at 10:30 a.m. and provide separate time estimates for each witness. The witness list must be provided to the Clerk five court days prior to the Issue Conference. The Clerk must be notified at least two weeks in advance of the Issue Conference if there is any party or witness needing an interpreter.

2. Exhibits:

The parties are to have met and conferred to exchange pre-marked copies of all potential trial exhibits, including discovery responses, to be used at trial; acknowledging that all pre-marked exhibits are no longer subject to any pre-trial confidentiality order. Please remove all duplicative exhibits. At trial the Court expects that when an exhibit is used it will already be marked and identified on the exhibit list (see below) and that all counsel will have a pre-marked copy. Plaintiff's exhibits shall be numerical and Defendant's exhibits shall be alphabetical, except where parties have a large number of exhibits. Plaintiff may take 1-300 and Defendant 301 and upwards (parties to agree where to split numbers). Each exhibit page must be numbered at the bottom right hand corner, numerically, regardless of exhibit number. Parties must supply their own exhibit stickers. Each exhibit binder will have a cover and spine label showing the exhibit range within the binder and the volume number. Each side will bring to trial at least five copies of each binder

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containing exhibits (one for the Court, one for the Courtroom Clerk, one for the witness stand, and one for each side). The five sets of exhibit binders may be delivered to the courtroom on the first day of trial.

Opposing counsel must be advised and given a chance before jury selection to review any materials a party intends to show to the jury during opening statements (such as PowerPoint demonstrations). Objections should be brought to the Court's attention at the earliest convenient time.

3. **Exhibit Lists:** Plaintiff shall be responsible for providing the Clerk, five court days before trial, a joint exhibit list [covering **all parties'** exhibits] prepared in the following format:

Exh. No. or Letter	<i>Exhibit Description</i>	<i>Date Identified</i>	<i>Date Admitted</i>

All counsel shall cooperate and assist in preparation of the list, exchanging data in electronic form where appropriate. All documents should also be provided to the Court in electronic (Microsoft WORD) format.

4. **Statement of the Case:** A joint statement of the case to be read by the Court to the jury, with any disagreements highlighted, must be provided to the Court electronically in WORD format five court days before the Issue Conference.
5. **Voir Dire:** Parties are to exchange and provide proposed *voir dire* questions to the Court electronically in WORD format, eliminating duplicates, five court days before the Issue Conference.
6. **Motions in limine:** Motions *in limine* are to be delivered to Dept. 36 ten court days before the Issue Conference in labeled and tabbed binders, together with oppositions and replies (if any) with a table of contents. The binders must have front cover and spine labels. Counsel are to meet and confer (face to face) on each

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motion *in limine*. Please comply with local rule 3.11(b), which provides more details.

7. **Deposition Transcripts:** Copies of deposition transcripts with full page formatting are acceptable. One set should be made for the Court only. Transcripts should be Velo Bound with the witness names marked on the spine with a marker stating last name, first initial and volume number.
8. **Zoom Appearances:** If a witness or expert witness is unable to travel to testify live during the trial, a Zoom appearance must be stipulated to and approved by the Court. The Dept. 36 courtroom is fully equipped to use Zoom. The witness **must have** a strong and reliable connection during their testimony.
9. **Jury Questionnaire:** Counsel shall stipulate to a joint Jury Questionnaire with any disagreements highlighted, which should be provided to the Court electronically in WORD format five court days before the Issue Conference.

10. **Jury Instructions:**

- a. All counsel are required to be familiar with CRC §§2.1055, 2.1058.
- b. Five court days before trial, the Court is to be provided with a combined index or history table, as required, and with copies of all proposed CACI instructions including any special instructions.
- c. The index or history table shall list all proposed instructions, whether or not the parties are in agreement as to their use. The list shall commence with CACI instructions, in numerical order, and then list any requested special instructions which shall be numbered sequentially starting with "S1" or verdicts numbered "V1".
- d. The parties shall meet and confer before trial as to proposed instructions and verdicts and shall divide them into two sets for the Court: agreed instructions and verdicts and disputed instructions and verdicts. Each party's authorities on disputed instructions should be appended to the instructions or verdicts.

11. **Additional Materials prior to trial:**

No later than 10 court days before the Issue Conference, pursuant to Local Rule 3.11(b), counsel shall provide the Court any stipulations on factual or legal issues, and trial briefs.

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12. Court Reporter:

The Court no longer provides court reporters for civil trials. Parties are to prepare a joint stipulation and order for their designated court reporter, using form CV-310, which should be brought to the courtroom on the first day of trial. The court reporter must have the capacity to stream “LiveNote” or other simultaneous transcription to the Bench.

B. Jury Selection:

1. Jury selection shall proceed by random selection with the Court normally seating 19 prospective jurors, 12 plus 2 alternates in the box and 5 in the first row of the audience. The Court will initially question all 19 jurors. Normally, 15 minutes per side should be adequate for follow-up *voir dire* by counsel. The Court will consider granting additional time if the nature of the case warrants such. To expedite *voir dire* and to avoid objections, it is suggested that proposed questions be exchanged ten court days before the Issue Conference so the Court can rule on disagreements before the trial. In attorney examination:
 - Do not repeat the Court's questions.
 - Do use group questions to avoid undue consumption of time.
 - Do not ask questions regarding hardship or personal comfort of jurors.
 - The Court will not allow needless, repetitive questions, or permit pre-instruction, or pre-argument by counsel. “If I prove...” questions will not be allowed.
 - Counsel will address jurors from the lectern or from counsel table.
2. Two or three alternates are normally selected on cases with average time estimates. If it is necessary to replace a juror, the replacement is selected by lot as required by code. In addition to the normal number of peremptory challenges as to the jury panel, each side has the number of challenges to alternates that equals the number of alternates being selected and can use them in any sequence and against any alternate chair. The Court encourages an alternate system, which does not identify who the alternates are until after closing.

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C. Evidence Presentation:

1. After the first Monday, trials will ordinarily be conducted on a schedule of five partial days per week from 10:00 a.m. to 4:00 p.m. On Thursdays, Dept. 36 hears its Law and Motion calendar at 9:00 a.m. and will inform counsel if the trial will be dark on Thursday morning. Jury hours will be 10:30 a.m. to 12:00 noon and 1:30 p.m. to 4:00 p.m., except Thursday mornings when Dept. 36 has its Law and Motion calendar. **Please be on time as the Court seats all jurors punctually and jurors do not like waiting.** Problems and disputes will be resolved outside of jury hours.
2. Orders granting or denying *in limine* motions are strictly enforced by the Court. Witnesses must be appropriately advised of the Court's rulings.
3. Counsel should always have present in the courthouse all witnesses who are anticipated for that session (morning or afternoon). Expert witnesses may have a scheduled time to testify, but counsel must always have a witness available should a witness be delayed or the trial move faster than anticipated. If a party "runs out of witnesses" the normal result is that such party is deemed to have rested unless the party can testify or designated deposition testimony can be read.
4. Each side is to notify the opposing side, at the end of each day, the names of all witnesses that it expects to call the following court day.
5. Witnesses excluded under Evidence Code §777 should wait by the courtroom until called and should not attend any court session, including the opening statements. Counsel is responsible for informing each of their witnesses of this order. Further, witnesses are prohibited from discussing their testimony with anyone once they start their testimony until excused by the Court. Failure to comply with this order may result in impeachment based on this order.
6. Question all witnesses from the lectern or from your place at counsel table. Counsel may approach a witness by seeking permission from the Court provided that the sole purpose is to provide to the witness a document or other physical evidence. After doing so counsel is to depart from the area of the witness stand to resume questioning.
7. Counsel should advise the Court outside the presence of the jury as to any expected foundational or hearsay objections, and as to which exhibits can be admitted by stipulation without the necessity of foundation evidence.

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Depositions in lieu of testimony must be lodged (with designations) before trial starts.

8. Evidence not produced in response to an appropriate discovery request will normally not be admitted. In the event that discovery issues arise during trial, discussion must be outside of the presence of the jury, either at recess or outside of jury hours. Counsel must have, at such time, the appropriate discovery materials to establish their position with the Court.
9. After a conference at the side bar, it is counsel's responsibility to make a record regarding the discussions at the next recess. Sidebar conferences will not be reported.

D. Jury Deliberations:

The courtroom is generally closed (or other matters are being heard) during jury deliberations. Counsel and the parties may remain in the building or leave, but in all cases it is the responsibility of counsel to inform the Clerk and the Deputy where he or she can be reached at all times. The parties and counsel are expected to return to the courtroom **within ten minutes** of being notified by the Clerk. Counsel must provide their cell phone numbers to the Courtroom Clerk.

E. Demeanor and Courtroom Conduct:

1. This Court expects full compliance with the Standard of Professional Courtesy adopted by the Contra Costa County Superior Court and set forth in Appendix B to our Rules of Court.
2. During court proceedings, all persons are to be addressed by surnames. Courtroom staff must be addressed formally – Madam Clerk, Deputy, etc.
3. State the legal grounds for an objection **ONLY**. Speaking objections will not be permitted. Offers of proof must be made outside of the presence of the jury. Nothing is to be shown to the jury until it is admitted into evidence; anything demonstrative in opening statements is to be reviewed by the other side and the Court.

F. Required Trial Readiness Conference:

At least five court days before the trial, counsel are to physically meet and confer in a face-to-face conference to resolve the following:

1. All stipulations are to be reduced to writing.

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2. Ensuring that the exhibit list is in the format required with all those being admitted into evidence by stipulation being identified in a written stipulation.
3. Identifying those portions of videotaped or other depositions or discovery to which there are objections. All objections are to be resolved in writing and, failing resolution, submitted to the Court in writing on the day of trial.
4. Identifying all audio or visual presentations to which there are any objections. All audio or visual presentations are to be tested in court on the first day of trial and before using in front of the jury.
5. Exchange proposed *voir dire* questions for the Court, eliminating duplicates.
6. All expert designations and declarations are to be provided in a binder on the day of trial.
7. Arrange and draft a joint hour-by-hour proposed schedule for the trial.

IT IS SO ORDERED.

Dated: 5-5-23



CLARE M. MAIER

Superior Court Judge