

## 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.**

**At least 5 court days prior to the Issue Conference, please have the following completed:**

#### 1. Witness Lists:

Both sides are to exchange a list of the witnesses they expect to call. Plaintiff's counsel shall prepare for the Court a combined list setting forth the time estimates for the examinations 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 list must be provided to the Clerk no later than 9:30 a.m. five 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 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.** 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 1-200 and Defendant 201 and up (parties to agree where to split numbers). Each binder must be numbered at the bottom right hand corner, numerically, regardless of exhibit number, i.e. like the pages of a book. Parties must create their own exhibit stickers. Each side will bring to trial at least four copies of each binder containing exhibits (one for the Court, one for the witness stand, and one for each side). **Note:**

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A final exhibit list (only) is to be provided to the Courtroom Clerk the Friday before trial via email: [dept36@contracosta.courts.ca.gov](mailto:dept36@contracosta.courts.ca.gov)

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 statement. 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, by 9:30 a.m. at least five days prior to the issue conference, an exhibit list [covering **all parties'** exhibits] in the following format:

# 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 to the jury with any disagreements highlighted. Electronic versions must also be provided to the Court.
5. **Voir Dire:** Exchange and provide proposed *voir dire* questions to the Court, eliminating duplicates.
6. **Motions in limine:** Motions *in limine* are to be provided in a tabbed binder together with opposition and reply with an index. Counsel are to meet and confer (face to face) on each motion *in limine*. Please comply with local rule 3.11(b) which provides more details.
7. **Jury Instructions:**

- a. All counsel are required to be familiar with CRC §§2.1055, 2.1058.

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- b. By no later than 9:30 a.m. at least 5 court days prior to the Issue Conference, 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.

### 5. **Additional Materials prior to trial:**

No later than 10 days before the Issue Conference date, pursuant to Local Rule 3.11(b), counsel shall provide the Court all *in limine* motions, any stipulations on factual or legal issues, statement of the case and trial briefs. Oppositions are due five days before the Issue Conference.

### B. **Jury Selection:**

1. Jury selection shall proceed by random selection with the Court normally seating 18 prospective jurors, 12 in the box and 6 in the first row of the audience. The Court will initially question all 18 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 7 days before trial 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.

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- 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. The standard form jury questionnaire is normally used. Counsel shall return all copies to the Clerk after jury selection.
  3. Two 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.

### C. **Evidence Presentation:**

1. When the case is called for the first time on the trial calendar, a joint schedule of proposed witnesses is to be submitted (3-hole punched) in a day-to-day, hour by hour, format until conclusion of trial. After the first Monday, trials will ordinarily be conducted on a schedule of four and one half (4 ½) days per week (Mon, Tue, Wed, & Fri) from 10:00 a.m. to 4:00 p.m. and Thursdays from 1:30pm -4:00pm. Jury hours will be 10:30 a.m. to 12:00 noon and 1:30 p.m. to 4:00 p.m., possibly excepting Thursday mornings when Dept. 36 has its Law and Motion calendar. Each week, the Court will notify you by Wednesday as to following Thursday morning trial schedule. For Fridays, the trial will start at 10:30 a.m. or 1:30 p.m. depending on the Court’s workload. **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 *in limine* motions are strictly enforced by the Court. Witnesses should 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. Witnesses may appear virtually (on the Court’s Zoom link) provided that counsel have all stipulated (in writing) to such. Witnesses must confirm they

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- have a strong internet connection prior to the date and time of their appearance.
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. 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. The Court will advise the jury that they may submit written questions through the Bailiff and, if not legally objectionable, that the question will then be provided to all counsel who will decide if the question is to be asked of a witness or not.
  10. 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:**

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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 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 be located where they can easily return to the courtroom **within 20 minutes** of being notified by the 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.
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 5 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.
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. All expert designations and declarations are to be provided in a binder on the day of trial.

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6. Arrange and draft a joint hour-by-hour proposed schedule for the trial.
7. All materials prepared and reviewed during this conference are to be produced for the Court no later than 9:30 a.m. five court days before the date set for trial.

8/10/22