

**Department 10
Civil Pre-Trial Order**

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I. PRE-TRIAL DISCOVERY AND MOTIONS

A. General Conduct

Civility will be rewarded. The Court agrees with *Snoeck v. ExakTime Innovations, Inc.* (2023) 96 Cal.App.5th 908, 928, that incivility is a sign of lesser skill and experience, and such behavior will be considered in any requests for attorney's fees or sanctions.

The Court does not require courtesy copies of any pre-trial motions except as outlined below.

B. Case Management Conferences

Case Management Conference statements are required for every Case Management Conference. They must contain useful information ("per code" is not acceptable; provide relevant information regarding mediation, anticipated motions, and issues relating to pending parties). Diligence in the prosecution and defense of cases is expected.

C. Discovery

Counsel must be aware of all discovery obligations, including but not limited to meeting and conferring in good faith and *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783 ("A party may not deliberately misconstrue a question for the purpose of supplying an evasive answer. Indeed, where the question is somewhat ambiguous, but the nature of the information sought is apparent, the proper solution is to provide an appropriate response."). A proper meet and confer process usually involves telephone/video calls and/or in-person meetings. The mere exchange of hostile letters is unlikely to result in productive resolution of discovery disputes.

If a party against whom a Motion to Compel has been filed responds to the Motion by filing amended responses less than 2 weeks before the hearing, that party will remain subject to sanctions (where appropriate - the Court will analyze each case separately). While amending discovery responses is frequently appropriate, such last-minute behavior is not encouraged, as the Court notes that most discovery motions are set for hearing approximately 6 months after filing, giving the responding party ample time to amend discovery responses and have the motion removed from calendar before the Court expends what is *considerable* effort in preparing.

The parties are encouraged to request **informal discovery conferences** prior to filing motions to compel further responses, motions for protective orders, and motions to quash. Upon a finding of good faith participation, the Court will grant calendaring preference to any remaining discovery motions, such that the moving party is not prejudiced by the IDC process.

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Unless demanded earlier pursuant to CCP § 2034.230, the parties must disclose in writing at least 30 days before trial the identity of any expert witness including any expert report prepared by the expert or a summary of the testimony where no report has been prepared, curriculum vitae, and estimated time for the expert's testimony.

Discovery must be complete 30 days before trial, except that any expert witness may be deposed as late as 10 days before trial.

II. ISSUE CONFERENCE AND MANDATORY SETTLEMENT CONFERENCE

Approximately one month prior to trial, the Court will set an issue conference. Each party taking part in the trial shall file an issue conference statement in accordance with local rule 3.11, with only the exceptions set forth below. Issue conference statements shall be filed by all parties no later than 10 calendar days before the scheduled conference. The key issues to be discussed at the issue conference are as follows:

- The Court's trial orders below
- Expected evidentiary issues. The parties will be expected to meet and confer before filing any Motions in Limine, as outlined below.
- Realistic trial length, including preliminary witness lists.
- Any remaining expert witness issues

The Court will also set mandatory settlement conferences approximately one month prior to trial. If either party believes this is *not* an efficient use of time, then the Court will consider vacating it upon presentation of reasons.

III. MANDATORY MEET-AND-CONFERENCE BEFORE TRIAL

A. At least 14 days before the date set for trial:

The parties must exchange (email is sufficient with confirmation)

- A list of all possible non-expert witnesses
- A list of potential exhibits
- Proposed stipulations
- A brief proposed statement of the case
- Preliminary jury instructions

The parties must file:

- Motions in Limine: Each party shall file and serve Motions in Limine, numbered consecutively by party. Absent good cause, parties are limited to FIVE such Motions. Excessive, unnecessary, and improper Motions are disfavored. All motions seeking to exclude evidence shall set forth factual support as to the exact nature and type of evidence that the party is seeking to exclude, including

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attaching relevant portions of depositions, interrogatories, or other factual support. The court will specifically enforce the standards of *Kelly v. New West Federal Savings*, 49 Cal. App. 4th 659, 670 (1996) and *Amtower v. Photon Dynamics, Inc.*, (2008) 158 Cal. App. 4th 1582, 1593-95. Motions that make unsupported assertions about what witnesses allegedly said in deposition or speculate about what witnesses may say at trial without attaching to the motion a declaration setting forth a factual basis are subject to sanctions.

- The following motions in limine are conditionally granted and, unless contested in writing, should NOT be filed:
 - To amend the Case Caption to Reflect Remaining Defendants only. The defendants will be referred to, introduced, and participate at trial in alphabetical order.
 - To preclude reference to any possible future wrongful death action.
 - To preclude reference to plaintiff's counsels' other clients or website.
 - To preclude attribution of fault to any party granted summary judgment.
 - To exclude witness from courtroom until witness's testimony is completed.
 - To exclude evidence not produced during discovery. Any request to introduce such evidence must be affirmatively requested unless there is a stipulation.
 - To preclude mention of bankruptcy or any other financial status of absent defendants.
 - To preclude reference to absence of corporate representative. This does not, however, preclude Plaintiff from commenting on any defendant's failure to produce or refute relevant evidence.
 - To exclude evidence or mention of insurance, including Plaintiff's medical insurance.
 - To exclude experts not designated pursuant to CCP § 2034.
 - To exclude any reference to or evidence of prior settlements
 - To bifurcate punitive damages claims.
 - To exclude collateral source evidence.
- Trial brief: Each party shall file and serve a trial brief summarizing the case.
- B. At least 7 days before the date set for trial:
 - Motions in Limine: Each party must file and serve any opposition to Motions in Limine. Non-oppositions are not required. The Court will assume that any Motion not opposed is conceded. While the Court generally does not desire hard

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copy courtesy copies during the litigation, binders of Motions in Limine and oppositions should be prepared by the moving party for each. Uncontested Motions in Limine need not be included in the binder.

- Realistic identification of witnesses to be called, with best estimates of length and any known scheduling issues. Parties must exchange with each other at this time their proposed witness list as outlined in Attachment B. A final version will be due no later than the Pretrial Conference. If, after the Pretrial Conference, there are adjustments, updated lists must promptly be provided to the Court.
 - Witness lists should not be exaggerated. Only witnesses that a party expects to actually call should be listed, with a brief synopsis of the proposed testimony.
 - Witnesses must be listed last name first. Titles (e.g. Dr., Officer) should be placed after the comma following the last name. This is so the lists can be sorted correctly.
 - The amount of time estimated for each witness's testimony should be stated in minutes (not days or hours). This is so the estimates can be added on the spreadsheet.
 - Witness lists **must include** deposition designation time – i.e. the time to read or play deposition transcripts

C. At least three days before the Pretrial Conference, counsel are required to meet and confer on at least the following topics.

- Preparation of a joint statement of the case to be read to the jury at the start of voir dire.
- Preparation of a list of potential witnesses, or other involved persons, to be read to the jury during voir dire.
- All stipulations possible, which must be reduced to writing.
- Motions in limine. Counsel must identify which ones are genuinely disputed, and seek to compromise to the maximum extent possible.
- Identification of those portions of videotaped testimony or depositions to be presented to the jury. The final designations are due no later than the Pretrial conference.
- Identification of interrogatory or RFA responses, or other discovery materials, to be presented to the jury. The final designations are due no later than the Pretrial conference.
- Whether the trial will be reported (including the voir dire). Local Rule 2.52 provides that no court reporting services are provided except for a party with an approved fee waiver obtained by filing form MC-30 no later than three days before trial. Otherwise, to have the matter reported, you must comply with the

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Civil Protocols of Use of Private Pro Tempore Reporters packet and follow its requirements. Please determine in advance whether the parties plan to waive reporting as to reading of jury instructions, and jury voir dire.

- If you will not be hiring a court reporter, the parties will be expected to present to the Court daily settled statements, due no later than 9:00 am the business day following each day of trial.
- Identification and marking of exhibits.
 - Marking must be in proper court format. The Court encourages a joint exhibit list. There is to be unified numbering of the exhibits. In other words, all exhibits for both parties must bear consecutive numbering. Gaps are acceptable, such that, for example Plaintiff(s) may have exhibits 1-50, and Defendant(s) may have exhibits 100-150.
 - If the parties cannot agree on a joint exhibit list, Plaintiff(s) will use exhibit numbers, and Defendant(s) will use exhibit letters.
 - Multiple plaintiffs or defendants shall agree on how to assign letters or numbers in order to avoid duplication. At the trial besides copies for counsel, you must prepare two for the court: a bench set for the judge, and a set for the witnesses.
 - If the parties are presenting the same exhibits, they should not separately submit them – all identical exhibits should be identified using the same numbering (for default, that of Plaintiff(s)).
 - The Court expects the parties to stipulate to admissibility to the maximum extent possible. Objections for lack of authentication or the like will be frowned on if there is no genuine dispute as to authenticity.
 - If there are more than a small number of exhibits, the sides are to put all exhibits into one or more binders with appropriate tabs.
 - If you will be entering into evidence electronic exhibits (such as videos, electronic files), you must be prepared to provide to the jury a clean laptop with NO access to the internet, no other programs except what is necessary to view the files.
- Jury instructions.
 - Preparation of a single, agreed set of instructions, as far as agreement is possible.
 - If there are disagreements as to particular instructions, they should be identified for the Court's decision. Use of a *useful* redline should be provided.
 - If there are instructions that cannot be decided on until the evidence comes in, they should be flagged for consideration.

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- NOTE: Counsel must keep in mind that, by the end of the trial, we will need a comprehensive set of instructions with a physical copy ready for the jury. Counsel are expected to know which jury instructions apply to their case prior to the Pretrial conference and the only remaining issues shall be ones relating to issues that arise during trial, how the evidence ends up during trial, or disputes as to applicability. For a court trial, the Court will still follow any appropriate jury instructions. Please also note that Code of Civil Procedure section 607a and California Rule of Court 2.1055 require all proposed instructions prior to the first witness.
- Verdict form(s).
- AV equipment. The Court's preference is that you utilize the Court's equipment. If other equipment is needed, this issue must be raised in advance with the Court so that it can be coordinated with the Court and between the parties.
- The civil courts in Contra Costa County do not longer provide court reporting services. (Local Rule 2.52) If you wish to have your matter reported, you must obtain the Civil Protocols for Use of Private Pro Tempore Court Reporters packet and comply with all the requirements therein. The Court will provide a reporter for any party with an approved fee waiver, upon request made by filing form MC-30 no later than three calendar days before trial.

IV. PRETRIAL CONFERENCE

The Wednesday prior to the trial date, the Court will hold a Pretrial Conference. Counsel must appear in person at the pretrial conference unless the Court, for good cause shown, authorizes virtual appearance in advance. Parties may appear virtually at the pretrial conference but will be expected to appear in person at the trial (unless previously discussed and authorized.) The following matters will be discussed.

- Settlement: If there remains any possibility for settlement (complete or partial), the Court will be happy to give the parties time to discuss the matter. If the parties believe that the Court can be of assistance (through settlement mentors or otherwise), they should request such participation in time for it to be arranged.
- Expected length of trial. The Court will be giving the jurors a firm outside date for completion of the trial, including deliberations. If we give the jurors a date and the trial runs longer, you can expect a mistrial.
- Motions in limine. It is very helpful if these are gathered in a binder, each motion together with the opposition (if any) to it.
- Any rulings required on instructions.
- An agreed set of the start-of-trial instructions to be given after the jury is sworn.
- Any expected issues with respect to expert testimony that have not previously been disposed of through Motions in Limine. For example, the Court will be

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unable to rule in *Kennemur* motions in open court as the testimony proceeds; the parties must therefore be prepared to provide citations at the nearest break so that the Court can rule properly.

Parties must exchange demonstratives that they intend to use in opening statements. The Court will resolve any disputes that remain after full efforts between the parties to resolve between themselves.

Also, if either or both sides intend to use any form of visual or audio equipment, whether for presentation of evidence or for arguments, the equipment **MUST BE BROUGHT TO COURT** on Friday morning for hookup and live field testing. The same rules apply to use of the court equipment; i.e. you must arrange to test your knowledge of how to use the equipment and that your evidence is compatible with the system.

V. TRIAL

A. Trial Date

The Court will do its best to notify counsel, during the week before a trial date, if there is an existing trial that will not be finished in time.

A. Witnesses and Exhibits

No witness may be called, except with Court permission in exceptional circumstances, unless notice has been given to all parties of the date when the witness will testify. Such notice shall be given no later than at the end of the court day proceeding the court day before the witness is to testify (e.g. notice for a Monday witness to be given at or before adjournment of the Friday session).

No later than the first day of trial, counsel for each side must e-file a complete exhibit list in the format identified in Attachment A and witness list in the format identified in Attachment B, unless there is a stipulated joint list, in which case only one must be e-filed.

Counsel are expected to advise all of their witnesses as to the Court's evidentiary rulings – Motions in Limine and other related rulings – and the general rules of witness testimony prior to their testimony.

All witnesses must be ready to testify. Any anticipated gaps in witness availability *must* be addressed ahead of time and all attempts must be made to mitigate those gaps. Inability to present witnesses in a timely manner outside the scope of the trial plan agreed upon by the parties and the Court at pretrial may be considered forfeiture of the ability to present those witnesses.

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At trial the court expects that when an exhibit is used it will already have been marked and identified on the exhibit list (see below) and that all counsel will have a pre-marked copy. Exhibit stickers may be obtained from the courtroom clerk.

Exhibit lists should be in a form identifying only admissible evidence in a singular fashion. Entries such as “files of ABC Company”, “all manufacturing formulas” or “photos of injuries” are not acceptable.

B. Voir Dire

Counsel conducting voir dire are reminded that attorney voir dire is NOT a platform from which counsel may:

- Attempt to precondition the prospective jurors to a particular result, indoctrinate them, or question them about the pleadings or the applicable law. Code Civ. Proc §222.5.
- Compel prospective jurors to commit themselves to a particular disposition of the case. *People v. Visciotti* (1992) 2 Cal.4th 1, 47-48.
- Prejudice prospective jurors for or against a party. *Visciotti, supra*, 2 Cal.4th at 47-48.
- Argue the case. *People v. Morales* (1988) 203 Cal.App.3d 970, 974.
- Instruct the prospective jurors on matters of law. *Visciotti, supra*, 2 Cal.4th at 47-48; *Rousseau v. West Coast House Movers* (1967) 256 Cal.App.2d 878, 882.
- Attempt to obtain the jurors’ advisory opinion based on a preview of the evidence. *People v. Mason* (1991) 52 Cal.3d 909, 939-40.
- Ask prospective jurors about the comfort of the jurors or the meaning of particular words or phrases, or to comment on the personal lives and families of the parties or their attorneys. Stds. Of Jud. Admin. 3.25(f).

Attorneys have the right to examine prospective jurors in order to enable counsel to intelligently exercise both peremptory challenges and challenges for cause. The Court permits liberal and probing examinations calculated to discover bias or prejudice with regard to the circumstances of the particular case before the Court. Code Civ. Proc. 222.5(b)(1).

Attorneys have the right to conduct an examination of prospective jurors that is reasonable in length, method, purpose, and content. The Court typically sets reasonable and non-arbitrary time limits on attorney voir dire. As the Court observes the attorneys’ use of the allotted minutes, if circumstances warrant, the Court will grant additional time. In making this determination, the Court will monitor how much repetition there is and how much actual information is elicited from the jurors.

C. Objections and Trial Procedure

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There are to be no speaking objections. Objections based on Motions in Limine may simply be referenced as “objection, motions.” If the Court requires more information, we can speak at side-bar. Not all side-bar requests by counsel will be honored, but the Court endeavors to resolve all disputes.

Once the Court has ruled on an issue, it may not be revisited *absent* an actual change in facts or additional legal authority not considered that materially changes the analysis.

You **MUST** be prepared with your theories of the case and any case law to support your arguments.

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Attachment A

Format for Exhibit Lists

#	Description	Date of Document	Objection to Admission? (Y/N)	Date Identified	Date Offered	Date Admitted

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Attachment B

Format for Witness Lists

Plaintiffs' List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Smith, John	P	20		5	250	Formation of contract
Brown, Nancy	P	15		5	20	Breach of contract
White, Ron	P	70		15	85	Damages
Black, Peter	P	60		15	75	Formation of contract
Garcia, Dr. Ruth	P	120		30	150	Damages
Rogers, Officer Ted	P	60		10	70	Arrest of Susan Petersen
Franks, Jane (deposition excerpts)	P	15			15	Formation of contract

Defendant's List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Doe, Edward	D	20		5	25	Formation of contract
Chang, Dr. Sam	D	75		15	90	Damages
Martin, Eric	D	120		30	150	Damages