

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ADVANCE TRIAL REVIEW ORDER

by Judge Loren G. Freestone
Department 64

CASE NAME: _____ v. _____

CASE #: _____

Trial counsel for the parties and/or those appearing as self-represented are ordered to meet in person within the County of San Diego at least three (3) court days before the initial trial call date for the purpose of arriving at stipulations and agreements resulting in the simplification of triable issues. At the meeting, the following information shall be prepared, displayed and/or exchanged:

EVIDENCE/EXHIBITS

A. Trial Exhibits

1. Counsel shall produce and pre-mark all exhibits the parties intend to introduce at trial. Counsel shall prepare a joint numerical index of all exhibits for submission to the trial judge. The index shall indicate: 1) the exhibit number; 2) by whom the exhibit is being offered; 3) a brief description of the exhibit; 4) whether the parties have stipulated to admissibility, and if not; 5) the legal ground(s) for objection(s) that the objecting party intends in good faith to rely upon at trial. (See the attached exemplar for joint exhibit list.)

All exhibits shall be pre-marked as court exhibits, e.g., "Court's Exhibit 1," not "Plaintiff's (or Defendant's) Exhibit 1." The exhibit tag (brown sticker) should be placed in the right, lower corner of the exhibit. If an exhibit consists of more than one page, it shall be marked as one exhibit and each page Bates labeled.

Each party seeking economic damages shall prepare a summary of the supporting documentary evidence (medical bills, accounts, wage statements, etc.) as an exhibit in lieu of the underlying documentary evidence in accordance with Evidence Code §1521, and such document shall be marked as an exhibit. The parties are to meet and confer regarding the preparation of this exhibit, not necessarily to stipulate to the merits of whether a party is entitled, but as to whether it is mathematically correct given what could be a large amount of supporting documentation.

Three copies of the joint exhibit list shall be provided to the Court on the first day of trial.

Other than impeachment exhibits, exhibits not contained within the binder, as well as exhibits not previously listed on the Joint Trial Readiness Report, will likely be excluded at trial.

B. Depositions

2. If depositions are intended to be used in lieu of live testimony, counsel shall submit the excerpts to be used to opposing counsel at the above meeting. Proposing and opposing counsel shall make a good faith effort to resolve any objections. Any remaining objections shall be brought to the Court's attention prior to the start of trial. It shall be the responsibility of the proponent of the evidence to prepare clean copies of the excerpts, which shall include the beginning and ending page and line numbers, to be given to the trial judge and placed in the record to eliminate the need of reporting the reading of the testimony. Any problems in this regard shall be brought to the Court's attention prior to the start of trial.

C. Audio/Video Evidence

3. Any proposed audio, with or without accompanying video, intended to be used at trial must be accompanied by a written transcript. Counsel are to meet and confer regarding any disputes over the accuracy of the transcript. See CRC 2.1040.

D. Stipulations

4. All Stipulations shall be reduced to writing and signed by counsel or parties.

STATEMENT OF THE CASE AND WITNESS LIST

5. Counsel shall jointly prepare a non-argumentative summary of the case, along with a joint witness list, with names in alphabetical order.
6. Three copies of the joint witness list shall be provided to the court on the first day of trial.

JURY INSTRUCTIONS/VERDICT FORM [JURY TRIAL]

7. Counsel shall prepare a joint set of jury instructions. This set shall consist of one package of instructions for all parties. Any objections to instructions shall be identified by a "post-it" which identifies the objecting party. The submission of a

list of CACI numbers is not acceptable. Neither are multiple packages of instructions whether arranged by parties, objections or some other method. These instructions should be CACI instructions whenever feasible. They should be fully redacted with all blanks filled in, placed in the order they are to be read to the jury and printed in at least 14 size font.

COUNSEL SHALL PRESENT AN AGREED UPON FINAL VERDICT FORM AT THE TIME OF TRIAL CALL. If there is a disagreement, each side may submit a proposed version.

8. Jury instructions not listed in the parties' Joint Trial Readiness Conference Report and prepared in accordance with the above order are subject to exclusion at trial.

MOTIONS IN LIMINE/TRIAL BRIEFS

9. Motions in limine (if any) shall be prepared, filed and served by fax or electronic service (see, California Rule of Court 2.306 and 2.251), or personally served at least five court days in advance of the trial. The title of each in limine motion shall identify the moving party and describe the nature of the motion, and shall be numbered sequentially, indicating the total number of in limine motions submitted by the moving party. Example: "Plaintiff JANE DOE's Motion in Limine to Exclude the Testimony of Joe Expert [No. 1 of 6]." Written opposition to in limine motions, if any, shall be filed, faxed, electronically served or personally served **no later than two court days in advance of trial call**. They shall identify both the party filing the opposition, and the specific motion which is being opposed by name of moving party and motion number. Counsel should file trial briefs according to the same schedule.

See Local Rule 2.1.18 regarding motions deemed granted (if applicable).

Trial Briefs are to be filed at the same time as motions in limine.

JOINT TRIAL NOTEBOOK

10. Joint Trial Notebook.

At the time of the Friday trial call, a Joint Trial Notebook shall be provided to the court containing:

- a. Table of Contents
- b. Copy of Joint Trial Readiness Report
- c. Copies of Motion in Limine and Oppositions (In order)
- d. Joint Witness List (with description of what witness will testify)
- e. Joint Exhibit List

- f. Copies of Trial Briefs (if any)
- g. Joint Statement of the Case
- h. Voir Dire Questions (proposed, if any)
- i. Jury Instructions- packet agreed upon and packet of those not agreed with indication of who is offering and objecting
- j. Special Verdict Form – either agreed upon form(s) or each side’s proposed Special Verdict Form(s). If the parties fail to make a genuine effort to limit disputes on the form of the special verdict, the Court will use a general verdict.

WITNESS READINESS

- 11. Each counsel is to familiarize themselves with the Court’s Trial Guidelines, attached to this order.
- 12. Unless otherwise agreed by the parties, defense counsel shall prepare the exhibit binders, which shall be delivered to the court on the first day of trial, and plaintiff’s counsel shall prepare the joint trial notebook, which shall be brought to the Friday trial call.
- 13. Trial will not be delayed accommodating witness scheduling problems. In the absence of extraordinary circumstances, the party will be deemed to have concluded the presentation of his/her case once the examination of available witnesses is concluded.
- 14. Witnesses not listed on the parties' Joint Trial Readiness Conference Report are subject to exclusion at trial.
- 15. Each counsel is ordered to telephone Department 64 at (619) 619 450-7064 prior to 12:00 p.m. (noon) on the day before the initial trial call date to report 1) their readiness for trial, 2) the estimated trial length, and 3) whether a jury will be required.
- 16. The stipulation for release of exhibits (attached) shall be signed by counsel for all parties and filed with the court on the first day of trial.

ADDITIONAL ORDERS

— **FAILURE OF COUNSEL FOR ANY PARTY TO COMPLY WITH THE ABOVE ORDERS MAY RESULT IN THE EXCLUSION OF EVIDENCE OR BE CONSIDERED AN ABANDONMENT OR FAILURE TO PROSECUTE OR DEFEND DILIGENTLY.**

— **WE THE UNDERSIGNED ATTORNEYS OF RECORD IN THIS CASE HAVE READ AND UNDERSTAND THE ABOVE ADVANCE TRIAL REVIEW ORDERS:**

Signature of counsel:

Counsel for [name of client]:

IT IS SO ORDERED:

DATED: _____

HON. LOREN G. FREESTONE
Judge of the Superior Court

(Rev. 04/2023)

JOINT TRIAL EXHIBIT LIST

CASE NO.: _____

CASE NAME: _____ vs. _____

Exhibit No.	Submitted By	Description	Ground(s) for Objection(s)	Date Identified	Date Admitted

TRIAL GUIDELINES
The Hon. Loren G. Freestone

1. Be on time. Call the Court Clerk, Jenitta Virissimo at (619) 450-7064, if there is any reason why you may be late.
2. Stipulations should be in writing, signed by counsel.
3. No speaking objections. State only the legal ground(s) for your objection.
4. No swearing or foul language unless the attorney or witness is quoting what was, in fact, said.
5. You are not required to obtain permission from the Court to approach the witness or otherwise move within the well. You may place the podium wherever you like. You are not required to stand while addressing the Court.
6. The use of laser pointers is prohibited
7. While arguing legal issues, address remarks to the Court rather than to opposing counsel.
8. Do not show a witness any document that has not already been marked, even if you do not intend to offer it into evidence.
9. Do not publish an exhibit, *i.e.*, show it to the jury, unless the exhibit has already been admitted into evidence.
10. Show all demonstrative evidence you intend to use in opening statement to opposing counsel. If there is an objection, the matter is to be brought to the Court's attention for a ruling prior to the commencement of opening statements.
11. Advise opposing counsel of your anticipated witness schedule (dates and times) as soon as practicable, and, unless the witness is a true impeachment witness, no later than the day before the witness is to testify. The Court will allow a witness to testify out of order if there is a legitimate scheduling conflict. "Down time" is unacceptable; there should be no gaps in time between witnesses.
12. Jury Selection:
 - (a.) In most cases, the clerk will call and seat 35-40 prospective jurors. Initial questions will be directed toward these 40 jurors. Peremptory challenges are to be exercised only as to jurors 1 through 12. Jurors 13 through 40 will be substituted in for excused jurors in accordance with their numbers. At least two alternates will be selected.
 - (b.) As a general rule, the Court will allow up to 25 minutes to each side to ask questions of the initial panel of jurors (40). Depending upon the complexity of the case or issues involved, more time may be provided upon request. In the event additional jurors beyond the original 40 are called, each attorney will be allotted additional time for voir dire. However, questions may be directed only to the newly called jurors.
 - (c.) At the conclusion of questioning, the Court will call counsel to sidebar to make any challenges for cause.
 - (d.) The purpose of voir dire is to elicit information from prospective jurors, not impart information to them. During voir dire, please do not argue your case or ask the jurors to promise you anything other than to follow the law as instructed by the court. Do not construct hypotheticals involving evidence you intend to produce at trial. Do not attempt to precondition jurors.
 - (e.) During voir dire [and trial], do not provide any personal information about yourself, e.g., "When I was stationed in Vietnam . . .," "I said to my spouse last night . . .," "My 12-year-old daughter said to me . . .," etc. Your case is not about the lawyers. A lawyer's attempt to ingratiate himself with a jury based on their personal, professional or other life circumstances and/or accomplishments is inappropriate.
13. If there are more than one attorney on a side, the attorney handling the witness handles all aspects of the witness' examination, including objections.
14. Acceptable client advocacy never includes making misrepresentations of law or fact to the Court.
15. Civility: Treat people, including opposing counsel, the way you want to be treated.