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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Defendants.)

CR - DSF

**CRIMINAL MOTION AND
TRIAL ORDER**

This matter is set for trial before the Honorable Dale S. Fischer, United States District Judge, Courtroom 840, Roybal Federal Building, 255 E. Temple St., Los Angeles, California, 90012.

A. PRETRIAL AND TRIAL DATES AND MOTIONS

1. Pretrial motions shall be filed on or before the Monday preceding four weeks before trial. Counsel must meet and confer with opposing counsel and attempt to resolve the issue before filing a motion. Motions expected to take more

1 than one-half hour of court time must include a time estimate beneath the hearing
2 date on the face page of the motion.

3 Oppositions (or notices of non-opposition) shall be filed no more than
4 one week after the filing of the motion.

5 Replies (optional) shall be filed no more than one week after the filing
6 of the opposition.

7 Adherence to these timing requirements is essential to Chambers'
8 preparation of motion matters. Counsel must follow the Central District's General
9 Orders and Local Rules concerning electronic filing, unless superseded by this
10 Order.

11 2. Memoranda of Points and Authorities in support of or in opposition
12 to motions shall not exceed 25 pages. Replies shall not exceed 12 pages. Only in
13 rare instances and for good cause shown will the Court grant an application to
14 extend these page limitations. No supplemental brief shall be filed without prior
15 leave of court. **Typeface shall comply with Local Rule 11-3.1.1. (Civil).**

16 **NOTE: If Times Roman font is used, the size must be no less than 14; if**
17 **Courier is used, the size must be no less than 12.** Footnotes shall be in typeface
18 no less than one size smaller than text size and shall be used sparingly.

19 3. Filings that do not conform to the Local Rules and this Order may not
20 be considered.

21 4. Before filing any motion for discovery, a party shall consult with
22 opposing counsel to ascertain whether the requested discovery will be provided.
23 All discovery motions shall state with particularity what is requested, the basis for
24 the request, whether the discovery has been requested from opposing counsel, and
25 whether the discovery has been declined, in whole or in part. Motions made
26 without prior consultation with opposing counsel or that fail to include the above
27 information may not be heard.

28 5. **Paper Chambers copies are mandatory. Counsel are to place the**

1 **mandatory Chambers copies of all documents in the box outside the entrance**
2 **to Judge Fischer’s Chambers on the eighth floor by 12:00 p.m. on the day**
3 **after filing. Attach the NEF to the BACK of the Chambers copy. Chambers**
4 **copies delivered by Federal Express should not require the signature of the**
5 **recipient. The Court will not rule on stipulations, ex parte applications, etc.**
6 **until the mandatory Chambers copies have been received.** For security
7 reasons, Chambers copies should be removed from envelopes or folders before
8 placing them in the box. **Sanctions may be imposed for failure to provide**
9 **Chambers copies.**

10 6. Ex parte applications are disfavored. The Court is unlikely to grant an
11 ex parte application that recites that the moving party has been unable to obtain the
12 position of the opposing party. Counsel should make serious efforts to obtain the
13 agreement (or at least the position) of opposing counsel before filing an
14 application.

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16 B. DISCOVERY & NOTICE

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18 Counsel shall comply promptly with discovery and notice pursuant to Rules
19 12, 12.1, 12.2, 12.3, 12.4, 15, and 16 of the Federal Rules of Criminal Procedure.
20 On government counsel’s discovery of any evidence within the scope of Brady v.
21 Maryland, 373 U.S. 83 (1963), such evidence shall be produced forthwith to
22 counsel for the defendant. Counsel for the government shall also disclose to
23 counsel for defendant the existence or non-existence of: (1) evidence obtained by
24 electronic surveillance; and (2) testimony by a government informant.

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26 C. TRIAL REQUIREMENTS

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28 1. **No later than one week before trial**, counsel for the government

1 shall file with the Court:

2 a. In camera (under seal) all statements of all witnesses to be called
3 by the Government in its case-in-chief;

4 b. A trial memorandum setting forth a factual summary of the
5 government's case, a statement of the charges and the elements of each charge, an
6 estimate of the length of the government's case in chief, including anticipated
7 cross-examination, the names of witnesses the government intends to call, and a
8 discussion of relevant legal and evidentiary issues as applied to the facts of the
9 particular case. Counsel for the government shall attempt to obtain defense
10 counsel's agreement to the factual summary, statement of the charges, time
11 estimate for cross-examination of the government's witnesses, and legal and
12 evidentiary issues.

13 2. Counsel shall arrive at the Courtroom no later than 8:00 a.m. on the
14 first day of trial.

15 3. Counsel for the government shall present the courtroom deputy clerk
16 (CRD) with the following documents on the first day of trial:

17 a. Three copies of the government's witness list, which shall also
18 be sent in Word or WordPerfect format to the Chambers e-mail box;

19 b. Three copies of the government's exhibit list in the form
20 specified in Local Rule 16-5 (Civil), which shall also be sent in Word or
21 WordPerfect format to the Chambers e-mail box;

22 c. All of the government's exhibits, with official exhibit tags
23 attached and bearing the same number shown on the exhibit list. Exhibit tags may
24 be obtained from the receptionist in the Public Intake Section, located on the Main
25 Street level of the courthouse at 312 North Spring Street, Room G-19. Exhibits
26 shall be numbered 1, 2, 3, etc., NOT 1.1, 1.2, etc. If a "blow-up" is an enlargement
27 of an existing exhibit, it shall be designated with the number of the original exhibit
28 followed by an "A";

1 d. A three-ring binder containing a copy of the
2 indictment/information, a copy of all exhibits that can be reproduced, and a copy of
3 the witness list. Each exhibit shall be tabbed with the exhibit number for easy
4 referral;

5 e. A three-ring binder containing a copy of all exhibits for use by
6 witnesses.

7 4. Exhibits such as firearms, narcotics, etc., must remain in the custody
8 of a law enforcement agent during the pendency of the trial. It shall be the
9 responsibility of the agent to produce any such items for court, secure them at night
10 and guard them at all times while in the courtroom.

11 5. The Court prefers that defense counsel deliver defense exhibits to the
12 CRD on the first day of trial, but counsel are not required to do so unless these
13 exhibits have previously been provided to the government. Defense counsel are
14 responsible for affixing completed exhibit tags with the case name and case
15 number to all exhibits to be used in defendant's case.

16 6. In trials where the defense expects to admit more than 20 exhibits,
17 defense counsel shall provide two three-ring binders (one for the Court and one for
18 witnesses), tabbed if possible with numbers to correspond to the exhibits counsel
19 expects to introduce. Defense counsel shall provide the Court with a copy of
20 defense exhibits as they are introduced during trial, if they have not previously
21 been provided.

22 7. Defense counsel shall provide the CRD and the court reporter with the
23 defense witness list and defense exhibit list.

24 8. A copy of the exhibit list with all **admitted exhibits** will be given to
25 the jury during deliberations. Government and defense counsel shall review and
26 approve the exhibit list with the CRD before the list is given to the jury.

27 9. If any counsel wishes to arrange for the use of additional equipment,
28 such as video monitors, overhead projectors, etc., counsel shall notify the CRD no

1 later than 4:00 p.m. at least one week before trial so that the necessary
2 arrangements may be made.

3 10. Counsel shall not attempt to display or use any charts or enlargements
4 of exhibits unless all counsel have agreed to their use or objections have been
5 heard and a ruling has been made by the Court

6 11. On the day of jury selection, trial will begin at 9:00 a.m. Counsel will
7 appear at 8:00 a.m. Thereafter, trial days are Tuesday through Friday, 8:00 a.m. to
8 2:00 p.m., with three fifteen-minute breaks during the session. When necessary,
9 trials may continue beyond the normal schedule. If counsel contemplate that this
10 schedule will be problematic due to the unavailability of witnesses, counsel should
11 provide details to the Court at the Status Conference.

12 12. On the day of jury selection, the Court reserves the time from 8:00
13 a.m. to 9:00 a.m. to handle legal and administrative matters. Jury selection will
14 commence promptly at 9:00 a.m. or as soon as jurors are available. Thereafter,
15 legal and administrative matters shall be addressed between 7:45 a.m. and 8:00
16 a.m. All counsel are urged to anticipate matters that may need to be addressed
17 outside of the presence of the jury and to raise them during this period, during
18 breaks, or at the end of the day. The Court does not make jurors wait while
19 counsel discuss matters that should have been addressed previously. Counsel are
20 urged to consider any unusual substantive or evidentiary issues that may arise, and
21 to advise the Court of such issues. Short briefs addressing such disputed issues are
22 welcome.

23 13. Before trial begins, the Court will give counsel an opportunity to
24 discuss administrative matters and anticipated procedural or legal issues. Before
25 trial begins, and as soon as the information becomes available to counsel, counsel
26 should advise the court of any concerns or accommodations that are requested for
27 parties or witnesses. During trial, if there are any matters to be discussed outside
28 the presence of the jury, counsel shall advise the CRD of the request. The Court

1 discourages sidebars during trial.

2 14. Should counsel for the government wish to order transcripts, they
3 shall provide agency authorization to the court reporter at the time the request is
4 made.

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6 D. JURY INSTRUCTIONS, VERDICT FORMS & QUESTIONNAIRES

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8 1. **No later than one week before trial**, counsel shall submit both
9 general and substantive jury instructions in the form described below. If possible,
10 all instructions should be taken from the Manual of Model Criminal Jury
11 Instructions for the Ninth Circuit (West Publishing, current edition). Where no
12 applicable Ninth Circuit model instruction is available, counsel should consult the
13 instructions from O'Malley, Grenig & Lee (formerly Devitt, et al.), Federal Jury
14 Practice and Instructions (West Publishing Co., current edition). Counsel may
15 submit alternatives to the Ninth Circuit model jury instructions or O'Malley,
16 Grenig & Lee instructions only if counsel has a reasoned argument that those
17 instructions do not properly state the law or they are incomplete.

18 2. The parties must submit JOINT jury instructions and a JOINT
19 proposed verdict form. In order to produce these joint instructions, the parties shall
20 meet and confer sufficiently in advance of the required submission date with the
21 goal of agreeing on instructions and verdict forms. Where the parties cannot agree,
22 disputed instructions shall be submitted one week before trial as follows: 1) JOINT
23 jury instructions (those instructions agreed to by all parties), and 2) DISPUTED
24 jury instructions (those instructions propounded by a party to which another party
25 objects). On a separate page following each disputed jury instruction, the party
26 opposing the instruction shall briefly state the basis for the objection, any authority
27 in support thereof and, if applicable, an alternative instruction. On the following
28 page, the party proposing the disputed instruction shall briefly state its response to

1 the objection, and any authority in support of the instruction. Each requested jury
2 instruction shall be numbered and set forth in full on a separate page, citing the
3 authority or source of the requested instruction.

4 3. Jury instructions should be modified as necessary to fit the facts of the
5 case (e.g., inserting names of defendant(s) or witness(es) to whom instruction
6 applies). Where language appears in brackets in the model instruction, counsel
7 shall select the appropriate text and eliminate the inapplicable bracketed text.

8 4. An index page shall accompany all jury instructions submitted to the
9 Court. The index page shall indicate the following:

- 10 a. The number of the instruction;
- 11 b. A brief title of the instruction;
- 12 c. The source of the instruction; and
- 13 d. The page number of the instruction.

14 **EXAMPLE:**

15 Number	15 Title	15 Source	15 Page Number
16 #1	16 Conspiracy-Elements	16 9th Cir. 8.5.1	16 1

17 5. One or more copies of the instructions will be given to the jury during
18 deliberations. Accordingly, counsel must submit to the Chambers e-mail a “clean”
19 set of all instructions in Word or WordPerfect format, containing only the text of
20 each instruction, set forth in full on each page, with the caption “Instruction No.
21 ____” (eliminating titles, supporting authority, indication of party proposing, etc.).

22 A paper Chambers copy must also be submitted.

23 6. Counsel shall submit a proposed verdict form with the jury
24 instructions.

25 7. At least one week before trial, each counsel must file any proposed
26 questions to be asked of prospective jurors.

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28 **E. INSTRUCTIONS GOVERNING PROCEDURE DURING TRIAL**

1 1. Counsel shall not refer to any witness -- including a client -- over 14
2 years of age by his/her first name during trial.

3 2. Counsel shall not discuss the law or argue the case in opening
4 statements.

5 3. Counsel shall not use objections for the purpose of making a speech,
6 repeating testimony, or attempting to guide the witness. When objecting, counsel
7 shall stand, state only the legal ground of the objection, e.g., hearsay, irrelevant,
8 etc. Counsel shall not argue an objection before the jury. Requests to approach
9 sidebar to further argue an objection should be made sparingly, and may not be
10 granted.

11 4. Counsel shall not make facial expressions, nod, or shake their heads,
12 comment, or otherwise exhibit in any way any agreement, disagreement, or other
13 opinion or belief concerning the testimony of a witness. Counsel shall admonish
14 their clients and witnesses not to engage in such conduct.

15 5. Counsel should not talk to jurors at all, and should not talk to co-
16 counsel, opposing counsel, witnesses, or clients where the conversation can be
17 overheard by jurors. Each counsel should admonish counsel's own clients and
18 witnesses to avoid such conduct.

19 6. Counsel shall question witnesses from the lectern. Counsel shall not
20 approach the witness box or enter the well without the Court's permission, and
21 shall return to the lectern when counsel's purpose has been accomplished.

22 7. Counsel should speak clearly when questioning witnesses, making
23 objections, etc.

24 8. No document shall be placed before a witness unless a copy has been
25 provided to the Court and opposing counsel. Counsel may consider such devices
26 as overhead projectors, jury notebooks for admitted exhibits, or enlargements of
27 important exhibits. The Court has an Elmo and other equipment available for use
28 during trial. Counsel may call the CRD if they wish to visit when the Court is not

1 in session to practice using the equipment. The Court does not permit exhibits to
2 be “published” by passing them up and down the jury box. Exhibits may be
3 displayed briefly using the screen in the courtroom, unless the process becomes too
4 time-consuming.

5 9. Water is permitted in the courtroom. Food is not permitted in the
6 courtroom.

7 10. Counsel shall rise when addressing the Court. In jury trials, counsel
8 and the defendant shall rise when the jury enters or leaves the courtroom. Special
9 procedures or exceptions may apply when the defendant is in custody or restrained.

10 11. In trial, all remarks shall be addressed to the Court. Counsel shall not
11 directly address the CRD, the court reporter, or opposing counsel. All requests for
12 re-reading of questions or answers, or to have an exhibit placed in front of a
13 witness, shall be addressed to the Court

14 12. Counsel should not offer a stipulation without having conferred with
15 opposing counsel and having reached an agreement. Any stipulation of fact will
16 require defendant’s personal concurrence and shall be submitted to the Court in
17 writing for approval. A proposed stipulation should be explained to defendant in
18 advance.

19 13. While court is in session, counsel shall not leave counsel table to
20 confer with investigators, paralegals, secretaries, witnesses, etc. unless permission
21 is granted in advance.

22 14. When a party has more than one lawyer, only one lawyer may conduct
23 the examination of a given witness, and only that same lawyer may handle
24 objections during the testimony of that witness.

25 15. If a witness was on the stand at a recess or adjournment, counsel who
26 called the witness shall ensure the witness is back on the stand and ready to
27 proceed when trial resumes.

28 16. Counsel are directed to have witnesses available throughout the court

1 day. If no witnesses are available and there is more than a brief delay, the Court
2 may deem counsel to have rested.

3 17. The Court attempts to cooperate with expert witnesses and other
4 professionals, and will, except in extraordinary circumstances, accommodate them
5 by permitting them to be called out of sequence. Counsel are urged to anticipate
6 any such possibility and to discuss it with opposing counsel. If there is an
7 objection, counsel shall confer with the Court in advance.

8 18. Counsel must notify the CRD in advance if any witness should be
9 accommodated based on the Americans with Disabilities Act or for other reasons.

10 19. Counsel are ordered to be on time, as the Court makes every effort to
11 start promptly.

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13 IT IS SO ORDERED.

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15 Dated:

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17 Dale S. Fischer
18 United States District Judge
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