

LOCAL RULES - CENTRAL DISTRICT OF CALIFORNIA

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PRETRIAL FORM NO. 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(TITLE OF CASE)) CASE NO. _____
)
) FINAL PRETRIAL
) CONFERENCE ORDER
)
)
)
_____)

Following pretrial proceedings, pursuant to Rule 16, F.R.Civ.P. and L.R. 16, IT IS ORDERED:

1. The parties are: (list)

Each of these parties has been served and has appeared. All other parties named in the pleadings and not identified in the preceding paragraph are now dismissed.

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The pleadings which raise the issues are: (list)

2. Federal jurisdiction and venue are invoked upon the grounds: (Concise statement of facts necessary to confer federal jurisdiction and venue. State whether the facts requisite to federal jurisdiction are denied or admitted.)

3. The trial is estimated to take _____ trial days. (Where counsel cannot agree set forth each side's estimate.)

4. The trial is to be a jury (non-jury) trial.

(If a jury trial add: At least 5 court days prior to the trial date each counsel shall deliver to the Court and opposing counsel: (a) proposed jury instructions as required by L.R. 51-1 and (b) any special questions requested to be put to prospective jurors on voir dire.)

(If a non-jury trial add: At least 5 court days prior to the trial date each counsel shall submit to the Court and opposing counsel the findings of fact and conclusions of law the party expects the Court to make upon proof at the time of trial as required by L.R. 52-1.)

5. The following facts are admitted and require no proof: (set forth admitted facts).

6. The following facts, though stipulated, shall be without prejudice to any evidentiary objection: (set forth facts not to be contested though not admitted).

7. This section of the Joint Pretrial Order is intended to apprise the Court in advance of trial of the claims and defenses to be presented at the time of trial. Parties will be precluded from presenting claims or defenses not set forth in this order, in the manner required by this order. Only claims or defenses contained in the complaint and answer and any court authorized amendment thereto should be included in this pretrial order. If a party chooses to abandon a claim or defense previously alleged, it may do so by not including it in this order. The following format must be employed:

Plaintiff(s):

(a) Each claim each plaintiff plans to pursue against each defendant at trial.

(b) The ultimate facts required to prove such claim under the applicable legal standard.

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(c) A brief statement of the evidence relied upon to prove each element of every claim. These may be included in the statement of ultimate facts or separately stated.

Defendant(s):

(a) Every affirmative defense each defendant plans to raise at trial, and any counterclaims.

(b) The ultimate facts of every such affirmative defense or counterclaim.

(c) A brief statement of the evidence relied upon to prove the elements of every affirmative defense or counterclaim, or to defeat the plaintiff's claims.

Third Party Plaintiffs and Defendants:

Claims and defenses in third-party cases should be analyzed and set forth in the same way as those of plaintiffs and defendants. Separate proposed pretrial conference orders will not be accepted.

(Parties should note that the Court will use these statements by the parties to limit the trial to a consideration of issues and facts relevant to the theories of liability and defenses, to avoid trial proceedings likely to confuse a jury, to avoid unfocused proceedings resulting in an unnecessary waste of time, and to weigh the relevance and probativeness of evidence sought to be introduced.)

(Please refer to the pages immediately following for specific examples.)

8. All discovery is complete. (If discovery is not complete, only that discovery reserved in the pretrial conference order will be allowed.)

9. All disclosures under F.R.Civ.P. 26(a)(3) have been made. The joint exhibit list of the parties has been filed herewith under separate cover as required by L.R. 16-5. All exhibits may be admitted without objection, except those exhibits listed below:

Plaintiff objects to Exhibit Nos. _____.

Defendant objects to Exhibit Nos. _____.

The objections and grounds therefor are separately stated and attached hereto.

10. All disclosures under F.R.Civ.P. 26(a)(3) have been made. Witness lists of the parties have heretofore been filed with the Court.

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(Only the witnesses identified in the lists will be permitted to testify (other than solely for impeachment).)

11. Each party intending to present evidence by way of deposition testimony has marked such depositions in accordance with L.R. 16-2.7. For this purpose, the following depositions shall be lodged with the Clerk as required by L.R. 32-1: (list)

12. The following law and motion matters and motions in limine are pending or contemplated: (state “none” or list)

13. Bifurcation of the following issues for trial is ordered. (State “none” or identify those issues to be tried at the first trial and those to be tried later.)

14. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this pretrial conference order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Dated: _____, 20_____.

UNITED STATES DISTRICT JUDGE

Approved as to form and content.

Attorney for Plaintiff

Attorney for Defendant

Attorney for (indicate party represented)

PLAINTIFF'S FIRST CLAIM UNDER 42 U.S.C. § 1983 AGAINST OFFICERS JOHN JONES AND DON SMITH IN THEIR OFFICIAL AS WELL AS INDIVIDUAL CAPACITIES AND THE CITY OF BLANK FOR MUNICIPAL LIABILITY

The ultimate facts required to establish this claim are:

1. That at all times defendants Jones and Smith, acted under color of state law, as BLANK City police officers,
2. That in their capacities as police officers these defendants, on January 3, 1995, intentionally deprived plaintiff of his fourth amendment constitutional right to be free from unreasonable seizure by subjecting plaintiff to excessive use of force by inflicting gun shot wounds upon plaintiff.
3. Defendants by using such unreasonable force caused injury and damage to plaintiff.
4. That as a proximate cause of said deprivation of constitutional rights, the plaintiff suffered damages in the form of medical and hospital bills, lost earnings, and pain and suffering, for which he seeks compensatory damages against the defendants in their official as well as individual capacities.
5. The conduct of these defendants was reckless and demonstrated a callous indifference to the federally protected rights of plaintiff entitling plaintiff to recover punitive damages against them individually.

Plaintiff should set forth all other claims against defendants, using the same format employed in claim one.

CLAIM AGAINST CITY OF BLANK
FAILURE TO TRAIN

1. The training program of the City of BLANK was not adequate to train officers Jones and Smith in how and when to use firearms.

2. The City of BLANK was deliberately indifferent to the need to train its officers adequately in the use of firearms.

3. The failure to provide proper training was the proximate cause of the deprivation of the plaintiff's rights protected by the Fourth Amendment of the Constitution, as set forth in claim one.

4. That plaintiff sustained the damages set forth in claim one as a proximate result of defendant City's failure to properly train defendant officers.

Plaintiff should set forth all other claims against defendants, using the same format employed in claim one.

**PLAINTIFF'S FIRST CLAIM AGAINST
DEFENDANTS A, B AND C FOR PATENT INFRINGEMENT**

The ultimate issues of fact required to be proved to establish this claim are:

1. On May 16, 1983, United States Letters Patent No. 541,609 was issued to plaintiff for an invention in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.

2. Defendants A, B, and C have for a long time past been and still are infringing those Letters Patent by making, selling and using electric motors embodying the plaintiff's invention, and will continue to do so. Specifically, defendants are infringing claims 7, 9, 10 and 11 of the patent.

3. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendants of their said infringement.

4. Plaintiff seeks a permanent injunction against continued infringement, an accounting for damages, an award of interest and costs against defendant, as well as a finding of willful infringement, sufficient to warrant an award of attorneys' fees.

Plaintiff should set forth all other claims against defendants, using the same format employed in claim one.

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**DEFENDANTS A, B, C, FIRST DEFENSE AGAINST PLAINTIFF'S
CLAIM OF PATENT INFRINGEMENT: INVALIDITY OF
THE PATENT ON SEVERAL GROUNDS**

The ultimate facts required to prove these defenses are:

A. ANTICIPATION/LACK OF NOVELTY (35 U.S.C. § 102)

1. The plaintiff is not the inventor of the device for which the patent was issued,

2. The plaintiff was not the first inventor of the device for which the patent was issued, as the invention was known or used by other persons in the United States, prior to the alleged date of invention,

and/or

3. The invention was described in a patent or other printed publication in London, England,

and/or

4. The invention was described in another person's U.S. Patent Application which was granted.

B. OBVIOUSNESS (35 U.S.C. § 103)

1. Prior art, technology or information was publicly available before the date of the alleged invention.

2. Such prior art, technology or information would have made the invention obvious to a person having ordinary skill in the art relevant to the invention at the time the invention was made.

Evidence relied upon to establish these defenses are:

A. ANTICIPATION/LACK OF NOVELTY

That the first inventor of the device was Joseph A. Smith. That the device was described in a publication entitled "Wild Technology" published in London,

England, three years before the plaintiff applied for his patent. The invention was described in Joseph A. Smith's application for patent, which was issued as Patent No. 1,305,406.

B. OBVIOUSNESS

That the device was fully described in an article appearing in "The Scientific Journal," written by Professor Jordan Burch, two years before the plaintiff's application. Such description was so detailed and explicit as to have made the invention obvious to a person having ordinary skill in the art relevant to the invention.

Defendant should set forth all other defenses using the same format employed as above.

END OF APPENDIX A

Appendix B to Local Rules

MEMORANDUM OF FACTUAL CONTENTIONS
REQUIREMENTS IN PARTICULAR CASES

(a) Personal Injury Actions - In personal injury actions the Memorandum shall include:

1. the age of the plaintiff(s);
2. an itemized statement of all special damages to date (including loss of earnings);
3. if permanent injury is claimed, the life and work expectancy of plaintiff(s);
4. the specific act or acts of negligence upon which plaintiff(s) claim(s) liability;
5. whether the doctrine of *res ipsa loquitur* will be relied upon and the basis of such reliance;
6. a statement of the specific law, regulations or safety order claimed to have been violated;
7. where seaworthiness of a vessel, her equipment or appliances, or an unsafe condition of property is at issue, the material facts and circumstances supporting such claim shall be specified with particularity; and
8. if punitive or exemplary damages are sought the specific facts upon which such claim is made.

(b) Wrongful Death Actions - In addition to the requirements of Paragraph (a), above, the Memorandum in wrongful death actions shall include:

1. decedent's date of birth;
2. decedent's life expectancy and work life expectancy;

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3. decedent's marital status;
4. surviving spouse's age, life expectancy and state of health;
5. surviving spouse's marital status;
6. surviving dependents, their relationship, date of birth, state of health and life expectancy;
7. the work history of decedent including gross and net income for the five-year period before death; and
8. the general physical condition and illnesses of the decedent for the five-year period before death;
9. the claimed fair amount of the usual family expenses allocated to decedent for the five-year period before death.

(c) Comparative or Contributory Negligence - The Memorandum shall state whether it is claimed that comparative fault is the applicable standard, and, if so, the comparative fault claimed and factual and legal basis for such claim. If contributory negligence is claimed to be a bar to recovery, then the factual and legal basis for such claim shall be stated.

(d) Contract Cases - In contract cases the Memorandum shall state with particularity:

1. any claimed dispute as to the existence of the contract or its terms and the facts supporting the claimed nonexistence of the contract or its terms;
2. the act or omission relied upon as constituting the claimed breach;
3. the facts upon which any claim of duress, fraud, misrepresentation or mistake is based (See F.R.Civ.P.9(b));
4. in any claimed modification or defense of waiver or estoppel the facts and law giving rise to such claims;

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5. the terms of any oral contract; the parties thereto; the time; the place; and the circumstances creating the claimed contractual relationship;
6. the specific terms of a written contract claimed to have been breached; and
7. the facts claimed to prevent application of any claimed bar of the statute of frauds or statute of limitations.

(e) Patent Cases - In patent cases the Memorandum shall state with particularity:

1. if the validity of the patent is in issue for asserted failure to satisfy any of the statutory grounds for issuance of a valid patent, *e.g.*, obviousness, inadequate disclosure or statutory bar, the party contending for invalidity shall state each such ground relied upon for invalidity and set forth a short specific statement of the facts relied upon in support of each such ground, including a list of prior art to be relied on at trial (Counsel are admonished against listing prior art not intended to be used at trial); the party contending for validity shall set forth the grounds and facts upon which it relies in support of validity;
2. if any non-statutory defense against the enforceability or validity of the patent is asserted, *e.g.*, fraud on the Patent Office, misuse or laches, the party asserting such defense shall state the ground for each such defense and set forth a short specific statement of facts relied upon in support of each such ground; the party contending for the patent shall set forth the grounds and facts upon which it relies in support of validity or enforceability;
3. if infringement is contested, the party contending for infringement shall set forth in detail the way in which the patent claims-in-suit are infringed; the party contending for non-infringement shall state the reasons why the claims-in-suit are not infringed; and
4. whether it is claimed by either party that its attorney's fees are recoverable and, if so, the basis for such claim and the facts specifically relied upon in support of such claim.

Each party will be bound by the contentions set forth in the Memorandum.

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(f) Class Actions - In class actions the Memorandum shall state with particularity:

1. the description of the class previously certified by the Court, or if no certification has been made, the claimed membership of the class; and
2. whether notice is required, and if required, if notice has been given to class members.

(g) Eminent Domain Proceedings - In eminent domain proceedings additional pretrial disclosure shall be made in the Memorandum as follows:

1. Each expert witness which a party intends to call at the time of trial (whether the witness is to be called in the case in chief or in rebuttal) shall be identified by name and firm affiliation, if any, together with such witness' residence address and capacity or field of expertise and the subject matter to which his testimony will relate. With regard to each witness who will express an opinion of value or damages (whether or not such witness is an expert), unless the procedure set forth in Paragraph (g)5, below, is followed, there shall be served and filed under separate cover at the same time as the Memorandum, a statement of valuation testimony which shall contain the following:
 - (A) the name of the party whose interest has been valued;
 - (B) the nature of that interest; *e.g.*, fee, leasehold, easement, etc.;
 - (C) the witness' opinion of the highest and best use of the property or property interest being valued;
 - (D) the market data directly or indirectly relied upon by the witness, which shall include the particulars set forth in Paragraph (g)2, below;
 - (E) a summary of any summation or reproduction analysis relied upon by the witness, which shall include the particulars set forth in Paragraph (g)3, below;
 - (F) a summary of any capitalization of income, present worth, or annuity analysis directly or indirectly relied upon by the witness, which shall include the particulars set forth in Paragraph (g)4, below;

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(G) the witness' opinion of value of the property or interest being acquired;
and

(H) remainder damages, if any.

2. Market Data Detail. To the extent a valuation witness' testimony will relate to market data, the statement of market data shall contain as to each sale relied upon directly or indirectly by the witness:

(A) the street address or description of location sufficient to identify the property in the field without reference to the legal description, if possible;

(B) a legal description or the Assessor's parcel identification;

(C) the name of the seller;

(D) the name of the buyer;

(E) the date of the deed;

(F) the date of recording and Recorder's identification;

(G) the land area;

(H) the character of improvement, if any;

(I) the price paid; and

(J) the price per unit used for purposes of comparison of analysis.

Such market data detail shall be served and filed under separate cover at the same time as the Memorandum and shall be in such form that it may be used as a trial exhibit.

3. Reproduction Analysis Detail. To the extent a valuation witness' testimony will relate to or is based upon a summation or reproduction cost analysis, the summary of summation or reproduction cost analysis, if any, shall contain the

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witness' opinion of land value and shall state separately as to each improvement:

- (A) the type and number of units or elements of construction considered (square feet, lineal feet, cubic feet, etc.);
 - (B) the unit costs used;
 - (C) the indicated total construction costs;
 - (D) obsolescence considered, if any;
 - (E) the depreciation applied; and
 - (F) the indicated contributory depreciated value.
4. Income Analysis Detail. To the extent a valuation witness' testimony will relate to or rely upon an income analysis, such summary of capitalization of income analysis shall state separately as to each mode of analysis:
- (A) the gross fair rental value or income productivity considered;
 - (B) the type of data from which such indicated gross is derived;
 - (C) the expenses considered;
 - (D) the type of data from which such expenses are derived;
 - (E) the mode of capitalization and rate applied; and
 - (F) the resulting indicated market value.
5. Appraisal Report Which May be Exchanged In Lieu of Requirements of Paragraphs (g) 1-4, above.

To the extent an appraisal report has been prepared by the valuation witness which includes the information required to be included in the above-mentioned summary of valuation data described in Paragraphs (g) 1-4, above, at the option of the party, it may be served and filed under separate

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cover at the same time as the Memorandum in lieu of the information required by said paragraphs. Where a party provides such appraisal report, its statement of valuation testimony shall state the name of the valuation witness, the date of such report, and that it is being served and filed under separate cover at the same time as the Memorandum.

END OF APPENDIX B