

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE:	Department 1	
CASE NO.:		
DATE: June ____, 2020		

PROCEEDING: Trial Setting Order: (1) Setting the Trial Date, (2) Issuing Order to Show Cause, (3) [] Setting a Mandatory Settlement Conference and (4) [] Setting an Order to Show Cause re Failure to Appear at Trial Setting Conference

A. Summary of Order

1. The trial is set to commence on _____, 20____, at 8:30 A.M. in Department 1. The trial is currently set as a [] jury trial [] expedited jury trial [] non-jury trial. At the same date and time, the order to show cause described in ¶ D.3.b, *infra*, is returnable.

2. The parties [] are [] are not excused from attending the first day of trial.
_____ is excused from attending the first day of trial.
_____ The Court shall conduct a mandatory settlement conference on _____ 20____, at _____ A.M. / P.M. in Department 12.
_____ is excused from personally attending the MSC.
_____ shall appear on _____, 20____, at 8:30 A.M. in this department and show cause, if any, why monetary sanctions of up to \$1,500 should not be imposed on that party, attorney, or law firm for the failure to appear at the trial setting conference on _____, 20____.
_____ shall appear on _____, 20____, at 8:30 A.M. in this department and show cause, if any, why monetary sanctions of up to \$1,500 should not be imposed on that party, attorney, or law firm for the failure to comply with the Court's order of _____, 20____, to meet and confer with opposing counsel to select two trial dates that are no more than six months from the date of the TSC.

B. Right to Jury Trial

- _____ The right to a jury trial has been expressly waived by [] all parties [] plaintiff(s) [] defendant(s) [] _____.
- _____ By failing to deposit jury fees within the times specified by Code of Civil Procedure section 631, the right to a jury trial has been forfeited by [] all parties [] plaintiff(s) [] defendant(s) [] _____.

1. If the Court has declared that a party has forfeited its right to a jury trial, that party shall not post jury fees until that party has been granted relief from that forfeiture. Any request for relief from a forfeiture of the right to a jury trial must be brought in the form of a noticed motion to be heard no later than 21 days before the date first set for trial.

C. On the Trial Date

1. The principal trial counsel for each party shall appear in person at 8:30 A.M. in Department 1 for trial.
2. All parties, insurance representatives, and any other persons necessary to participate in settlement discussions and to enter a settlement on the record pursuant to Code of Civil Procedure section 664.6 shall appear in Department 1, unless the Court has excused that appearance in advance, based on a finding of good cause.
3. The parties shall bring all documents required by section 9.b. of RSC Local Rule 3401 to Department 1. The documents shall be complete, fully executed, copied, and ready to be handed to the trial judge.
5. Any party requesting the use of a juror questionnaire during jury selection shall bring a copy of the proposed questionnaire.
4. Any party still requesting a jury trial shall be prepared to (a) state the date on which that party demanded a jury trial, (b) state the date on which that party posted jury fees, and (c) discuss whether those fees were timely under Code of Civil Procedure section 631.

D. Counsel's Obligations Before the Trial Date

1. The parties shall fully comply with RSC Local Rule 3401.
 - a. Counsel for the plaintiff, for any cross-complainant, and for any plaintiff-in-intervention are jointly responsible for arranging for the Issues Conference at a time and place that is mutually agreeable to all parties.
 - b. The only defenses to be listed by a defendant in the Joint Pretrial Statement are those affirmative defenses in support of which that defendant intends to offer evidence at trial. Affirmative defenses are factual contentions on which the defendant has the burden of proof at trial (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 239) and are few in number. The Court will consider the defendant to have agreed to bear the burden of proving any contention listed as a defense.
2. Counsel for all parties shall meet and confer to determine whether the case is suitable for an expedited jury trial pursuant to Code of Civil Procedure section 630.01 et seq. and California Rules of Court, rule 3.1545, et seq. If the parties agree, the Consent Order for Voluntary Expedited Jury Trial (Judicial Council Form EJT-020) shall be filed no later than 30 days before the assigned trial date. (Cal. Rules of Court, rule 3.1547(a)(1).)

3. If any party intends to ask the Court to use a jury questionnaire during jury selection, counsel for all parties shall meet and confer regarding the contents of a potential questionnaire.
4. Parties Who Have Not Appeared
 - a. No later than one week before the trial date, the plaintiffs and any cross-complainants or plaintiffs in intervention shall file requests to dismiss:
 - i. Any defendant or cross-defendant who has not appeared and for whom no proof of service has been filed; and
 - ii. Any defendant or cross-defendant who has been served but who has not appeared and whose default has not been entered.
 - b. If any plaintiff, cross-complainant or plaintiff in intervention fails to dismiss all such defendants and cross-defendants, counsel for that plaintiff, cross-complainant or plaintiff in intervention shall appear in Department 1 at 8:30 A.M. on the trial date to show cause why the Court should not either:
 - i. Dismiss all such defendants and cross-defendants; or
 - ii. Impose sanctions of up to \$1,500 on plaintiff's, cross-complainant's, or plaintiff in intervention's counsel for the failure to dismiss.
 - c. Any plaintiff, cross-complainant, or plaintiff in intervention who opposes the dismissal of that defendant or cross-defendant or the imposition of sanctions shall respond to the OSC with a written declaration filed not later than four court days before the trial date. The Court may deem a party's failure to file a timely declaration, by itself, to constitute that party's consent to the dismissal of that defendant or cross-defendant or to the imposition of monetary sanctions. (RSC Local Rule 3116.)
5. Any party requesting daily reporter's transcripts at trial shall advise the Court of that request no later than one week before the trial date by contacting Leslie Moore, Supervising Court Reporter, at Leslie.Moore@riverside.courts.ca.gov.

E. Jury Trials

1. Jury instructions shall be prepared in accordance with section 8 of Riverside Superior Court Local Rule 3401. By "fully edited," the Court means that the instructions shall be prepared in a form suitable to be copied and handed to the jurors. In particular:
 - a. All blanks shall be filled in. (Cal. Rules of Court, rule 2.1050(c)(3).)
 - b. All references to the gender of the parties and to the number of parties shall be corrected.

- c. All inapplicable alternative language shall be deleted. If the application of any language cannot be determined until the end of testimony, that language should be left in.
 - d. All brackets (“[]”) surrounding applicable alternative language shall be removed.
 - e. Other than the text of the instruction and the instruction number, no other information shall appear regarding form instructions. Specifically, the following information shall not appear: the title of the instruction; the party requesting the instruction; and whether the instruction is given, modified, or refused.
 - f. The instructions shall appear in the following order: Any instructions from CACI Nos. 5000 through 5008 shall be at the beginning; any instructions from CACI No. 5009 et seq. shall be at the end; and all other instructions shall be in the middle. The text of any instructions requested from the CACI 100 series shall be omitted.
 - g. Proposed special instructions shall include the text of the instruction, the party requesting that instruction, and a citation to the authority supporting that instruction.
2. Unless leave of court is granted in advance, no witness shall testify, no documentary evidence shall be introduced, and no counsel shall ask a question or make any comment in the presence of the jury, concerning any of the following subjects. Therefore, motions in limine designed to impose the same restrictions are unnecessary.
- a. Whether a party is now or was formerly insured against any type of loss or liability.
 - b. Except as permitted by Civil Code section 3333.1, subdivision (a), any insurance benefits or other payments received by the plaintiff from a collateral source.
 - c. The retention of any counsel by an insurance company, unless the insurance company is a party to the action.
 - d. Settlement negotiations, mediation efforts, statements made during or in reference to those events, or documents prepared for or during those events.
 - e. The existence or terms of any settlement agreements reached with other parties, or payments made pursuant to those settlements.
 - f. The income, wealth, or financial condition of any of the parties, except when punitive damages are being sought.
 - g. Any other past or current litigation involving, or claims by or against, any of the parties. However, an expert witness may be examined concerning the number of cases in which the expert has been consulted by or has testified for a party.
 - h. Whether a party or a party’s representative was present or absent during the trial or any portion thereof. However, counsel may argue the significance of a party’s failure to testify or to offer particular evidence.

- i. Any party's attorney's fees, costs of suit, or other litigation expenses. However, an expert witness may be examined concerning the fee charged by the expert for the expert's testimony.
 - j. Whether counsel has been retained on a contingency-fee basis.
 - k. Prior criminal convictions of any party or witness, unless relevant to the credibility of that person's testimony.
 - l. The arrest record, citizenship, or immigration status of any party or witness.
 - m. If there is a claim for personal injury:
 - i. The tax consequences of a personal-injury award.
 - ii. A defendant's poor health.
 - iii. The lack of any prior accidents.
 - iv. Any post-accident repairs or remodeling.
 - v. If any claim is made against a health care provider, the limitation on noneconomic damages. (Civ. Code, § 3333.2 [MICRA].)
 - o. In an action by a surviving spouse for wrongful death, whether the surviving spouse has remarried.
3. If the plaintiff is making any claims for economic damages in the form of past medical expenses that were satisfied by an insurer, evidence of the amount of those damages shall be limited to the amount paid by the insurer and accepted by the health care provider in full satisfaction of that health care provider's invoice.
 4. Any claim for punitive damages shall be bifurcated. The first phase of the trial will include the question of whether the defendants acted with oppression, fraud, or malice. The question of the amount of punitive damages to be awarded, if any, shall be tried to the same finder of fact in a second phase of the trial.
 5. Except for jury deliberations, the trial will generally be dark on Fridays.

F. Requests to Continue Trial or to Extend Discovery Cut-Off

1. Generally, any request to continue a trial shall be made by noticed motion. Requests to continue trial may be made by *ex parte* application only if exigent circumstances exist. Any *ex parte* application shall explain why the request could not, with the exercise of reasonable diligence, have been brought by a noticed motion. If the trial date is more than two months away, the Court is unlikely to find that exigent circumstances exist.
 - a. Any request for a continuance must be made as soon as reasonably practical once the necessity for the continuance is discovered. (Cal. Rules of Court, rule 3.1332(b).) Therefore, the request shall state when the applicant discovered the circumstances that allegedly show that a continuance is necessary.

- b. The Court might find good cause for a continuance, but not for one of the length requested. Therefore, when appearing at a hearing on the request for a trial continuance, counsel shall come prepared with information concerning the availability of counsel, the client, and the witnesses for the entire period from the current trial date to the requested trial date.
2. Code of Civil Procedure section 595.2 authorizes continuances of up to 30 days without good cause, but the section has been held to be directory rather than mandatory. The Court will continue the trial pursuant to that section – and thus without a showing of good cause – only under the following conditions:
 - a. The current trial date is no more than 18 months after the filing date of the complaint;
 - b. The trial date has not previously been continued for any reason;
 - c. The requested continuance is for no more than 28 days; and
 - d. A written stipulation by all parties and a proposed order has been submitted at least five court days in advance of the trial date.
3. The Court will consider a stipulation for a continuance pursuant to Code of Civil Procedure section 592.5 without an *ex parte* application.
4. Code of Civil Procedure section 595.2 permits a continuance of the trial without cause, but it does not confer the right to an extension of pretrial deadlines for discovery, dispositive motions, etc., without good cause. Therefore, without a showing of good cause, those deadlines will continue to be measured from the initial trial date.
5. Unless the request conforms to Code of Civil Procedure section 595.2, no trial may be continued absent an affirmative showing of the facts that demonstrate good cause. (Cal. Rules of Court, rule 3.1332(c).) Good cause must be shown, not only for a continuance of the trial, but also for a continuance of the length requested.
 - a. A stipulation that good cause exists does not constitute such a factual showing. The stipulation must establish the evidentiary facts from which the Court may conclude that good cause exists.
 - b. The fact that the parties agree to a continuance does not constitute good cause.
6. A desire to mediate or to engage in settlement negotiations does not constitute good cause. Once the trial date has been set, counsel shall prepare for trial concurrently with their efforts to settle the case. Counsel shall not delay trial preparation until settlement efforts have failed.
7. The failure to complete discovery or other trial preparation is good cause for a continuance only if a party has been reasonably diligent in attempting to prepare for trial. (Cal. Rules of Court, rule 3.1332(c)(6).) Any request to extend the discovery cut-off or to continue the trial date on that ground must affirmatively demonstrate that diligence. In particular, the

request shall be supported by detailed declarations on personal knowledge addressing the following issues:

- a. What discovery has the moving party conducted to date, and when was that discovery propounded and completed?
 - b. What additional discovery does that party believe it needs to conduct in order to prepare for trial, and what is the estimated time necessary in which to complete that discovery?
 - c. Why did the moving party fail to complete the discovery that it needs in a timely fashion?
 - d. When was the current trial date set? Did the moving party object to the trial date at that time?
 - e. If the moving party failed to complete the discovery that it needs because of some event or circumstance beyond its control that arose after the TSC:
 - i. What was that event or circumstance?
 - ii. On what date did the moving party become aware of that event or circumstance?
 - iii. How did that event or circumstance prevent that party from completing discovery in a timely fashion?
 - f. On what date did the moving party realize that it would not be able to complete discovery prior to the current trial date? If the motion is filed more than a week after that realization, what is the reason for that delay?
8. The substitution of counsel is not good cause for the continuance of a trial unless there is an affirmative showing that the substitution was required in the interests of justice. (Cal. Rules of Court, rule 3.1332(c)(4).) Therefore, any request on the ground of a recent change of trial counsel shall explain in detail:
- a. Why was the substitution necessary, and when did the events demonstrating that necessity occur?
 - b. When did the substitution occur, and why did it not occur earlier?
 - c. What has new counsel done to date to prepare for trial, and when did new counsel begin to do so? If those preparations did not begin promptly following the substitution, why not?
 - d. What else does new counsel need to do to prepare for trial, and how long will it take to do so?
9. To demonstrate good cause on the ground of the unavailability of a percipient witness, the request shall:
- a. Make an offer of proof of the testimony to be provided by that witness;

- b. Explain why that testimony is material;
 - c. Explain why that testimony cannot be offered by another witness;
 - d. Prove that the witness has been served with a subpoena; and
 - e. Prove the witness's unavailability for the trial as currently scheduled, when that unavailability begins, and when it will end.
10. To demonstrate good cause on the ground of the unavailability of an expert witness for either deposition or trial, the request shall:
- a. Make an offer of proof of the testimony to be provided by that witness;
 - b. Explain why that testimony is material;
 - c. Explain why that testimony cannot be offered by another expert;
 - d. State when counsel retained the unavailable expert;
 - e. State how and when counsel informed the expert of the trial date;
 - f. State how and when the expert agreed to be available for a trial starting on that date and a deposition preceding that date;
 - g. State how and when counsel learned that the expert was not available; and
 - h. Prove the witness's unavailability for the trial as currently scheduled, when that unavailability begins, and when it will end.
11. To demonstrate good cause on the ground of the unavailability of trial counsel, the request shall:
- a. Prove counsel's unavailability for the trial as currently scheduled, when that unavailability begins, and when it will end;
 - b. State when the conflicting event was scheduled in relationship to the scheduling of the trial date;
 - c. State when trial counsel became aware of the conflict; and
 - d. Explain why other counsel cannot substitute for trial counsel during the period of the conflict.
12. No oral requests for a trial continuance will be considered on the day of trial. Requests for continuance on the ground that trial counsel is engaged in another trial may be made by declaration on the day of trial. Any such declaration shall describe the conflicting trial by stating:
- a. The case name and case number of the conflicting trial;
 - b. The courthouse and department in which the trial is pending, the name of the judicial officer presiding over the trial, and the telephone number of the clerk of that department;

- c. The date on which the trial commenced, the current status of the trial, and the date on which the trial is expected to be submitted to the judge or jury for decision; and
- d. Whether counsel is the principal trial counsel in that trial, and if not, a description of counsel's responsibilities in that trial.

G. Mandatory Settlement Conference

1. Unless an attorney's appearance is excused in advance in writing by the Court, the principal trial counsel for every party -- including all plaintiffs, cross-complainants, and plaintiffs in intervention -- shall appear at the MSC in person. Appearance by telephone or Court Call is not sufficient.
2. Unless his or her appearance is excused in advance in writing, the handling insurance claims professional for every insurer insuring any party shall appear in person, and shall come with full authority to settle all claims against the insured. (Cal. Rules of Court, rule 3.1380(b).) "Full authority to settle" means the authority of the person present to bind the insurer (a) to pay an amount equal either to the sum of the claimants' settlement demands against the insured or to the policy limits, whichever is less (b) without consulting anyone not personally present at the settlement conference.
3. All parties must appear in person unless that party's appearance is excused in advance in writing by the Court.
4. If the party is not a natural person, the person attending on behalf of a party shall come with full authority to settle all claims being asserted by that party or against that party. (Cal. Rules of Court, rule 3.1380(b).) As to a plaintiff, cross-complainant, or any other party seeking affirmative relief, "full authority to settle" means the authority of the person present to dismiss or compromise that party's claims in exchange for consideration in any sum whatsoever without consulting anyone not personally present at the settlement conference. As to any defendant, cross-defendant, or defendant-in-intervention, "full authority to settle" means the authority of the person present to bind the party (a) to pay an amount equal to the sum of the claimants' settlement demands against that party (b) without consulting anyone not personally present at the settlement conference.
5. After the date of this order, but not later than 24 days before the MSC, the plaintiffs shall send written settlement demands to each defendant with whom the plaintiffs have not yet reached a settlement, describing both the amount of the demand and the manner in which it was calculated. By the same date, every cross-complainant, and every plaintiff in intervention that is seeking affirmative relief, shall send such written settlement demands to each and every cross-defendant and defendant in intervention with whom they have not yet settled.
6. After the date of this order, but not later than 7 days before the MSC, every defendant and cross-defendant who received a settlement demand in accordance with the prior paragraph shall send a written response to that demand to the party that sent that demand. If the

response includes a settlement offer, the response shall state both the amount of the offer and the manner in which it was calculated.

7. Any request to excuse any attorney, party, or insurance claims professional from personally appearing at the MSC shall be presented to the Court, and shall be:
 - a. Presented at least 10 days before the MSC.
 - b. Supported by a declaration by the person seeking to be excused from appearing that:
 - (i) Establishes the facts justifying the excuse;
 - (ii) States whether the party, attorney, or insurance claims professional was personally present at any prior mediations or settlement conferences; and
 - (iii) Describes the extent to which that party, attorney, or insurance claims professional participated in any prior mediation, MSC, or informal settlement efforts.
 - c. Served on all parties.
8. If a basis for the request is that some other person will be personally attending the MSC with full authority to settle, the declaration shall identify that person by name and shall expressly state that the person has “‘full authority to settle’ as that term is defined in” this order.
9. Immediately upon learning of this order setting an MSC, trial counsel for each party shall mail a copy of this order to all handling insurance claims professional for that party’s insurance carriers. If trial counsel becomes aware that any insurance claims professional is refusing to attend the MSC, trial counsel shall advise the Court in writing of the name, address, and telephone number both of the person who is refusing to attend and that person’s supervisor.
10. No attorney, party, or insurance claims professional shall leave the MSC until he or she is excused by the Court.

H. Failure to Comply

1. If it appears that any attorney, party, or person has violated any provision of this order, the Court may issue an order to show cause why monetary sanctions should not be imposed upon that attorney, party, or person in an amount not to exceed \$1,500. (Code Civ. Proc., § 177.5; Cal. Rules of Court, rule 2.30(b).)

Craig G. Riemer, Judge of the Superior Court