|  |
| --- |
| IN THE UNITED STATES DISTRICT COURTFOR THE DISTRICT OF UTAH |
| ,Plaintiff,v.,Defendant. | **TRIAL ORDER**Case No.District Judge David Nuffer |

 The final pretrial conference in this matter is scheduled for**[about seven – ten days before trial ][day of week] [month] [day], [year] at** **[time]\_\_. m. in Room** **[room] [Include for Southern Region St. George cases: , 206 West Tabernacle Street, St. George, Utah].** Counsel who will try the case must attend.

 This case is set for a [days] day jury trial to begin on **[day of week] [month] [day], [year] at** **[time]\_\_. m. in Room** **[room] [Include for Southern Region St. George cases: , 206 West Tabernacle Street, St. George, Utah].** The attorneys must **appear in court at 8:00 a.m.** on the first day of trial for a brief pre-trial meeting. [Include for Southern Region St. George cases: The start and end times for each day of trial may vary, so the parties should coordinate to have witnesses available throughout the scheduled trial dates. If counsel have not yet stipulated to a Southern Region jury, confer with counsel and submit the [Stipulation to Selection of Jury From Southern Region Jury Pool](https://www.utd.uscourts.gov/sites/utd/files/Stipulation%20to%20Southern%20Region%20Jury.docx), if agreeable within 14 days of this Order.]

 Counsel are instructed as follows:

**1. Court-Imposed Deadlines**

 The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court and that motion may be joined by any other party.

**2. Preparation for Final Pretrial**

 The court has adopted its own standard general jury instructions and standard voir dire questions in the form of a questionnaire, copies of which are [posted on the court’s website](http://www.utd.uscourts.gov/chief-judge-david-nuffer#trial).

[Standard Civil Jury Instructions](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Standard_cv_Jury_Instructions.doc)

[Civil Juror Questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_cvJuror_Questionnaire.doc)                     [Optional Supplemental Questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Sample_Optional_Supplemental_Juror_Questionnaire.docx)

[Civil Advance Juror Questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Civi_Supplemental_Questionnaire_071217.docx)

Note also the [Jury Selection Procedures](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Jury_Selection.docx) and [Courtroom Seating Chart](http://www.utd.uscourts.gov/sites/utd/files/JurySeatingChart.pdf).

 The procedure for submitting proposed jury instructions and additional voir dire questions is as follows:

(a) The parties must serve their proposed jury instructions, special verdict and voir dire questions on each other by**[twenty-eight days before the final pretrial**. These shall not be filed with the court. The parties must then confer in order to agree on a single set of instructions to the extent possible. The use of a [questionnaire submitted to the jury in advance of trial](http://www.utd.uscourts.gov/sites/utd/files/Civi_Supplemental_Questionnaire_071217.docx) (beyond the [standard questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_cvJuror_Questionnaire.doc) used during the in-court [jury selection](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Jury_Selection.docx) and the [optional supplemental questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Sample_Optional_Supplemental_Juror_Questionnaire.docx)) may be advisable. Counsel shall meet and confer with the other parties and must file notice of any request for an [advance questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Civi_Supplemental_Questionnaire_071217.docx) *with the proposed joint questionnaire* by**[forty-two days before the final pretrial**.

(b) If the parties cannot agree upon one complete set of final instructions, special verdict and voir dire questions, they must file separately those instructions, special verdict and voir dire questions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions, special verdict and voir dire questions for the case.

(c) The joint proposed instructions, special verdict and voir dire questions (along with the proposals upon which the parties have been unable to agree) must be filed with the court by**[twenty-one** **days before the final pretrial**. Each instruction must be labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., “Joint Instruction No. 1” or “Plaintiff's Instruction No. 1”). Include citation to the authority that forms the basis for the instruction.

(d) A copy of the joint proposed instructions, special verdict and voir dire questions must be emailed to dj.nuffer@utd.uscourts.gov as a Word document by **[twenty-one days before the final pretrial]**. Include the case number and case name in the email subject line. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(e) Each party must file its objections, if any, to jury instructions, the special verdict and voir dire questions proposed by any other party by **no later than [fourteen days before the final pretrial**. Any objections must recite the proposal in its entirety and specifically highlight the objectionable language contained therein. Objections to instructions must contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit an alternative instruction covering the pertinent subject matter or principle of law. A copy of the proposed alternative instruction must be emailed to dj.nuffer@utd.uscourts.gov as a Word document. Include the case number and case name in the email subject line. Any party may, if it chooses, submit a brief written response in support of its proposed instructions **no later than** **[seven days before the final pretrial]**.

(f) All instructions must be short, concise, understandable, and *neutral* statements of law. Argumentative instructions and voir dire questions are improper and will not be given.

(g) Modified versions of statutory or other form jury instructions (*e.g.*, Federal Jury Practice and Instructions) may be acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite authority, if any, supporting such a modification.

**3. Motions in Limine**

 All motions in limine are to be filed with the court by**[fourteen days before the final pretrial**, unless otherwise ordered by the court. A separate motion must be filed for each preliminary ruling sought. Each motion must specifically identify the relief sought, and must contain the memorandum of law in the same document. (*See* [DUCivR 7-1(a)(1)](http://www.utd.uscourts.gov/local-civil-rules#71aMotions)). A proposed order should be emailed to dj.nuffer@utd.uscourts.gov as a Word document. Opposition memoranda must be filed by**[seven days before the final pretrial**. No memorandum in support of, or in opposition to, a motion may be longer than three (3) pages in length.

**4. Courtroom Equipment and Recorded Testimony**

 If counsel wish to use any courtroom equipment, such as the evidence presentation system, easels, projection screens, etc., they must so state in the final pretrial order and at the final pretrial. Trial counsel and support staff are expected to familiarize themselves with any equipment they intend to use in advance of trial. For practice time and training, contact the Clerk of Court at 801-656-7580.

 Any party desiring to present testimony of a witness by recorded means, whether video, audio or paper, must serve a designation of the testimony by**[twenty-one days before the final pretrial.** This shall not be filed with the court. The designation shall be made using the [Deposition Designation Form](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Deposition_Designation.docx) on [Judge Nuffer’s web page](http://www.utd.uscourts.gov/chief-judge-david-nuffer). Any objection must be served by **[fourteen days before the final pretrial**, and shall use the same form. The parties must meet and confer (with at least one in-person meeting) to resolve any disputes. The designating party shall file the completed Deposition Designation Form by **[seven days before the final pretrial** and any motion regarding this subject must be filed by **[seven days before the final pretrial.** Disputes evident in the [Deposition Designation Form](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Deposition_Designation.docx) do not require a motion. The completed [Deposition Designation Form](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Deposition_Designation.docx) shall be emailed to dj.nuffer@utd.uscourts.gov on that date.

 A party intending to use recorded testimony is strongly encouraged to display the deposition text as the deposition is presented, and if read, to use a professional reader who has rehearsed the reading with the attorney.

**5. Daily Transcript Requests**

 If counsel desire realtime or daily transcription of the trial, they must contact and make such request with the court reporters (Kelly Hicken – 801-521-7238) at least two weeks before the trial.

**6. Pretrial Order**

 At the pretrial conference, plaintiff must present a joint proposed pretrial order which has been approved by all counsel, noting any areas of dispute. The pretrial order must conform generally to the requirements of [DUCivR 16-1](http://www.utd.uscourts.gov/local-civil-rules#DUCivR16-1) and to the [approved form of pretrial order](http://www.utd.uscourts.gov/sites/utd/files/pretrord.doc) which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah. A copy of the proposed pretrial order must be emailed to dj.nuffer@utd.uscourts.gov as a Word document.

 In addition to the provisions in the final pretrial order thus called for, the following special provisions will apply:

 (a) The pretrial order must contain an additional subparagraph (d) Statement of the Case which will be used to describe the case to the jury.

(b) The statement of uncontroverted facts called for in Section 3 of the [General Form of the Pretrial Order](http://www.utd.uscourts.gov/sites/utd/files/pretrord.doc) must be in narrative form. Such facts shall be considered substantive evidence in the case and shall be marked as Exhibit 1. Upon commencement of the trial, Exhibit 1 shall be read into evidence. No further evidence as to the agreed facts may be entered into the record at trial.

 (c) In reference to Section 7 of the [General Form of the Pretrial Order](http://www.utd.uscourts.gov/sites/utd/files/pretrord.doc), regarding all witnesses that propose to be expert witnesses, the parties are directed to append to Exhibit 1 copies of the curriculum vitae of each such expert. Absent specific leave of Court, the expert may not present more than five (5) minutes of professional qualification. In most cases, the parties will stipulate to qualification, although in appropriate cases, voir dire or cross-examination of an expert’s qualification may be permitted and this examination may go beyond the scope of direct oral testimony as to qualification.

**7. Trial Briefs**

 Each party must file a Trial Brief **no later than** **[seven days before trial**. Each brief must include a list of all witnesses to be called and a short statement as to the substance of that witness’s testimony. Plaintiff's trial brief must contain an outline of the elements of each cause of action, with the facts supporting that element listed under each element. Defendant's trial brief must contain a similar outline of the elements and facts for each cause of action in any counterclaim or third-party claim. Any party raising an affirmative defense must outline the elements of such defense and the facts supporting that element.

**8. Exhibit Lists/Marking Exhibits**

1. Parties must meet and confer to avoid marking the same exhibit twice.
2. After eliminating duplicate exhibits, each party must prepare an exhibit list in Word format for the court's use at trial. Standard [forms of exhibit lists](http://utd-admin.jdc.ao.dcn/usdc-forms) are available from the court's website, and questions regarding the preparation of these lists may be directed to the case manager, Anndrea Bowers, at 801-524-6150.
3. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.
4. Plaintiff must mark exhibits by number starting at “1.” Defendant must mark exhibits by letter unless defendant anticipates using more than twenty (20) exhibits, in which case counsel must agree on number ranges to accommodate numbering all exhibits. Examples of alternative methods would be assigning numbers 1 – 99 to plaintiff and 100 to 199 to defendant. In a case with multiple parties who require separate exhibit numbers, counsel must agree on number ranges to accommodate numbering all exhibits.
5. Pages of documentary exhibits must retain bates stamps used when the documents were produced in discovery.
6. Original exhibits must be stapled.
7. Exhibit lists, marked exhibits, and courtesy copies must be submitted to the court three (3) business days before trial. The exhibit list must be emailed as a Word document to dj.nuffer@utd.uscourts.gov.
8. Courtesy copies of exhibits on a CD/DVD Rom in PDF format are preferred. Optical Character Recognition (OCR) must be run on the PDF files to enable text searching of the exhibits. If a party marks more than ten (10) exhibits, courtesy copies of exhibits **must** be provided in PDF format on a CD/DVD Rom. The naming of PDF format exhibit data files must enable sorting by exhibit number.
9. If a CD/DVD Rom with courtesy copies of exhibits in PDF format is not provided (because the party is marking less than ten exhibits and has elected not to provide courtesy copies of exhibits on a CD/DVD Rom in PDF format) two (2) paper courtesy copies of exhibits in a tabbed binder must be delivered to the court.
10. A tabbed binder containing paper copies of exhibits must be made available for witnesses to use while testifying.

**9. Witness Lists**

 All parties are required to prepare a separate witness list for the court's use at trial. The list contained in the pretrial order will not be sufficient. Standard [forms of witness lists](http://utd-admin.jdc.ao.dcn/usdc-forms) are available from the court's website, and questions regarding the preparation of these lists may be directed to the case manager, Anndrea Bowers, at 801-524-6150. Witness lists must be emailed as a Word document to dj.nuffer@utd.uscourts.gov three (3) business days before trial.

 Each afternoon of trial, by no later than 6:00 p.m. counsel anticipating examination of witnesses the next day shall provide the names of witnesses anticipated to be examined to all counsel and to dj.nuffer@utd.uscourts.gov, and by no later than 8:00 p.m. shall by the same means provide the list of exhibits anticipated to be used with each witness.

**10. In Case of Settlement**

 Pursuant to [DUCivR 41-1](http://www.utd.uscourts.gov/local-civil-rules#DUCivR41-1), the court will tax all jury costs incurred as a result of the parties’ failure to give the court actual notice of settlement less than one (1) full business day before the commencement of trial. Leaving a voice mail message or sending a notice by fax or email is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator and a member of this chamber’s staff by means of a personal visit or by person-to-person telephonic communication at least one full business day before the commencement of trial.

**11. Courtroom Conduct**

 In addition to the rules outlined in [DUCivR 43-1](http://www.utd.uscourts.gov/local-civil-rules#DUCivR43-1), the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:00 a.m. until 1:30 p.m. or 2:30 p.m., with two (2) short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you. Any motions or matters that need to be addressed outside the jury will be heard at 8:00 a.m. or after the trial day has recessed. Usually, the court has other hearings set after 2:30 p.m.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel must state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, “Objection . . . irrelevant and inadmissible under Rule 402” or “Objection . . . hearsay and inadmissible under Rule 802.”

(f) Sidebar conferences are discouraged. Most matters requiring argument must be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel must instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their standard salutation (Mr., Ms., Mrs., Dr., Officer, Detective, ect.) and their surnames, NOT by their first or given names.

(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Counsel should not refer to other witnesses’ testimony in their questioning. For example, counsel should not ask “Witness A testified . . . would you agree?”

(l) Offers of, or requests for, a stipulation must be made outside the hearing of the jury.

(m) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

(n) The same attorney must do initial and rebuttal closing arguments, and rebuttal closing argument may not take more time than the initial closing argument.

(o) Please review the guidelines for [Creating the Best Transcript Possible](http://www.utd.uscourts.gov/sites/utd/files/Creating_the_Best_Transcript_Possible.pdf) with your entire trial team and witnesses before trial.

 SIGNED this \_\_\_\_\_ day of April, 2019.

 BY THE COURT:

 David Nuffer

 United States District Judge