

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
DISTRICT JUDGE EDWARD J. DAVILA

**STANDING ORDER FOR CIVIL CASES**

**I. APPLICATION OF STANDING ORDER**

Unless otherwise indicated by the Court, this Standing Order applies to all categories of civil cases assigned to Judge Edward J. Davila. Parties and counsel shall comply with all aspects of this Standing Order, the Federal Rules of Civil Procedure, the Civil Local Rules, and all General Orders of the Northern District of California.

All motions filed after January 1, 2015, must conform to this Order. Failure to comply with any rule or standing order may be grounds for the imposition of sanctions when appropriate.

**II. COMMUNICATION WITH THE COURT**

Parties and counsel shall not engage in *any* ex parte communication with Judge Davila or his chambers staff by telephone, facsimile, e-mail or any other means unless such contact has been authorized in advance.

Judge Davila does not review or respond to letters or letter briefs providing case information or seeking relief from the Court even if the letter is filed on the docket. All requests requiring the Court to take action shall be made either by Stipulation and Proposed Order or by appropriate motion filed pursuant to the Civil Local Rules.

Parties and counsel may contact Judge Davila's Courtroom Deputy, Elizabeth C. Garcia, at (408) 535-5356 or ejdcrd@cand.uscourts.gov with any inquiries regarding scheduling or any other matter.

**III. CIVIL HEARINGS AND TRIALS**

**A. Motions**

1. Civil Motions are heard on Thursdays at 9:00 a.m. *by reservation only*. Parties and counsel may reserve a hearing date by contacting Judge Davila's Courtroom Deputy, Elizabeth C. Garcia, at (408) 535-5356 or ejdcrd@cand.uscourts.gov.

2. Motions must be filed and noticed within 14 calendar days of reserving a hearing date with Judge Davila's Courtroom Deputy. Failure to timely file any motion will result in the expiration of the hearing reservation without further notice to the parties.
3. All substantive motions, oppositions and replies must comply with the page limitations described in Civil Local Rules 7-2 and 7-3 unless permission has been obtained from the Court in advance of filing. Motions for Summary Judgment, Partial Summary Judgment, or Summary Adjudication must also comply with the requirements described in Section IV of this Standing Order.
4. Judge Davila does not issue tentative rulings on upcoming matters. Any matters that are taken under submission shall remain submitted until further order of the Court.

## **B. Case Management Conferences**

Civil Case Management Conferences are heard on Thursdays at 10:00 AM. The parties shall file a Joint Case Management Conference Statement at least 7 days prior to the Case Management Conference unless the filing of separate statements is authorized by Civil Local Rule 16-9(a). All joint statements must comply with the "Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement" and Civil Local Rule 16-9. Failure to timely file a Joint Case Management Conference Statement may result in the dismissal of an action pursuant to Federal Rule of Civil Procedure 41(b).

## **C. Trial Setting Conferences**

1. Trial Setting Conferences are heard on Thursdays at 11:00 a.m. Civil actions will be scheduled for a Trial Setting Conference approximately 30 days before the close of fact discovery or on another date selected by the court. The purpose of the Trial Setting Conference is to determine the parties' readiness for trial and schedule final pretrial and trial dates and deadlines.
2. Joint Trial Setting Conference Statement: No later than 10 days before the Trial Setting Conference, the parties shall file a Joint Trial Setting Conference Statement, not to exceed 10 pages in length, containing the following information:
  - Jurisdiction: A short statement explaining the basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims.
  - Substance of the Action: A brief description of the parties, a recitation of the facts and a statement of the principal factual issues in dispute, as well as a description of the relief sought.

- Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
- Motions: All prior and pending motions, their current status, and any anticipated motions.
- Discovery: The status of discovery. If discovery has not been completed, the scope of any anticipated further discovery, and proposed modifications to the discovery plan, and a realistic estimate of when discovery will be complete.
- Settlement and ADR: A description of all ADR efforts to date and whether further ADR efforts should be pursued prior to trial.
- Bifurcation and Separate Trial of Issues: A statement addressing whether bifurcation or a separate trial of specific issues is appropriate or desired.
- Trial: A brief statement describing each party's readiness for trial, whether the case will be tried before a jury or to the court, and a realistic estimate of the length of the trial.
- Scheduling: Any proposed modifications to the Case Management Schedule, as well as proposed dates for the Final Pretrial Conference and Trial.
- Other Matters: Such other matters that may facilitate the just, speedy and inexpensive disposition of the matter.

#### **D. Final Pretrial Conferences**

1. Final Pretrial Conferences are heard on Thursdays at 11:00 a.m. No later than 21 days before the Final Pretrial Conference, lead counsel who will try the case shall meet and confer with respect to:
  - Settlement of the case;
  - The preparation of the Joint Final Pretrial Conference Statement;
  - Preparation and exchange of pretrial materials to be served and lodged;
  - Clarifying and narrowing of the contested issues and disputes for trial.

2. Joint Final Pretrial Conference Statement: No later than 14 days before the Final Pretrial Conference, the parties shall file and serve a Joint Final Pretrial Conference Statement containing the following information:
  - Substance of the Action: A brief description of the parties and the claims and defenses that remain to be decided with reference to the operative pleadings that raise the claims and defenses.
  - Relief Sought: A detailed description of all relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents, or other evidentiary material to be presented concerning the amount of damages.
  - Undisputed Facts: A concise statement of all relevant facts to which the parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits, as well as which facts can be presented at trial upon an agreed statement.
  - Disputed Factual Issues: A concise list of the issues of facts that are contested and remain to be determined at trial.
  - Disputed Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
  - Trial Stipulations: A statement of the proposed stipulations or agreements that will expedite the presentation of evidence.
  - Further Discovery or Motions: A statement describing any remaining discovery or any motion or other matters that must be resolved prior to trial, including motions in limine.
  - Disputed Evidentiary Issues: A concise statement of each disputed evidentiary issue, even if a motion in limine will not be filed on that issue, including reference to specific statutes and decisions.
  - Trial Estimate: An updated statement of the total amount of days/hours needed for the trial.
  - Other Matters: Such other matters that may facilitate the just, speedy and inexpensive disposition of the matter.
3. Joint Witness List: No later than 14 days before the Final Pretrial Conference, the parties shall file a Joint Witness List which contains a list of witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief

statement following each name describing the substance of the testimony to be given.

No party shall be permitted to call any witness in its case-in-chief, without leave of court for good cause shown, if that witness is not disclosed on the Joint Witness List.

4. Joint Exhibit List: No later than 14 days before the Final Pretrial Conference, the parties shall exchange copies of all exhibits, summaries, and diagrams to be used at trial other than solely for impeachment or rebuttal and the shall file a Joint Exhibit List which contains a list of all documents and other items to be offered as exhibits at trial, other than solely for impeachment or rebuttal, along with a brief statement for each describing its substance or purpose and the identity of the sponsoring witness. This information should be organized in the form of a chart with a plaintiff's exhibits labeled with numerals 1-1000 and a defendant's exhibits labeled with numerals 1001-2000.

No party shall be permitted to offer any exhibit, without leave of court for good cause shown, if such exhibit is not disclosed on the Joint Exhibit List unless the exhibit is offered solely for impeachment or rebuttal.

5. Trial Exhibits: No later than 7 days before the commencement of trial, unless otherwise ordered, the parties shall deliver three sets of all pre-marked exhibits organized in three-ring binders to Judge Davila's Courtroom Deputy, Elizabeth C. Garcia.
6. Motions in Limine: No later than 14 days before the Final Pretrial Conference, unless otherwise ordered, the parties shall file and serve any motions in limine. Oppositions to motions in limine shall be filed and served no later than 10 days before the Final Pretrial Conference. Replies shall not be filed.

Each motion in limine should be separate and address a single topic. Motions in limine and oppositions to motions in limine shall contain no more than 7 pages of briefing.

7. Deposition and Discovery Designations: No later than 14 days before the Final Pretrial Conference, unless otherwise ordered, the parties shall file and serve any excerpts of deposition testimony or other discovery to be offered at trial, other than solely for impeachment or rebuttal.

Any objections to the use of designated experts and any counter-designations or deposition testimony shall be filed and served no later than 10 days prior to the commencement of trial.

8. Jury Materials: No later than 10 days before the Final Pretrial Conference, unless otherwise ordered, the parties shall jointly file and serve:

- Proposed jury voir dire questions;
- Proposed jury instructions;
- Proposed jury verdict forms;
- A short neutral statement of the case which the Court can read to prospective jurors.

The court will ordinarily give the standard preliminary and closing jury instructions contained in the Model Jury Instructions of the Ninth Circuit prior to opening statements and closing arguments.

For substantive, case-specific instructions, the parties shall meet and confer regarding an agreed set of jury instructions using the Model Jury Instructions of the Ninth Circuit where appropriate. In the event the parties are unable to agree to the language of a particular instruction, the objecting party shall submit a written objection or an alternative proposed instruction placed in sequence following the disputed instruction.

Sets of proposed jury instructions shall be submitted both on paper and in Microsoft Word format to Elizabeth C. Garcia, Courtroom Deputy, at [ejdcrd@cand.uscourts.gov](mailto:ejdcrd@cand.uscourts.gov).

9. Proposed Findings of Fact and Conclusions of Law: In any case to be tried without a jury, each party shall file and serve proposed Findings of Fact and Conclusions of Law no later than 10 days before the Final Pretrial Conference.

The findings of fact shall set forth in simple separately-numbered declarative sentences all factual contentions relied upon by the party in support of its claims or defenses and shall be free from pejorative language and argument. Conclusions of law shall be supported by appropriate citation to legal authority.

Proposed Findings of Fact and Conclusions of Law shall be submitted both on paper and in Microsoft Word format to Elizabeth C. Garcia, Courtroom Deputy, at [ejdcrd@cand.uscourts.gov](mailto:ejdcrd@cand.uscourts.gov).

## **E. Trials**

Trial proceedings are conducted on Tuesdays, Wednesdays and Fridays from 9:00 a.m. to 4:30 p.m., with a break from 12:00 p.m. to 1:30 p.m. The trial schedule may be adjusted and additional sessions may be added at the discretion of the Court.

## **F. Settlement and Continuances**

1. Notice of Settlement: The parties shall immediately notify the court of the settlement of any action by filing a Notice of Settlement which provides an estimate of when the parties expect the action will be finally resolved through stipulated dismissal or otherwise.

For settlements that occur after the Final Pretrial Conference and prior to the commencement of trial, the parties shall immediately file a Notice of Settlement and e-mail a copy of the notice to Elizabeth C. Garcia, Courtroom Deputy, at [ejdcrd@cand.uscourts.gov](mailto:ejdcrd@cand.uscourts.gov). Jury costs may be assessed for failure to timely file a Notice of Settlement.

2. Continuances: Continuances are disfavored. Any request to continue a motion hearing date must be made in accordance with Civil Local Rules 6-2 or 6-3. Any request to continue a scheduled trial date must be made in accordance with Civil Local Rule 40-1. Jury costs may be assessed for failure to proceed with a scheduled trial.

## **G. Telephonic Appearances**

The Court encourages in person appearances for Law and Motion and Case Management/Pretrial Conferences. However, the Court will consider requests to appear telephonically on a case by case basis. Parties wishing to appear by telephone shall file and serve an Administrative Request to Appear Telephonically and Proposed Order at least one week prior to the scheduled hearing date.

Absent compelling circumstances, the Court will not grant a request to appear telephonically for parties or counsel who reside or have an office located within any of the Bay Area counties (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and Sonoma) or those other counties covered by the San Jose Division (Monterey, San Benito, and Santa Cruz). In addition, the Court will not generally grant a request by the moving party on a motion.

If a request to appear telephonically is granted, the parties must contact CourtCall Phone Conferencing at (866) 582-6878 in advance of the hearing to schedule a telephonic appearance. Please inform CourtCall you have been approved for a telephonic appearance by the Court. The parties are to adhere to CourtCall's procedures. If your matter is vacated after arranging for an appearance through CourtCall, please notify CourtCall that your matter has been taken off calendar and you do not need a telephonic appearance.

## **H. Opportunities for Junior Lawyers**

The Court strongly encourages parties to permit less experienced lawyers to actively participate in the proceedings by presenting argument at motion hearings or examining witnesses at trial.

## **IV. MOTIONS FOR SUMMARY JUDGMENT, PARTIAL SUMMARY JUDGMENT OR SUMMARY ADJUDICATION**

### **A. Limitation and Format**

1. One Motion per Party: Unless otherwise permitted by the Court, only one Motion for Summary Judgment, Partial Summary Judgment or Summary Adjudication may be filed by each party.
2. Format: All Motions for Summary Judgment, Partial Summary Judgment or Summary Adjudication must comply with the requirements of this Standing Order in addition to any requirements or limitations described in the Federal Rules of Civil Procedure and Civil Local Rules. Any non-compliant motion may be summarily terminated by the Court.
3. Chambers Copies: Printed copies of any Motion for Summary Judgment, Motion for Partial Summary Judgment, or Motion for Summary Adjudication and any Opposition thereto must be organized in a binder or binders labeled with the title of the motion on the cover and spine and must be submitted to the Clerk's Office consistent with Section VI of this Standing Order.

### **B. Separate Statement**

1. Moving Separate Statement: Any party moving for summary judgment, partial summary judgment or summary adjudication must include a separate, short and concise statement identifying each claim or defense to which the moving party contends there is no genuine issue to be tried.

For each claim, defense or part thereof, the Moving Separate Statement must: (a) identify the relevant elements or issues; (b) list the asserted material facts establishing those elements or issues; and (c) cite to record evidence demonstrating that the asserted material facts are undisputed (e.g., deposition testimony, declaration or discovery response). Upon filing, the moving party shall provide the Moving Separate Statement to all other parties in an electronic, word-processing format for ease of response thereto.

The Moving Separate Statement shall be no more than 15 pages and must be organized in the form of a chart as shown in the following example:



<b>Claim or Defense</b>	<b>Moving Party's Undisputed Facts/Supporting Evidence</b>	<b>Opposing Party's Response/Supporting Evidence</b>
<b>Claim 3 Breach of Contract</b>		
1. Plaintiff did not perform under the contract	Fact 1. Defendant issued a homeowner's insurance policy to Plaintiff.  Jones Decl. ¶¶ 4-5 and Ex. A (policy).	
	Fact 2. Plaintiff failed to pay premiums required by the policy.  Jones Decl. ¶ 6.	
2. Defendant did not breach the contract.	Fact 3. The policy expressly excludes coverage for loss resulting from theft.  Jones Decl. ¶¶ 9-10 and Ex. A (policy).	
<b>Punitive Damages</b>		
1. Plaintiff cannot establish that Defendant acted with oppression, fraud, or malice	Fact 4. Defendant timely investigated Plaintiff's insurance claim.  Jones Decl. ¶¶ 18-20.	

2. Responsive Separate Statement: The papers opposing a Motion for Summary Judgment, Partial Summary Judgment or Summary Adjudication must include one Responsive Separate Statement which: (a) incorporates the Moving Separate Statement; (b) indicates whether each of the facts listed in the Moving Separate Statement is disputed or undisputed; and (c) identifies any additional material facts the party contends will establish a genuine issue to be tried. If the opposing party contends that a fact is in dispute, the opposing party must cite to evidence in the record establishing the dispute.

The Responsive Separate Statement shall add no more than 5 pages to the Moving Separate Statement and must be organized in the form of a chart as shown in the following example:

<b>Claim or Defense</b>	<b>Moving Party's Undisputed Facts/Supporting Evidence</b>	<b>Opposing Party's Response/Supporting Evidence</b>
<b>Claim 3 Breach of Contract</b>		
1. Plaintiff did not perform under the contract	Fact 1. Defendant issued a homeowner's insurance policy to Plaintiff.  Jones Decl. ¶¶ 4-5 and Ex. A (policy).	Undisputed.
	Fact 2. Plaintiff failed to pay premiums required by the policy.  Jones Decl. ¶ 6.	Disputed. Plaintiff timely paid the premiums required by the policy.  Smith Dep. 22:4-23:19.
		Additional Fact: Defendant has failed to record Plaintiff's timely

		premium payments on 2 prior occasions.  Smith Dep. 72:8-14.
2. Defendant did not breach the contract.	Fact 3. The policy expressly excludes coverage for loss resulting from theft.  Jones Decl. ¶¶ 9-10 and Ex. A (policy).	Disputed. The policy does not exclude coverage for loss resulting from theft.  Jones Decl. Ex. A (policy).
<b>Punitive Damages</b>		
1. Plaintiff cannot establish that Defendant acted with oppression, fraud, or malice	Fact 4. Defendant timely investigated Plaintiff's insurance claim.  Jones Decl. ¶¶ 18-20.	Disputed. Defendant waited more than 4 months before investigating Plaintiff's claim.  Smith Dep. 79:15-80:4.

3. Reply Separate Statement: The moving party may file a Reply Separate Statement which incorporates and responds to the Responsive Separate Statement in the same manner described above.
4. Deemed Admitted Unless Controverted: Each numbered fact in the Moving Separate Statement will be deemed to be admitted for purposes of the motion unless specifically controverted by the opposing party, so long as the moving party meets its burden of proof under Federal Rule of Civil Procedure 56.
5. Attestation: Each separate statement must be signed by counsel or unrepresented party who has reviewed the document and attests as follows:

*I attest that the evidence cited herein fairly and accurately supports or disputes the facts as asserted.*

### C. Cross-Motion Requirement

Any Cross-Motion for Summary Judgment, Partial Summary Judgment or Summary Adjudication shall be incorporated into the Opposition to the original like motion. The combined Opposition/Cross-Motion shall not exceed 25 pages in length.

Any opposition to a Cross-Motion shall be incorporated into the Reply to the opposition to the original like motion. The combined Reply/Opposition shall be limited to 15 pages in length.

A Reply to the Opposition to the Cross-Motion may be filed and served not more than 7 days after the filing of the combined Reply/Opposition and shall be limited to 15 pages in length.

### D. Objections to Evidence

Objections to evidence shall be contained within the objecting party's brief and shall not be filed as a separate pleading.

## **V. MOTIONS TO SEAL**

### **A. Compliance with Civil Local Rules and Standing Order**

All Motions to Seal relating to any civil matter assigned to Judge Davila must strictly comply with Civil Local Rule 79-5 and this Standing Order. Any non-conforming Motion to Seal may be summarily terminated by the Court.

### **B. Requirements**

1. One Motion per Pleading: A separate Motion to Seal must be filed for every pleading sought to be sealed. Omnibus Motions to Seal which seek to seal numerous pleadings shall not be filed.
2. Simultaneous Filing of Redacted Motion: When the subject of a sealing request is a motion (such as a Motion to Dismiss or Motion for Summary Judgment), the moving party must file the redacted version of the motion sought to be sealed as a separate docket entry on ECF simultaneously with the Motion to Seal. This separate filing shall occur *in addition* to attaching the redacted version to the Motion to Seal. The moving party shall choose the "motion" event type when uploading the redacted copy to ECF and shall input the reserved hearing date for the motion sought to be sealed.

## **VI. CHAMBERS COPIES**

Pursuant to Civil Local Rule 5-1(e)(7), the parties are *required* to lodge copies of pleadings for chambers. The printed copies shall be marked "Chambers Copy - Do Not File" and shall be clearly marked with the case number and name of the assigned judge. Chambers copies shall be mailed or delivered to the Clerk's Office. Parties shall not file a paper copy of any document with the Clerk's Office that has already been filed electronically.

## **VII. UNREPRESENTED (PRO SE) LITIGANTS**

Parties representing themselves are encouraged to review the information provided for pro se litigants contained on the Northern District of California website. Parties may access this information by clicking the "PRO SE LITIGANTS" link located at the top of the Court's homepage: <http://www.cand.uscourts.gov>.

Legal assistance may also be available to unrepresented litigants through the Federal Legal Assistance Self-Help Center (FLASH), located in Room 2070 on the 2nd Floor of the San Jose Courthouse. Additional information about FLASH is available on the Pro Se Litigants section of the Court's website or can be obtained by calling (408) 297-1480.

**IT IS SO ORDERED.**

DATED: February 12, 2015

  
EDWARD J. DAVILA  
United States District Judge