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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

CASE NO.  
**CRIMINAL MOTION AND  
TRIAL ORDER**  
**Trial:**  
**Time: 8:30 a.m.**

A. GENERAL REQUIREMENTS

1. The captioned title of every pleading shall contain the name of the first-listed defendant as well as the name(s) and number(s) (in the order listed in the Indictment) of the particular defendant(s) to whom the pleading applies, unless the document applies to all defendants. The individual defendant's registration number (if known) should be provided on any document pertaining to defendant's custody status (*e.g.*, requests for transfer, medical requests). All parties shall docket items only as to the particular defendant(s) the item pertains to, not as to all defendants, unless the item pertains to all. With the exception of documents filed under seal, every pleading shall be filed electronically in such a way that it is clear from the docketing entry to which defendant(s) it applies. The

1 outer envelope containing any pleading filed under seal should identify only the  
2 case title with first-listed defendant and case number and should state that the  
3 document is filed under seal.

4 2. Mandatory paper Chambers copies of all e-filed documents must be  
5 delivered to Judge Fitzgerald's mailbox outside the Clerk's Office on the Fourth  
6 Floor of the First Street Courthouse, no later than 5:00 p.m. on the first court day  
7 after the filing date, or on the same day if priority processing is requested.  
8 Exhibits, declarations, etc. to chambers copies must be tabbed, where applicable.  
9 Mandatory chambers copies need NOT be blue-backed.

10 B. EX PARTE APPLICATIONS AND MOTIONS

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

16 2. *Ex parte* applications to allow defendant to travel should be made  
17 well in advance of the date of travel. Counsel should indicate whether the  
18 Pretrial Services officer has approved the travel. Applications by defendants  
19 with appointed counsel must indicate who will pay for the travel and related  
20 expenses. If these expenses are not to be paid by the defendant's employer, the  
21 Court may require declarations under penalty of perjury from the persons paying  
22 the expenses.

23 3. Counsel must meet and confer with opposing counsel and attempt to  
24 resolve the issue before filing a motion. Motions expected to take more than  
25 one-half hour of court time must include a time estimate beneath the hearing date  
26 on the face page of the motion.

27 4. Hearings on motions and Status Conferences are held on Mondays,  
28 at 1:30 p.m. Counsel must follow the Central District's Local Rules and General

1 Orders concerning electronic filing, unless superseded by this Order.

2 5. Pretrial motions shall be noticed for a Monday that is mutually  
3 agreed to by counsel. The briefing schedule is as follows: Motions shall be filed  
4 three weeks prior to the hearing; oppositions, or notice of non-opposition, shall  
5 be filed two weeks prior to the hearing; and replies, if any, shall be filed one  
6 week prior to the hearing.

7 6. Suppression motions shall also be noticed for a Monday that is  
8 mutually agreed to by counsel. The briefing schedule for suppression motions is  
9 as follows: Motions shall be filed four weeks prior to the hearing; oppositions  
10 shall be filed two weeks prior to the hearing; and replies, if any, shall be filed one  
11 week prior to the hearing.

12 7. Counsel shall meet and confer with opposing counsel to resolve  
13 informal discovery disputes prior to filing a motion for discovery. All discovery  
14 motions shall state *with particularity* what is requested, the basis for the request,  
15 whether discovery has been requested and opposing counsel's response to such  
16 request. Motions made without prior consultation with opposing counsel may  
17 not be heard.

18 C. DISCOVERY AND NOTICE

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

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1           D.    BAIL REVIEWS

2           Any request for a bail review based on changed circumstances or  
3 information not previously presented to the magistrate judge shall be addressed  
4 in the first instance to the magistrate judge and shall be served on both opposing  
5 counsel and Pretrial Services.

6           E.    TRIAL REQUIREMENTS

7           1.    *No later than one week before trial*, counsel for the government  
8 shall file with the Court a trial memorandum setting forth a factual summary of  
9 the government’s case, a statement of the charges and the elements of each  
10 charge, an estimate of the length of the government’s case in chief, including  
11 anticipated cross-examination, the names of witnesses the government intends to  
12 call and a discussion of relevant legal and evidentiary issues as applied to the  
13 facts of the particular case. Counsel for the government shall attempt to obtain  
14 defense counsel’s agreement to the factual summary, statement of the charges,  
15 time estimate for cross-examination of the government’s witnesses and legal and  
16 evidentiary issues.

17           2.    On the first day of trial, court will commence at 9:00 a.m. and  
18 conclude at approximately 4:30 p.m. with a one-hour lunch break. On the first  
19 day of trial, *counsel must appear at 8:30 a.m.* to discuss preliminary matters with  
20 the Court. After the first day of trial, trial days are Tuesday through Friday from  
21 8:30 a.m. to approximately 2:00 p.m. with two twenty-minute breaks.

22           3.    On the day of jury selection, the Court reserves the time from 8:30  
23 a.m. to 9:00 a.m. to handle legal and administrative matters. Jury selection will  
24 commence promptly at 9:00 a.m. or as soon as jurors are available. All counsel  
25 must anticipate matters that may need to be addressed outside of the presence of  
26 the jury and raise them at the end of the day or during breaks. The Court does  
27 not make jurors wait while counsel discuss matters that should have been  
28 addressed previously. Short briefs addressing disputed issues are welcome. The

1 Court discourages sidebars during trial.

2 4. Counsel for the government shall present the Courtroom Deputy  
3 Clerk (“CRD”) with the following documents on the first day of trial:

4 a. Three copies of the government’s witness list, which also  
5 shall be sent in Word or WordPerfect format to Chambers' e-mail address.

6 b. Three copies of the government’s exhibit list in the form  
7 specified in Local Rule 16-5 (Civil), which also shall be sent in Word or  
8 WordPerfect format to Chambers’ e-mail address.

9 c. All of the government’s exhibits, with official exhibit tags  
10 attached and bearing the same number shown on the exhibit list. Exhibits shall  
11 be numbered 1, 2, 3, etc., *NOT* 1.1, 1.2, etc. Exhibit tags are available on the at  
12 <http://www.cacd.uscourts.gov/forms/exhibit-tags-plaintiff-defendant>. If a “blow-  
13 up” is an enlargement of an existing exhibit, it shall be designated with the  
14 number of the original exhibit followed by an “A.”

15 d. A three-ring binder containing a copy of the indictment/  
16 information, a copy of all exhibits that can be reproduced, and a copy of the  
17 witness list. Each exhibit shall be tabbed with the exhibit number for easy  
18 referral.

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

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

25 6. The Court prefers that defense counsel deliver defense exhibits to  
26 the CRD by noon on the Monday before trial, but counsel are not required to do  
27 so unless these exhibits have previously been provided to the government.  
28 Defense counsel are reminded that many discovery obligations are reciprocal.

1 Defense counsel are responsible for affixing completed exhibit tags with the case  
2 name and case number to all exhibits to be used in defendant's case. Defense  
3 counsel should be sure that defense exhibit numbers do not duplicate government  
4 exhibit numbers.

5 7. In trials where the defense expects to admit more than 20 exhibits,  
6 defense counsel shall provide three (3) three-ring binders (two for the Court and  
7 one for witnesses), tabbed if possible with numbers to correspond to the exhibits  
8 counsel expects to introduce. Defense counsel shall provide the Court with a  
9 copy of defense exhibits as they are introduced during trial, if they have not  
10 previously been provided.

11 8. Defense counsel shall email to the Chambers' email address and  
12 provide the CRD and the court reporter with the defense witness list and defense  
13 exhibit list at the start of the defense case, if they have not previously done so.

14 9. At least one week before trial, the parties must provide a case-  
15 specific glossary for the court reporter that includes applicable medical, scientific  
16 or technical terms, gang terms, slang, the names and spellings of case names  
17 likely to be cited, street/city/country names, all parties/agents/departments/  
18 entities involved in the case, names of people interviewed/deposed, names of  
19 family members, friends, or others who might be mentioned, and other case-  
20 specific terminology.

21 10. A copy of the exhibit list with all *admitted exhibits* will be given to  
22 the jury during deliberations. Government and defense counsel shall review and  
23 approve the exhibit list with the CRD before the list is given to the jury.

24 11. If any counsel wishes to arrange for the use of additional equipment,  
25 such as video monitors, overhead projectors, etc., counsel shall contact 213-894-  
26 3061 to verify and/or reserve demonstrative equipment and notify the CRD no  
27 later than 4:00 p.m. at least one week before trial so that the necessary  
28 arrangements may be made.

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

4           13. Any party requesting special court reporter services for any hearing  
5 (*i.e.*, real time transmission, daily transcripts) shall notify the reporter as least two  
6 weeks before the hearing date.

7           14. All pretrial document copies delivered to the Court shall be “binder-  
8 ready” (three-hole punched on the left side, without blue-backs or staples).

9           F. JURY INSTRUCTIONS, VERDICT FORMS AND  
10 QUESTIONNAIRES

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

24           2. The parties must submit JOINT jury instructions and a JOINT  
25 proposed verdict form. In order to produce these joint instructions, the parties  
26 shall meet and confer sufficiently in advance of the required submission date  
27 with the goal of agreeing on instructions and verdict forms. Where the parties  
28 cannot agree, disputed instructions shall be submitted Wednesday before trial as

1 follows: 1) JOINT jury instructions (those instructions agreed to by all parties);  
2 and 2) DISPUTED jury instructions (those instructions propounded by a party to  
3 which another party objects). On a separate page following each disputed jury  
4 instruction, the party opposing the instruction shall briefly state the basis for the  
5 objection, any authority in support thereof and, if applicable, an alternative  
6 instruction. On the following page, the party proposing the disputed instruction  
7 shall briefly state its response to the objection, and any authority in support of the  
8 instruction. Each requested jury instruction shall be numbered and set forth in  
9 full on a separate page, citing the authority or source of the requested instruction.

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

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

- 16 a. The number of the instruction;
- 17 b. A brief title of the instruction;
- 18 c. The source of the instruction; and
- 19 d. The page number of the instruction.

20 EXAMPLE:

21 Number	Title	Source	Page Number
22 #1	Conspiracy-Elements	9th Cir. 8.5.1	1

23  
24 5. One or more copies of the instructions will be given to the jury  
25 during deliberations. Accordingly, counsel must submit to the Chambers' e-mail  
26 address a “clean” set of all instructions in Word or WordPerfect format,  
27 containing only the text of each instruction, set forth in full on each page, with  
28 the caption “Instruction No. \_\_\_\_\_” (eliminating titles, supporting authority,



1 indication of party proposing, etc.). A paper Chambers copy must also be  
2 submitted.

3 6. Counsel shall submit a proposed verdict form with the jury  
4 instructions.

5 7. At least by Wednesday before trial, each counsel must file any  
6 proposed questions to be asked of prospective jurors.

7 G. INSTRUCTIONS GOVERNING PROCEDURE DURING TRIAL

8 1. Water is permitted in the courtroom. Food is not permitted in the  
9 courtroom.

10 2. Counsel shall rise when addressing the Court. Counsel and the  
11 defendant shall rise when the jury enters or leaves the courtroom. Special  
12 procedures or exceptions may apply when the defendant is in custody or  
13 restrained.

14 3. In trial, all remarks shall be addressed to the Court. Counsel shall  
15 not directly address the CRD, the court reporter or opposing counsel without the  
16 Court's permission. All requests for re-reading of questions or answers, or to  
17 have an exhibit placed in front of a witness, shall be addressed to the Court.

18 4. Counsel shall not discuss the law or argue the case in opening  
19 statements.

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

22 6. No "speaking objections" are allowed. When objecting, counsel  
23 shall stand, state only the legal ground of the objection, *e.g.*, hearsay, irrelevant,  
24 etc. Counsel shall not argue an objection before the jury. Requests to approach  
25 sidebar to argue an objection further should be made sparingly, and may not be  
26 granted.

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28 7. Counsel shall not make facial expressions, nod, shake their heads,

1 comment, or otherwise exhibit in any way any agreement, disagreement, or other  
2 opinion or belief concerning the testimony of a witness. Counsel shall admonish  
3 their clients and witnesses not to engage in such conduct.

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

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

11 10. No document shall be placed before a witness unless a copy has  
12 been provided to the Court and opposing counsel. Counsel may consider such  
13 devices as overhead projectors, jury notebooks for admitted exhibits, or  
14 enlargements of important exhibits. The Court has an Elmo projector and other  
15 equipment available for use during trial. Counsel may call the CRD if they wish  
16 to visit when the Court is not in session to practice using the equipment. The  
17 Court does not permit exhibits to be "published" by passing them up and down  
18 the jury box. Exhibits may be displayed briefly using the screen in the  
19 courtroom, unless the process becomes too time-consuming.

20 11. Counsel should not offer a stipulation without having conferred with  
21 opposing counsel and having reached an agreement. Any stipulation of fact will  
22 require defendant's personal concurrence and shall be submitted to the Court in  
23 writing for approval. A proposed stipulation should be explained to the  
24 defendant(s) in advance.

25 12. While court is in session, counsel shall not leave counsel table to  
26 confer with investigators, paralegals, secretaries, witnesses, etc., unless  
27 permission is granted in advance.

28 13. When a party has more than one lawyer, only one lawyer may

1 conduct the examination of a given witness, and only that same lawyer may  
2 handle objections during the testimony of that witness.

3 14. If a witness was on the stand at a recess or adjournment, counsel  
4 who called the witness shall ensure the witness is back on the stand and ready to  
5 proceed when trial resumes.

6 15. Counsel are directed to have witnesses available throughout the  
7 court day. If no witnesses are available and there is more than a brief delay, the  
8 Court may deem counsel to have rested.

9 16. The Court attempts to cooperate with expert witnesses and other  
10 professionals, and will, except in extraordinary circumstances, accommodate  
11 them by permitting them to be called out of sequence. Counsel are urged to  
12 anticipate any such possibility and to discuss it with opposing counsel. If there is  
13 an objection, counsel shall confer with the Court in advance.

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

16 18. Each counsel should keep counsel's own list of exhibits and should  
17 note when each has been admitted into evidence.

18 19. Each counsel is responsible for any exhibits that counsel secures  
19 from the CRD and must return them before leaving the courtroom at the end of  
20 the session.

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20. An exhibit not previously marked should, at the time of its first mention, be accompanied by a request that the CRD mark it for identification. To save time, counsel must show a new exhibit to opposing counsel before it is mentioned in Court.

IT IS SO ORDERED.

Dated:

MICHAEL W. FITZGERALD  
United States District Judge