UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN THE MATTER OF: )
)
AMENDMENTS TO APPENDIX A )
TO LOCAL RULES - )
PRETRIAL FORM NO. 1 )
)

GENERAL ORDER NO. 96-17

WHEREAS, the Judges of this Court have adopted revisions to APPENDIX A TO THE LOCAL CIVIL RULES, PRETRIAL FORM NO. 1, and

WHEREAS, the proposed new revisions and rules were published for public comment pursuant to 28 U.S.C. § 2071 (b) and Rule 83 of the Federal Rules Of Civil Procedure and such comments as were made having been considered by the Court,

IT IS HEREBY ORDERED that effective November 4, 1996, Appendix A to Local Civil Rules, Pretrial Form No. 1, is amended as attached to this General Order.

Appendix A to Local Rules

PRETRIAL FORM NO. 1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| (TITLE OF CASE) | (CASE) NO._____ |
| | PRETRIAL CONFERENCE ORDER |

Following pretrial proceedings, pursuant to Rule 16, F.R.Civ.P. and Local Rule 9, 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.

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 one week prior to the trial date each counsel shall deliver to the Court and opposing counsel: (a) proposed jury instructions as required by Local Rule 13.2 and (b) any special questions requested to be put to prospective jurors on voir dire.)

(If a non-jury trial add: At least one week 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 Local Rule 13.5.)

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.

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 Appendix A for specific examples of a Joint Pretrial Order.

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

9. The joint exhibit list of the parties has been filed herewith under separate cover as required by Local Rule 9.7. 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. Witness lists of the parties have heretofore been filed with the Court.

(Except for good cause shown only the witnesses identified in the lists will be permitted to testify (other than for impeachment or rebuttal).

11. Each party intending to present evidence by way of deposition testimony has marked such depositions in accordance with Local Rule 9.4.9. For this purpose, the following depositions have been lodged with the Clerk as required by Local Rule 8.1.2: (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:_____, 19_____.

_____
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 USC 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 IS 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, and accounting for damages, an award of interests and costs against defendant, as well as a finding of wilful 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.**

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

The ultimate facts required to prove these defenses are:

A. **ANTICIPATION/LACK OF NOVELTY** (35 USC §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 USC §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 devise 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 above.**