SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

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| CASE TITLE:  CASE NO.:  DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 | Department 1 |  |
| PROCEEDING: Amendment to Trial Setting Order | | |

The Trial Setting Order previously or concurrently issued in this case is hereby amended and supplemented by the provisions set forth below.

This Amendment to Trial Setting Order supersedes any prior Amendment.

\_\_\_\_ The trial date previously set is continued or advanced to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021, at 8:30 A.M. in Department 1.

1. **VIRTUAL TRIALS ARE A NECESSITY.**
   1. Because of the public health crisis resulting from the COVID-19 pandemic, the Court is not able to welcome counsel, parties, witnesses, or jurors into our civil trial courtrooms for the purpose of in-person civil trials. Nor can the Court predict with reasonable certainty when it will be able to do so. In particular, the Court cannot guarantee that it will be doing so by the time of the date set for the trial in this case.
   2. The Court cannot simply continue trials until the COVID-19 pandemic disappears and the pre-pandemic “normal” is restored. The conditions and practices that were normal at the beginning of 2020 may never return. Even if they were to return 6, 12, or 18 months from now, the limited resources of the Riverside Superior Court would be unable to try the backlog of trials that would accumulate over that period. In short, the Court cannot afford to postpone trials when it has the time and resources to hear those trials now.
   3. Accordingly, if the Court is not yet conducting in-person trials by the time that the trial date arrives, that fact by itself will not justify a continuance of the trial. Instead, the trial will proceed as scheduled.
      1. If the trial is to be presented to a jury, the parties shall be prepared to present the jury trial remotely. (See Cal. Rules of Court, emergency rule 3(a)(1) and rule 3.670(f)(3).) If the party or parties who requested a jury trial are not prepared to present the case to a jury remotely, then the Court may find that those parties have forfeited their respective rights to a jury trial, and the trial may proceed as soon as possible thereafter as a bench trial.
      2. If the trial is to be presented to the Court without a jury, the parties shall be prepared to present the trial to the Court without coming into the courtroom.
         1. If all parties agree, the trial may be conducted by presenting all evidence through stipulated facts, declarations, deposition transcripts, or some combination thereof, and by presenting all opening statements, objections, and arguments remotely.
         2. If all parties are unable to agree to dispense with live testimony, then the trial shall be conducted by presenting the entire trial -- all testimony, evidence, opening statements, objections, and arguments -- remotely. (See Cal. Rules of Court, emergency rule 3(a)(1) and rule 3.670(f)(3).) If any party is not prepared to do so, then the Court may deem that failure to constitute a failure to appear at trial. If that party is a plaintiff, the Court may dismiss the case. (Code Civ. Proc., § 581, subds. (b)(5) & (*l*).) If the party is a defendant, the Court may bar that defendant from participating in the trial.
   4. If the parties can agree upon a referee who will agree to conduct an in-person trial in facilities outside any RSC courthouse, the parties shall file a stipulation for the appointment of such a referee. (Code Civ. Proc., § 638.) Any such stipulation shall be supported by a declaration of the proposed referee, consenting to such an appointment.
2. **AMENDMENTS TO THE TRIAL SETTING ORDER REGARDING VIRTUAL TRIALS**

In the event of a virtual trial, the Trial Setting Order in this case is amended as follows:

* 1. Those portions of sections A and C of the Trial Setting Order that require personal appearances on the day of trial shall not apply.
  2. Notwithstanding section C.3 of the TSO:
     1. All documents required by RSC Local Rule 3401 to be filed on the date of trial, including all exhibits, shall instead be delivered directly to the clerk of this department no later than 48 hours before the day and time on which the trial is scheduled to begin. If the clerk of this department is not available, then those documents shall be delivered to the clerk’s office. If the clerk’s office is not open, then those documents shall be deposited in the drop box at the courthouse to which the matter is assigned.
     2. All documents required to be provided to opposing counsel on the day of trial shall be delivered directly to opposing counsel no later than 48 hours before the day and time that the trial is scheduled to begin.

1. **CONDUCTING VIRTUAL TRIALS**

If any portion of the trial is to be presented remotely, all parties shall comply with the provisions set forth below to the extent applicable.

* 1. **Maintaining the Decorum of the Court**

Participants appearing remotely must observe rules and procedures related to court appearances, including, without limitation, rules related to attire and the consumption of food or drink during the proceedings. Participants shall eliminate all visual and auditory distractions if appearing remotely.

Participants appearing in person must adhere to Court, Health Department and/or other government issued requirements in effect at the time addressing the COVID-19 crisis, including, without limitation, wearing of masks and social distancing.

* 1. **Pre-Trial Arrangements**
     1. **Remote Platform.** For the remote presentation of the entire trial either to a jury or to the Court, the parties shall use Cisco Webex Meetings video. If the only portion of a trial to be presented remotely are the arguments of counsel – for instance, if the trial is on the basis of stipulated facts or written testimony – then the argument may be presented telephonically via Webex, just as is done for the telephonic hearings on the Court’s daily law-and-motion and case-management calendar.
     2. **Court Management of Platform.** The Court will manage and control the proceedings, including being designated the “Host” of the video conference, and will exercise control over the various technological settings.
     3. **Preparing to Meet Technological Requirements.**  Parties and their counsel appearing remotely shall use best efforts to ensure that there will be clear video and audio transmission during the trial, including adequate familiarity with the designated platform and related software and hardware, *e.g.*, microphones, webcams, headphones, and multiple monitors.
     4. **Adequate Equipment.** 
        1. The Parties are responsible for ensuring that each attorney, party, witness, and the court reporter appearing remotely is familiar with the designated platform and has the equipment to participate in the remote proceeding without undue delays, including the following: speakers, microphone, webcam, laptop, or monitor. Counsel may wish to ensure that each witness is able to participate in the videoconference with one device (or screen) and review exhibits on another.
        2. The Court shall ensure that each juror appearing remotely is familiar with the designated platform and has the following equipment to participate in the remote proceeding without undue delays: speakers, microphone, webcam, laptop, or monitor.
     5. **Test Sessions.** In advance of the remote proceeding, at least one test session must be conducted by counsel with each of their witnesses appearing remotely in which the witness practices using the designated platform, becomes familiar with the process for viewing electronic exhibits, and tests all audio and video equipment (including settings) that will be used at trial.
     6. **Court Reporter.** The court reporter may appear remotely. After conference with counsel party and the reporter, the Court will determine whether the reporter will be unmuted for the duration of the proceeding to allow for timely and effective requests for clarification.
     7. **Interpreter.** A court interpreter may appear remotely. After conference with counsel and the interpreter, the court will determine the protocol for those proceedings involving an interpreter appearing remotely for any “Limited English Proficient” (LEP) participant, which may include the following requirements: If appearing remotely for a LEP party, the interpreter will work with counsel to establish a phone bridge connection to facilitate simultaneous interpretation. The LEP party using the interpreter’s service must have access to two devices, one for the remote video conferencing software, and a separate phone line. Once the interpreter and LEP are connected via phone bridge, the interpreter will mute themselves from the video conferenced proceeding and interpret simultaneously over the phone. They will unmute themselves in order to interpret short statements or responses from the LEP. When interpreting for a witness, the court will determine if the interpreter will use the consecutive mode, and will not use the phone bridge.
     8. **Camera/Remote Venue Set Up.** The faces of each participant in the trial must clearly be visible while speaking. No masks shall be worn for any participant in the trial appearing remotely. To the extent possible, each participant’s webcam should be positioned at face level relatively close to the participant. The background must be neutral.
     9. **Multiple Participants in the Same Room.** Multiple participants in the same room is not allowed. First, to do so the parties would have to be masked. Second, inherent ethical issues of having two people in the same room will undoubtedly arise.
     10. **Party Identification.** All participants shall use their full first and last name when signing on to the designated platform.
     11. **Scheduling.** If participants are located in materially different time zones, the proceeding will be scheduled to be reasonably convenient for all, which may require a shorter than normal trial day.
     12. **Confidentiality.** The Parties shall meet and confer in advance of the start of trial regarding a protocol for the use of confidential information, including sealed exhibits, at trial. The Parties shall provide a joint recommendation to the Court before trial commences.
     13. **Procedure for Sidebars.** The Parties shall meet and confer in advance of the start of trial regarding a protocol for conducting virtual sidebars at trial. The Parties shall provide a joint recommendation to the Court before trial commences.
  2. **Public Access and Prohibition of Recording** 
     1. All trial proceedings will be live-streamed and available for listening by the public. However, the general public must not be provided with access codes provided to court participants.
     2. Unless authorized by the Court, recording of a court proceeding held by video or teleconference, including “screen-shots” or other visual or audio copying of a hearing, is prohibited. However, exhibits may be copied as addressed later. Violations of these prohibitions may result in sanctions, including restricted entry to future hearings, denial of entry to future hearings, removal of Court-issued media credentials, or any other sanctions deemed appropriate by the Court.
  3. **Opening Statements and Closing Arguments** 
     1. Counsel may use the “share screen” function in the designated platform to display demonstratives during openings and closings. Counsel must meet and confer to exchange any visuals or exhibits to be used in the opening statements or closing argument. Any disputes regarding the demonstratives sought to be used by a party shall be addressed with the Court. Counsel may not screen share any visual with the jury unless counsel has stipulated or until the court has ruled on any objection.
  4. **Witnesses, Exhibits and Presentation of Testimony.** 
     1. **Witness Lists.** In addition to the witness list to be filed, the parties shall provide the clerk with a witness list annotated with the email address of each witness.
     2. **Joining the Trial.** Witnesses must access the trial proceedings using the credentials provided by the Court at least 10 minutes before the scheduled start time for their examination. The witness will be directed to the virtual waiting room where he or she will remain until the Court is ready to admit the witness to the virtual courtroom. Nonparty witnesses are only permitted in the virtual courtroom while they are testifying; unless the court orders otherwise, a nonparty witness is not permitted to view or listen to the testimony of other witnesses prior to their testimony.
     3. **Conduct During Testimony.** The attorney calling the witness is responsible for ensuring the witness has a separate video and audio feed. Attorneys should not attempt to “share” a connection with a witness. Witnesses may not have any notes or documents with them at the time of the remote appearance, other than the trial exhibits exchanged by the parties or notes or documents that have been shown to opposing counsel at least twenty-four (24) hours in advance of the witnesses’ testimony. Witnesses may not do any research, review any materials, or communicate with anyone else in any manner, including by text, cell-phone, chat, or other means when virtually “on the stand.” The Court may require witnesses to back up from their webcam so the Court and counsel can see their hands for the duration or portions of their testimony
     4. **Witness Oath/Affirmation.** In addition to the standard admonitions, before each witness testifies, the Court will ask the witness to affirm: (i) no one else is present in the remote room where the witness is testifying other than those, if any, authorized by the Court; (ii) that all communications with the witness during his or her examination will be on the record, other than communications with the witness and his or her attorney of record during breaks, and (iii) that the witness will not engage in any direct or indirect communications with anyone during his or her examination other than those communications made on the record.
     5. **Exhibits.** 
        1. The Parties shall meet and confer in advance of the trial to discuss a protocol for use of exhibits at trial and present a joint recommendation to the Court at the pretrial conference. The joint recommendation must address the form of exhibits (e.g., electronic and/or paper), acceptable file formats (e.g., .pdf; .doc; .jpeg; .mpeg; *etc.*), how exhibits will be exchanged among the parties, court and presented to jurors (e.g., via email, electronic joint repository, or in-meeting file transfer, *etc.*), and any procedures that may be required for “oversized” exhibits, deposition transcripts, or “non-standard” exhibits of any kind. The Court will give significant weight to the Parties’ joint recommendation.
        2. If the Parties fail to reach agreement on a joint protocol, the Court will implement a protocol along the following lines, subject to modifications, as appropriate for each matter:
           1. All exhibits to be used on direct and cross examination, except for impeachment, shall be submitted electronically to the Court, all counsel, and the court reporter at a time to be designated by the court, unless otherwise ordered by the trial judge. Each exhibit shall be accessible as an individual document, named electronically according to its exhibit number (*e.g.*, Ex. 1). It is the responsibility of the attorney offering the witness to ensure that the witness has the link to the proceedings and to electronic copies of all exhibits that will be used with that witness, including those of the opposing parties and will be accessible to all jurors whether appearing in person in court or remotely.
           2. **Form.** All exhibits to be used on direct and cross examination, except for impeachment, shall be submitted in tabbed binders to the Court, all counsel, and the court reporter, and/or submitted electronically via jump drive or any other method agreed by the parties. Printed exhibits shall be printed single sided and in black and white, provided that the exhibit shall be printed in color where reasonably necessary to ascertain its meaning in the context of the proceedings. It is the responsibility of the attorney offering the witness to ensure that the witness has copies in paper form of all exhibits to be used with the witness, including those of the opposing parties, and that those exhibits are available to the witness in the same form that has been provided to counsel and the Court.
           3. **Original Documents.** If a true “original” document needs to be entered into evidence, the original should be submitted to the Court as part of its copy of the evidence binder. Such a document should be clearly identified as a true “original.”
           4. **Impeachment Exhibits.** If counsel wishes to use a document for impeachment purposes that was not previously disclosed as an exhibit, counsel must email an electronic copy of the document to the Court, trial counsel, and the witness at the time counsel seeks to use the document with the witness. In lieu of email, counsel may use the chat function in the designated platform or other platform as designated by the court to send the document to the Court, counsel, and the witness or post the document on a secure document repository that counsel has made available to the Court, counsel, and the witness.
           5. **Sealed Paper Copies**. If counsel prefers, he or she may also send a paper copy of the documents that counsel anticipates using for impeachment purposes to the Court and counsel for the other parties at least one business day before the anticipated use of those documents. Two copies of each document must be provided to counsel for the witness with whom the documents will be used. Counsel may enclose the documents in an envelope or box that is sealed and marked DO NOT OPEN UNTIL FURTHER NOTICE. Counsel may package each document in its own sealed envelope so long as it identifies the inner contents in such a way that the recipient can be directed to open a specific envelope. Each envelope shall have a marking across the seal. The envelope shall not be opened unless and until counsel and the witness are instructed to do so by the questioning attorney or the Court. The questioning attorney has the right to request that all recipients return each and every package that they were not authorized to open.
     6. **Objections.** The witness must stop speaking when either counsel objects. After the objection is made, the Court will be the first to speak and will instruct counsel how the Court wishes to proceed.
     7. **Juror Questions.** Before each witness is excused, the Court will request jurors submit any questions they may have for that witness to the judge using the chat or other function. The Court will use a virtual break-out room to discuss the questions posed by the jurors with counsel and shall determine whether the question or a modification of the question will be asked.
  5. **Technological Considerations During the Hearing.** 
     1. **How to Join.** Each attorney, witness, party, and juror who plans to attend any portion of the trial will be a “case participant” and will receive login credentials from the Court. Case participant login information is not public and must not be shared with anyone other than counsel of record and the Court. Everyone who is not a “case participant” will be an “attendee” (*i.e.*, a member of the press or public). Attendees will be able to hear the court proceeding by live stream from the court’s website and will not be able to participate in it beyond observing. As stated above, nonparty witnesses may not see or hear the court proceeding until they are called to testify.
     2. **Chat Features.** The chat function allows participants to type text (comments) during the proceeding and also allows participants to send files to other participants. The Court will determine whether the use of the chat function will be allowed during trial after discussion with the Parties. If allowed, the Court will enable the chat function for case participants only and the following rules shall apply: (i) counsel may not initiate *ex parte* “chats” with the Court; (ii) counsel may not “chat” with a witness at any time while the witness is “on the stand” for any purpose unless authorized by the Court. Except for juror questions submitted to the Court via the “chat” feature, messages relayed through the “chat” feature will not become a part of the Court record unless ordered by the Court. Documents transmitted through the chat feature, such as a document to be used for impeachment purposes, will be made part of the Court record but the text of the message transmitting them will not. If counsel transmits a document through the chat feature, counsel must so state on the record and must identify the document for the record and ensure that the court reporter has a copy of it.
     3. **Break-out Rooms.** The Court may use virtual break-out rooms for “side bar” discussions with counsel during trial, to discuss proposed juror’s questions to witnesses, for witness waiting rooms, for hearings outside the presence of the jury, or for any other proceedings as needed. The Court will determine if discussions that take place in the break-out rooms are to be made part of the record.
     4. **Addressing Technological Difficulties.** Ifa participant is disconnected from the videoconference or experiences some other technical failure, the participant shall use best efforts to promptly re-establish the connection and shall take no action which threatens the integrity of the proceeding (*e.g.*, communications with a third party related to anything other than resolving the technical issue). If the connection cannot be re-established within approximately five minutes, the Court may take steps to “pause” the trial, which may include moving participants into the virtual waiting room or one or more separate break-out rooms, at which time counsel shall meet and confer in good faith to develop a joint proposal regarding how to proceed. If the Court deems it unfair to any Party to continue the proceedings because of a technical failure, the Court may postpone or terminate the videoconference at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.
  6. **Jury Deliberations and Discharge**
     1. After determining each sitting juror’s ability to appear remotely, and consideration of all other relevant factors, the Court will determine whether jurors will be required to appear in person, appear remotely or be allowed to appear either in person or remotely during jury deliberations.
     2. Upon discharge of the jury, the Court shall provide instructions to remotely-appearing jurors regarding notes jurors may have taken during the course of the trial. These instructions may include an instruction that juror notes taken during the trial are to be destroyed.

1. **AMENDMENTS TO THE TRIAL SETTING ORDER REGARDING MANDATORY SETTLEMENT CONFERENCES**
   1. Until further notice, any mandatory settlement conference will be conducted remotely, either by telephone or by video. Therefore, those portions of sections A and G of the Trial Setting Order that require personal appearance of counsel, the parties, and any insurance professional at the MSC are suspended. Instead, all such individuals shall participate in the MSC remotely. (See Cal. Rules of Court, emergency rule 3(a)(1) and rule 3.670(f)(3).)
   2. The MSC will generally be set in Department 12.
   3. The MSC may be set in Department 1, the department to which it assigned for trial.
      1. If both sides agree to allow Judge Riemer, the presumptive trial judge, to conduct the settlement conference, the parties shall file a Stipulation to Allow Trial Judge to Conduct Settlement Conference that has been executed by both the parties and their counsel no later than seven days prior to the MSC. (RSC local form RI-CI028, available on the Court’s website at www.riverside.courts.ca.gov/FormsFiling/LocalForms/ri-ci028.pdf.)
      2. If the parties do not agree to the settlement conference being conducted by Judge Riemer, the parties shall notify the Court of that decision to allow the Court the opportunity to arrange for a different judicial officer to conduct the MSC. That notice shall be filed as soon as possible prior to the MSC, and in no event later than seven days in advance.

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Craig G. Riemer, Judge of the Superior Court

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