

Cislo & Thomas LLP Litigation Cost Control™ (LCC™)

Stages of Litigation and Expected Fees and Costs

The following is a list of procedural Tasks and Deadlines for actions in the Central District of California based on the Federal Rules; the Court's Local Rules, many District Court Judges' orders and a typical Central district of California litigation time schedule for trial.

1. Investigate Matter and Parties involved

A. In General:

- Task 1 – Audit File...
- Task 2 – Review Deadlines and Rules
- Task 2A – Avoid Pitfalls in the Local Rules
- Task 3 – Analyze the Pleadings
- Task 4 – Create Proof Outline
- Task 5 – Develop Case Theme

\$ 3,000

2. Prepare Complaint

A. Structure Case:

- Task 6A – Seek an Injunction
- Task 6B – Apply for a Temporary Restraining Order
- Task 6C – Seek Declaratory Relief
- Task 5 – Develop Case Theme

B. File Complaint/Answer:

\$ 7,500 w/o injunction

\$ 50,000-\$75,000 w/injunction

(Includes expedited discovery for strongest evidence, two briefs plus hearing)

Plaintiff must serve Complaint on defendantsFederal Rules of Civil Procedure (FRCP) 4(m)

Defendant must conduct Meet and Confer re Rule 12(b) motion, if any Local District Court Rules (LR) 7-3

Defendant must file answer or Rule 12(b) Motion to Dismiss FRCP 12(a)(1)

\$ 25,000-\$75,000

(Personal Jurisdiction/Venue motion. Includes two briefs plus hearing for plaintiff
One brief plus hearing for defendant)

3. Opposition to Rule 12(b) Motion/Other Pleadings, if made

Structure Case cont.

- Task 6D \$ 7,500 Amend Pleadings
- Task 7 3,500 Oppose Motion to Amend Pleadings
- Task 8 6,500 Sever Claims or Parties
- Task 9 6,500 Dismiss Claims or Parties

3. Opposition to Rule 12(b) Motion/Other Pleadings, if made cont.

| | | |
|----------|---------------------|-----------------------------------|
| Task 10 | 6,500 | Move for Separate Trials |
| Task 11 | 7,000 | Add Counterclaims or Cross-Claims |
| Task 12 | 6,500 | Implead Third Parties |
| Task 13 | 8,500—11,500 | Add Parties: Mandatory- Joinder |
| Task 14 | 8,500—11,500 | Add Parties Permissive Joinder |
| Task 15 | 4,500 | Intervene |
| Task 16 | 1,250 | Voluntarily Dismiss Actions |
| Task 17 | 7,500 | Consolidate Cases |
| Task 18 | 10,500—15,500 | Transfer Venue |
| Task 19 | 500 | Consent to Magistrate Judge |
| Task 19A | 3,500 | Work with Special Master (totals |
| | \$ 88,000—\$105,000 | |

Not to exceed **\$ 75,000**

4. Pretrial Meetings and Conferences:

Notify Counsel re Early Meeting of Counsel

| | |
|---------|---|
| Task 20 | Mandatory Discovery Planning Conference |
| Task 21 | Participate in FRCP 16 Conference |

Plaintiff must conduct Early Meeting of CounselFRCP 26(f)

Prepare [Proposed] Joint Report for Defense Counsel review/input

Plaintiff must file Joint Report of Early MeetingFRCP 26(f)

Parties must attend Scheduling ConferenceScheduling Conf. Order

\$ 5,000

DISCOVERY DEADLINES

5. Disclosure Requirements

Prepare Initial Disclosures

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|---------|-------------------------------------|
| Task 22 | Review and Make Initial Disclosures |
|---------|-------------------------------------|

\$ 3,000

Last day to serve Initial Disclosures FRCP 26(a)

7. Organize Discovery

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|---------|--|
| Task 25 | Set Discovery- Goals |
| Task 26 | Prepare Deposition Schedule |
| Task 27 | Docket Internal Discovery Schedule |
| Task 28 | Prepare Final Phase Discovery Plan |
| Task 29 | Conduct Freedom of Information Act Discovery |
| Task 30 | Complete Informal Discovery |

\$ 4,000

8. Nonparty Discovery

| | |
|---------|--|
| Task 31 | Subpoena Records from Nonparties |
| Task 32 | Challenge Subpoenas (<i>Can be expensive</i>)* |
| Task 33 | Enforce Subpoenas (<i>Can be expensive</i>)* |
| Task 34 | Produce and Inspect Nonparty Documents |

\$ 5,000-\$25,000*

9. Format Written Discovery

| | |
|----------|--|
| Task 35 | Propound and Answer Interrogatories |
| Task 36 | Propound and Respond to Requests for Admission |
| Task 37 | Propound and Respond to Requests to Produce or Inspect |
| Task 37A | Plan for and Perform Electronic Discovery |
| Task 38 | Request Physical and Mental Examinations or Reports |
| Task 39 | Object to Discovery |

A. Interrogatories to Defendant

B. Document Production Requests to Defendant

C. Requests for Admission to Defendant

\$ 25,000-\$75,000

DISCOVERY DEADLINES CONT.

10. Depositions (Assumes five (5) depositions per side)

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|----------|---|
| Task 40 | Notice Depositions |
| Task 41 | Notice Expert Depositions |
| Task 41A | Advanced Expert Discovery Strategy |
| Task 42 | Prepare For and Take Depositions |
| Task 43 | Take Telephone Depositions |
| Task 44 | Take Videotaped Depositions |
| Task 45 | Object to Depositions |
| Task 46 | Prepare Client or Witness for Depositions |
| Task 47 | Defend Depositions |
| Task 59 | Prepare Experts for Deposition |
| Task 60 | Depose Experts |
| Task 61 | Supplement Expert Discovery |

A. Schedule 30(b)(6) and Individual Depositions

B. Additional Discovery as needed

C. Review Discovery Responses

D. Prepare & Serve Responses to Propounded Discovery (Various as applicable)

\$ 75,000

- Est. Prosecuting five (5) depositions [10-12 hrs prep, 8hrs depo, 3 hrs to review = 21-23 hrs or \$9,000/depo.
- Est. Defending five (5) depositions [4 hrs prep, 8 hrs depo, 3 hrs review = 15 hrs or \$6,000/depo

Last day to serve fact discovery by mail FRCP 34(b)

11. Resolve Discovery Problems

- Task 48 Extend Discovery Time
- Task 49 Shorten Discovery Time
- Task 50 Stipulate to Protective Order
- Task 51 Move for Protective Order

A. Prepare Compel Letter to counsel re deficient discovery responses

Last day to send compel letter (fact)..... L.R. 37-2,37-3, Judge’s Proc., Standing Order

B. Meet & Confer re discovery

- Task 52 Meet and Confer

C. Prepare and serve Discovery Joint Stipulation re Motion to Compel (Various)

D. Receive (within 5 days) Responding Party portion of Joint Stipulation

- Task 53 Compel Discovery or Disclosures
- Task 54 Move for Discovery Sanctions

E. Prepare and File NOTICE OF MOTION & Joint Stipulation re Discovery Motion to Compel (Various)

F. Prepare & File Supplemental Memorandum (14 days prior to hearing)o Motion (Various)

- Task 55 Supplement Disclosures and Discovery Responses

Fact discovery cutoff..... FRCP 26(a), Scheduling Order and Magistrate’s hearing date

\$ 25,000-\$40,000 Compel Motion cost depends on degree of work/complexity

12. Experts

- Task 56 Determine Whether to Retain Experts
- Task 57 Retain Consultants
- Task 58 Use Consultants to Prepare for Trial
- Task 61A Challenge Expert Witnesses

A. Prepare Expert Reports

Last day to serve expert reports (if not otherwise ordered) FRCP 26(a)(2)

B. Disclosure Requirements

- Task 24 Identify Experts and Disclose Their Reports

C. Prepare Rebuttal Expert Reports

Last day to rebuttal expert reports..... FRCP 26(a)(2)

D. Prepare Compel Letter to counsel re deficient Expert Report

Last day to send compel letter (expert) L.R. 37-2, 37-3, Judge’s Procedures, Standing Order
(Exp. Disc. C/O - 75) (i.e., 10 days for letter + 13 days for the stip + 24 days for the motion + 28 days to respond to compel order)

E. Meet & Confer re Expert Reports

F. Expert Joint Stipulation re Motion to Compel

G. Receive (within 5 days) Responding Party portion of Joint Stipulation

H. Prepare and File NOTICE OF MOTION & Joint Stipulation re Expert Motion to Compel (Various)

I. Prepare & File Supplemental Memorandum (14 days prior to hearing)o Motion (Various)

Expert discovery cutoff.....Scheduling Order and District Judge hearing date

\$ 90,000

- Includes three (3) experts [liability (2) and damages (1), not including expert fees (Typically, fees can be \$50,000/expert, not including trial testimony.
- For trademark cases, assume \$50,000 for a trademark survey and survey expert.)

13. Motions

| | | |
|----------|--------------------------|---|
| Task 62 | | Motion Basics |
| Task 63 | \$ 3,500 | Make Ex Parte Applications |
| Task 64 | \$60,000-\$75,000 | Move for Summary Judgment |
| Task 65 | \$35,000-\$40,000 | Oppose Motion for Summary Judgment |
| Task 65A | \$25,000-\$35,000 | Seek Rule 11 Sanctions |
| Task 65B | | Seek Sanctions on Other Grounds |
| Task 66 | \$15,000 | Move to Dismiss for Failure to Prosecute |
| Task 67A | \$ 4,500 | Move to Expedite Trial |
| Task 67B | \$ 2,500 | Move to Amend Pretrial Scheduling Order |
| Task 67C | \$ 2,500 | Move for Trial Continuance |
| Task 68 | \$4,000-\$5,500 | Move to Stay Federal Proceedings |
| Task 69 | | [Reserved] |
| Task 70 | \$ 3,500 | Move to Disqualify Judge |
| Task 71 | \$ 4,500 | Move to Withdraw as Counsel |
| Task 72 | \$ 3,000 | Move for Reconsideration of an Order or to Alter Judgment |
| .. | \$50,000-\$75,000 | Markman Hearing on Patent Claims interpretation |

A. Give Notice to Counsel re Meet & Confer re motion (Various)

Last day to conduct meet and confer re dispositive motions, if any LR 7-3

B. Prepare and Serve Dispositive Motion (Various)

C. Prepare and Serve Opposition (Various)

D. Prepare and Serve Reply to Opposition (Various)

Last day to serve dispositive motions by mail LR 6-1

E. Prepare and Serve Opposition (Various)

F. Prepare and Serve Reply to Opposition (Various)

Last day to hear dispositive motions.....Scheduling Order and Magistrate's hearing date

\$ 65,000-\$125,000 or more for Motion costs

14. Settlement and ADR

a. Notify Counsel re M & C for Settlement Procedure Selection

| | |
|---------|--|
| Task 73 | Prepare for Settlement Negotiations and Alternative Dispute Resolution (ADR) |
| Task 74 | Analyze Damages and Remedies |
| Task 75 | Negotiate Settlement |
| Task 76 | Make Offer of Judgment |
| Task 77 | Consider Arbitration |
| Task 78 | Try Mediation |

b. Meet & Confer re Settlement Procedure Selection

Parties must file a Notice of Settlement Procedure Selection LR 16-15.2

c. Prepare Settlement Brief

d. Conduct Settlement Procedure selected

Parties must complete settlement procedures LR 16-14.2

\$ 10,000

15. EVIDENCE

A. Gear Up For Trial

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|---------|-----------------------|
| Task 79 | Review Evidence Rules |
| Task 80 | Develop Trial Plan |

B. Lay and Expert Witnesses

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|---------|---|
| Task 81 | Ensure that Client and Witnesses Appear to Testify |
| Task 82 | Prepare Client and Lay Witnesses to Testify |
| Task 83 | Ensure that Client and Lay Witnesses' Testimony is Admissible |
| Task 84 | Prepare Experts to Testify |
| Task 85 | Ensure that Experts' Testimony is Admissible |
| Task 86 | Prepare to Use Learned Treatises |

C. Non-Testimonial Evidence

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|---------|--|
| Task 87 | Create and Obtain Demonstrative Evidence |
| Task 88 | Prepare to Offer "Real Evidence" |
| Task 89 | Prepare to Offer Business Records |
| Task 90 | Prepare to Offer Public Records |

D. Evidence From Formal Discovery

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|---------|---|
| Task 91 | Prepare to Offer Depositions and Other Records of Testimony |
| Task 92 | Prepare to Offer Responses to Requests for Admission |
| Task 93 | Prepare to Offer Interrogatory Responses |

E. Evidence Motions and Requests

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|----------|-------------------------------------|
| Task 94 | Request Judicial Notice of Facts |
| Task 95 | Move to Strike Undisclosed Evidence |
| Task 96 | Prepare Motions in Limine |
| Task 96A | Advanced Motions in Limine |

\$ 50,000

16. FINAL PRETRIAL CONFERENCE

Task 97 Request and/or Participate in Final Pretrial Conference

- A. Contact Counsel to schedule pretrial meeting of counsel
- B. Prepare Stipulation of Facts
- C. Prepare Exhibits and Objections to Exhibits
- D. Prepare List of Witnesses
- E. Identify deposition testimony to be lodged as evidence
- F. Prepare Contentions of Law & Fact
- G. Prepare for discussion Expert Witnesses, Evidentiary Issues

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|--|-----------|
| Parties must <u>conduct pretrial meeting of counsel</u> | LR 16-2 |
| Confirm subject matter jurisdiction | LR 16-2.1 |
| Stipulation of facts | LR 16-2.2 |
| Exchange Exhibits (marked according to LR 26-4) | LR 16-2.3 |
| Exchange List of Witnesses | LR 16-2.4 |
| Discuss Experts Witnesses | LR 16-2.5 |
| Resolve Evidentiary Matters | LR 16-2.6 |
| Identify any deposition testimony to be lodged as evidence | LR 16-2.7 |
| Prepared contentions of law and fact | LR 16-2.8 |
| Exhaust settlement possibilities | LR 16-2.9 |

H. Prepare Memorandum of Contentions of Fact & Law

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|--|-----------|
| Last day to file memorandum of contentions of fact and law | LR 16-4 |
| Claims and Defenses | LR 16-4.1 |
| Bifurcation of Issues | LR 16-4.3 |
| Identify issues triable to a jury | LR 16-4.4 |
| Discuss any claim to attorneys' fees | LR 16-4.5 |
| Identify any issues abandoned | LR 16-4.6 |
| Last day to serve and File Witness List | LR 16-5 |
| Last day to serve and File Joint Exhibit List | LR 16-6.1 |
| Last day to serve and File Witness List | LR 16-5 |
| Last day to serve and File Witness List | LR 16-5 |

I. Prepare Joint [Proposed] Final Pretrial Conference Order & send to opposing counsel

J. Finalize Joint [Proposed] Final Pretrial Conference Order

K. Prepare Joint Exhibit List (LR 16.6.1)

L. Prepare Objections to Exhibits (included in proposed Final Pretrial Conf Order)

LR 16-6.3

FINAL PRETRIAL CONFERENCE cont.

Task 98 Prepare Final Pretrial Stipulation

Parties must lodge joint proposed final pretrial conference order LR 16-6.1

File Joint Exhibit List LR 16-6.1

A. Give Notice re Meet & Confer for Motions for Final Pretrial Conference

B. Meet & Confer for Motions for Final Pretrial Conference

C. Prepare Motions for Final Pretrial Conference

Parties must attend final pretrial conferenceScheduling Order

Dismiss all unserved parties LR 16-7.1

Motions & Other Proceedings (if not already cut off) LR 16-7.2

Set date for trial (if not already set) LR 16-7.3

\$ 100,000-\$125,000

COUNTDOWN TO JURY TRIAL

17. TRIAL PROCESS

- Task 101 Retain and Use Jury Consultants
- Task 102 Create and Use Mock Juries and Focus Groups
- Task 103 Prepare Jury Instructions and Verdict Form
- Task 104 Prepare for Jury Selection
- Task 105 Prepare Voir Dire Questions
- Task 106 Prepare Jury Questionnaires

- Task 108 Prepare Opening Statement
- Task 109 Prepare Direct Examination Plans
- Task 110 Prepare Cross-Examination Plans
- Task 111 Prepare to Examine Experts

A. Prepare Pretrial Disclosure (witnesses, depositions & exhibits)

Parties must file Pretrial Disclosure (witnesses, depositions & exhibits) FRCP 26(a)(3)

35 U.S.C. § 282 Notice (Patent cases)

B. Disclosure Requirements

Task 23 Make Disclosures 30 Days Before Trial

C. Prepare Objections to Pretrial Disclosures

Parties must file objections to pretrial disclosures (depositions & exhibits) FRCP 26(a)(3)

D. Give Notice re need to Disclose graphic or illustrative material to be used at trial

TRIAL PROCESS cont.

Parties must disclose all other graphic or illustrative material to be used at trial LR 16.3

Task 115 Prepare Trial Notebook
Task 99 Prepare Trial Brief

Parties must file Trial Brief.....LR 16-9

E. Give Notice re Meet & Confer re continuance

F. Meet & Confer re continuance

G. Prepare Motion/Application for Continuance

Last day to file any continuance..... LR 40-1

H. Prepare Request for Special Verdict or General Verdict with Interrogatories

Parties must file request for special verdict or general verdict with Interrogatories LR 49-1

I. Prepare Requests for Jury Instructions

Parties must prepare requests for (jury) instructions LR 51-1

J. Preserving a Right to Appeal

Task 118 Preserve Objections Re: Jury Instructions

K. Prepare Objections to Jury Instructions

Parties must file with the Court any Objections to the Jury Instructions LR 51-5

L. Preserving a Right to Appeal

Task 116 Preserve Appeal With Pre-Trial Motions

JURY TRIAL TO COMMENCE.....Scheduling Order

M. TRIAL JMOL PROCESS

Task 112 Move for Judgment and Other Trial Motions
Task 112A Move for Mistrial
Task 113 Oppose Motion for Judgment and Other Trial Motions

N. Preserving a Right to Appeal

Task 117 Preserve Evidentiary Objections for Appeal
Task 114 Prepare Closing Arguments

COUNTDOWN TO BENCH TRIAL

Task 100 Convert Jury Trial to Non-Jury Trial

Parties must file Findings of Fact & Conclusions of Law in bench trial LR 52-1

O. Prepare Findings of Fact & Conclusions of Law (Bench Trial)

Task 107 Prepare Findings of Fact and Conclusions of Law

BENCH TRIAL TO COMMENCE.....Scheduling Order

P. Prepare Order for Court

Parties must serve and lodge Order with the Court..... LR 52-4

Q. Prepare Separate Objection

Separate objection, if any, must be filed LR 52-7

\$ 100,000

POST TRIAL

18. POST TRIAL

A. Prepare Findings of Fact & Conclusions of Law (jury verdict)

Parties must serve findings of fact and conclusions of law after jury verdict LR 52-2

B. Prepare Objection

Last day to file separate objection, if any, must be filed LR 52-7

C. Prepare Motion for New Trial

Parties must file any motion for a new trial..... FRCP 59(b)

D. Prepare Motion for Attorneys' Fees

Parties must file and serve motion for attorneys' fees..... LR 54-12

E. Prepare Bill of Costs

Parties must file Bill of Costs LR 54-3

POST TRIAL cont.

F. Prepare Objections to Bill of Costs

Objections to Bill of Costs, if any, must be filed LR 54-7

G. Prepare Reply to Objections to Bill of Costs

Parties must file reply to objections to Bill of Costs..... LR 54-7

H. Prepare Notice of Appeal

Parties must file any notice of appeal FRAP 4(a)(1)(A) and 4(a)(4)

I. Prepare Other Party Notice of Appeal

Other party must file any notice of appeal FRAP 4(a)(3)

Review of Clerk's decision LR 54-9

J. Give Notice of Meet & Confer

K. Conduct Meet & Confer

L. Prepare Motion for Relief From Judgment

Parties must file any motion for relief from judgment FRCP 60(b)

\$ 50,000