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2 **UNITED STATES DISTRICT COURT**  
3 **EASTERN DISTRICT OF CALIFORNIA**  
4

5 **TREVOR WEEKS,**

6 **Plaintiff**

7 **v.**

8 **UNION PACIFIC RAILROAD**  
9 **COMPANY,**

10 **Defendants**

**CASE NO. 1:13-CV-1641 AWI SAB**

**ORDER SETTING PRE-TRIAL**  
**CONFERENCE FOR AUGUST 28, 2017**  
**AT 10:30 a.m.**

**PARTIAL PRETRIAL ORDER**

**Motions In Limine Hearing and Trial**  
**Confirmation:**

**OCTOBER 16, 2017**  
**1:30 p.m., Courtroom 2**

**Trial: NOVEMBER 7, 2017**  
**8:30 a.m., Courtroom 2**

**RULES OF CONDUCT**

14 Due to the pendency of a motion for reconsideration and the parties' inability to file a joint  
15 pre-trial statement, the Court vacated the May 1, 2017 pre-trial conference. On May 4, 2017, the  
16 Court granted Plaintiff's motion for reconsideration, and a First Amended Complaint was  
17 subsequently filed. On May 30, 2017, a status conference was held. See Doc. No. 120. As part of  
18 that status conference, the Court set a new trial date and a trial confirmation and motions in limine  
19 hearing date. The Court issues this partial pre-trial order in light of those new dates.

20 Additionally, on August 28, 2017, the Court will hold a pre-trial conference at 10:30 a.m in  
21 Courtroom No. 2. Following the pre-trial conference, the Court will issue an amended pre-trial  
22 order. On or by August 21, 2017, the parties will submit a joint pre-trial statement that includes  
23 all of the information required under Local Rule 281.

24  
25 **I. Jurisdiction and Venue**

26 The Court has subject matter jurisdiction and supplemental jurisdiction under 28 U.S.C. §§  
27 1331 and 1367 by virtue of Plaintiff's Americans with Disabilities Act (42 U.S.C. § 12101 et.  
28 seq.) claim. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

1 **II. Jury Trial**

2 Plaintiff has requested a jury trial.

3  
4 **III. Further Discovery or Motions**

5 The parties shall contact the Magistrate Judge for purposes of setting an additional  
6 scheduling and/or a further discovery schedule.

7  
8 **IV. Settlement Negotiations**

9 The parties may engage in their own settlement negotiations at any time and they may  
10 contact the Magistrate Judge for purposes of setting a formal settlement conference.

11  
12 **V. Separate Trial Of Issues**

13 The trial will be bifurcated. The first phase will decide liability, damages, and punitive  
14 liability. If punitive liability is found, then the second phase will decide punitive damages.

15  
16 **VI. Further Trial Preparation**

17 **A. Final Witness List**

18 The parties are ordered to file and serve their final list of witnesses by November 2, 2017.  
19 Additionally, at that time Plaintiffs shall disclose the order of witnesses so that Defendants will be  
20 prepared for cross-examination.

21 **B. Trial Briefs**

22 The parties are to file and serve a Trial Brief by September 25, 2017. Local Rule 285. The  
23 parties need not include in the Trial Brief any issue that is adequately addressed in a motion in  
24 limine, or in an opposition brief to a motion in limine. Any response to a Trial Brief shall be filed  
25 and served by September 29, 2017.

26 **C. Duty of Counsel to Pre-Mark Exhibits**

27 The parties are ordered to confer no later than September 8, 2017, for purposes of pre-  
28 marking and examining each other's exhibits. All joint exhibits must be pre-marked with numbers

1 preceded by the designation JT/-- (e.g., JT/1, JT/2). The significance of identifying an exhibit as a  
2 “joint exhibit” is that it can be admitted by either party, at any time, and without objection. All of  
3 Plaintiffs’ exhibits shall be pre-marked with numbers. All of Defendants’ exhibits shall be pre-  
4 marked with letters.

5 1. Counsel shall create four (4) complete, legible sets of exhibits in binders as follows:

6 (a) Two sets of binders to be delivered to Courtroom Clerk Wendy Kusamura by  
7 November 2, 2017, one for use by the Courtroom Clerk and the other for the court;  
8 and

9 (b) One set for each counsel’s own use.

10 If the parties desire, they may have a fifth set of binders to be used for the purposes  
11 of questioning witnesses.

12 2. Counsel are to confer and make the following determination with respect to each  
13 proposed exhibit to be introduced into evidence, and to prepare separate indexes - one listing joint  
14 exhibits, and one listing each party’s separate exhibits:

15 (a) Duplicate exhibits, i.e., documents which both sides desire to introduce into  
16 evidence, shall be marked as a joint exhibit, and numbered as directed above. Joint  
17 exhibits shall be listed on a separate index, and shall be admitted into evidence on  
18 the motion of any party, without further foundation.

19 (b) As to exhibits that are not jointly offered, and to which there is no objection to  
20 introduction, those exhibits will likewise be appropriately marked, e.g., Plaintiffs’  
21 Exhibit 1 or Defendants’ Exhibit A, and shall be listed in the offering party’s index  
22 in a column entitled “Admitted In Evidence.” Such exhibits will be admitted upon  
23 introduction and motion of the party, without further foundation.

24 (c) Those exhibits to which the only objection is a lack of foundation shall be  
25 marked appropriately, e.g., Plaintiffs’ Exhibit 2 - For Identification, or Defendants’  
26 Exhibit B - For Identification, and indexed in a column entitled “Objection  
27 Foundation.”

28 (d) Remaining exhibits as to which there are objections to admissibility not solely

1 based on a lack of foundation shall likewise be marked appropriately, e.g.,  
2 Plaintiffs' Exhibit 3 - For Identification or Defendants' Exhibit C - For  
3 Identification, and indexed in a third column entitled "Other Objection" on the  
4 offering party's index.

5 3. Each separate index shall consist of the exhibit number or letter, a brief description of  
6 the exhibit, and the three columns outlined above, as demonstrated in the example below:

7 INDEX OF EXHIBITS

8

9 EXHIBIT #	DESCRIPTION	ADMITTED IN EVIDENCE	OBJECTION FOUNDATION	OTHER OBJECTION
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10

11 Two sets of the completed joint index and the separate indexes shall be delivered to the  
12 Courtroom Clerk with the two sets of binders.

13 The court has no objection to counsel using copies. However, the copies must be legible.  
14 If any document is offered into evidence that is partially illegible, the court may *sua sponte*  
15 exclude it from evidence.

16 **D. Discovery Documents**

17 By November 2, 2017, each party shall file a list of all discovery documents the party  
18 intends to use at trial. The list shall indicate whether each discovery document has previously  
19 been lodged with the Clerk. If the discovery document has not been previously lodged, the party  
20 shall so lodge the document with the Courtroom Clerk by November 2, 2017.

21 **E. Motions In Limine Hearing and Briefing Schedule**

22 The hearing for motions in limine will be held on October 16, 2017 at 1:30 p.m. In  
23 addition to addressing any filed motions in limine, at that time the court will also settle, to the  
24 extent possible, any other matter pertaining to the conduct of the trial.

25 Counsel are expected to be fully cognizant of the legal issues involved in the case by the  
26 date of the hearing for motions in limine.

27 By 4:00 p.m. on September 18, 2017, all motions in limine, with supporting points and  
28 authorities, shall be filed and served either personally or by facsimile upon opposing counsel.

1 By 4:00 p.m. on October 2, 2017, opposition to any motion in limine shall be filed and  
2 served either personally or by facsimile upon opposing counsel. If a party does not oppose a  
3 motion in limine, that party shall file and serve in the same manner a Statement of Non-Opposition  
4 to that motion in limine.

5 By 4:00 p.m. on October 9, 2017, any reply to an opposition shall be filed and served  
6 either personally or by facsimile upon opposing counsel. The court is not inclined to consider late  
7 reply briefs.

#### 8 **F. Morning Conferences During Trial**

9 During the trial, it is the obligation of counsel to meet with the court each morning to  
10 advise the court and opposing counsel as to what documents are proposed to be put into evidence  
11 that have not previously been admitted by stipulation, court order, or otherwise ruled upon. The  
12 court will rule on those documents, to the extent possible, prior to the commencement of trial each  
13 day out of the presence of the jury. If the ruling depends upon the receipt of testimony, the court  
14 will rule as requested upon the receipt of such testimony.

15 The court shall consider any other legal matter at morning conferences as well. The court  
16 does not wish to recess the trial to hear legal argument outside of the presence of the jury, and  
17 proper preparation by counsel will eliminate the need for that result.

#### 18 **G. Use Of Videotape and Computers**

19 Any party wishing to use a videotape for any purpose during trial shall lodge a copy of the  
20 videotape with the Courtroom Clerk by 4:00 p.m. on Thursday, November 2, 2017. If a written  
21 transcript of audible words on the tape is available, the Court requests that the transcript be lodged  
22 with the court, solely for the aid of the court.

23 If counsel intends to use a laptop computer for presentation of evidence, they shall contact  
24 the courtroom deputy clerk at least one week prior to trial. The courtroom deputy clerk will then  
25 arrange a time for counsel to bring the laptop to the courtroom, and meet with a representative of  
26 the Information and Technology Department and receive a brief training session on how counsel's  
27 equipment interacts with the court's audio/visual equipment. If counsel intends to use PowerPoint,  
28 the resolution should be set no higher than 1024 x 768 when preparing the presentation.

1           **H. Order of Witnesses**

2           In order to make the trial operate efficiently and smoothly, each counsel has the continuing  
3 obligation to advise opposing counsel as to what witnesses he or she intends to call twenty-four  
4 (24) hours prior to calling that witness.

5           **I. Proposed Jury Instructions & Verdict Forms**

6           The parties shall file and serve proposed jury instructions and verdict forms by 4:00 p.m.  
7 on October 2, 2017. Electronic filers shall attach a copy of their proposed jury instructions in  
8 Microsoft Word format to an e-mail, which the party shall send to: [awiorders@caed.uscourts.gov](mailto:awiorders@caed.uscourts.gov).  
9 Prior to submission of the proposed jury instructions and verdict forms, the parties shall meet and  
10 confer in order to determine which instructions they agree should be given and whether they can  
11 agree upon a joint verdict form.

12           The parties are to submit a packet of jury instructions to which they agree, and separate  
13 packets of jury instructions to which they cannot agree. All proposed jury instructions shall be  
14 submitted in duplicate sets. One set shall identify the party proposing the instruction or state that  
15 the instruction is agreed. Each instruction shall be numbered or lettered, cite supporting authority,  
16 and include the customary “Given, Given as Modified, or Refused,” showing the court’s action  
17 with regard to each instruction. The other set shall be an exact copy of the first set, but shall be a  
18 “clean” copy that does not contain the identification of the offering party, numbering/lettering,  
19 supporting authority, or references to the court’s disposition of the proposed instruction.

20           As to those instructions to which the parties dispute, the court will conduct its jury  
21 instruction conference during trial at a convenient time. However, depending on time constraints,  
22 the Court may conduct a preliminary jury instruction conference on October 16, 2017, following  
23 the hearing and decision on the parties’ motions in limine.

24           **J. Voir Dire**

25           The parties shall file and serve proposed voir dire questions, if any, by 4:00 p.m. on  
26 Thursday, November 2, 2017.

27           Further, in order to aid the court in the proper voir dire examination of the prospective  
28 jurors, counsel should lodge with the court on the first morning of trial a list of all prospective

1 witnesses, including rebuttal witnesses, that counsel reasonably expect to call. The purpose of the  
2 lists is to advise the prospective jurors of possible witnesses to determine if a prospective juror is  
3 familiar with any potential witness.

4 **K. Agreed Summary Of The Case**

5 The parties shall lodge with the Courtroom Clerk a joint agreed summary of the case,  
6 briefly outlining the positions of the parties by 4:00 p.m. on Thursday, November 2, 2017. The  
7 summary will be read to the jury panel at the outset of the trial solely for the purposes of assisting  
8 in the jury selection process. The contents of the summary shall not be deemed to be evidence or  
9 an admission or stipulation by a party as to any contested fact or issue.

10  
11 **VII. Objections to this Order**

12 Any party may, within ten (10) calendar days after the date of service of this order, file and  
13 serve written objections to any of the provisions of this order. Local Rule 283. Such objection  
14 shall specify the requested corrections, additions or deletions.<sup>1</sup>

15  
16 **VIII. Rules of Conduct During Trial**

17 **A. General Rules**

18 1. All participants in the trial shall conduct themselves in a civil manner. There shall be  
19 no hostile interchanges between any of the participants.

20 2. All oral presentations shall be made from the podium, unless otherwise permitted by the  
21 court.

22 3. Sidebar conferences are discouraged. Legal arguments or discussion of issues outside  
23 the presence of the jury should be done during recesses.

24 4. Counsel shall advise their respective clients and witnesses not to discuss any aspect of  
25 the case in the common areas of the courthouse accessible to the jurors, such as the lobby, the  
26 elevators, the hallways and the cafeteria.

27 \_\_\_\_\_  
28 <sup>1</sup> The parties need not object to any information envisioned by Local Rule 281 that is not included in this order, but  
will be included as part of an amended order once the parties submit a joint pre-trial statement. Objections should be  
limited to the items included in this Partial Pre-Trial Order.

1           **B. Jury Selection**

2           1. The court will conduct voir dire to be supplemented by any written questions submitted  
3 by counsel prior to trial and after the court has concluded its questioning of the jury panel. In  
4 some circumstances, the court may allow brief direct questioning by counsel.

5           **C. Opening Statements**

6           1. Counsel may use visual aids in presenting the opening statement. However, any  
7 proposed visual aids shall be shown to opposing counsel before opening statement.

8           **D. Case in Chief**

9           1. Counsel shall have his/her witnesses readily available to testify so that there are no  
10 delays in the presentation of evidence to the trier of fact.

11           2. At the close of each trial day, counsel shall disclose his/her anticipated witnesses and  
12 order of presentation for the next day, so that any scheduling or evidentiary issues may be raised at  
13 that time.

14           **E. Witnesses**

15           1. Before approaching a witness, counsel shall secure leave of court to approach the witness.

16           2. Before approaching a witness with a writing, counsel shall first show the writing to opposing  
17 counsel.

18           **F. Exhibits**

19           1. All exhibits shall be marked and identified in accordance with the instructions in the  
20 Pretrial Order.

21           2. An exhibit shall not be published to the jury until it has been admitted into evidence and  
22 counsel has secured leave of court to publish the exhibit.

23           3. The court usually will conduct an on the record review of the exhibits that have been  
24 admitted in evidence at the conclusion of each party's case in chief and after each party has rested  
25 its entire case.

26           **G. Objections**

27           1. No speaking objections or arguments are permitted in the presence of the jury. Counsel  
28 shall state the specific legal ground(s) for the objection, and the court will rule based upon the



1 ground(s) stated. The court will permit counsel to argue the matter at the next recess.

2 2. The court will not assume that any objection made also implies with it a motion to  
3 strike an answer that has been given. Therefore, counsel who has made an objection, and who also  
4 wishes to have an answer stricken, shall also specifically move to strike the answer.

5 **H. Closing Argument**

6 1. Counsel may use visual aids in presenting the closing argument. However, any  
7 proposed visual aids shall be shown to opposing counsel before closing argument.

8  
9 FAILURE TO COMPLY WITH ALL PROVISIONS OF THIS ORDER MAY BE GROUNDS  
10 FOR THE IMPOSITION OF SANCTIONS, INCLUDING POSSIBLE DISMISSAL OF THIS  
11 ACTION OR ENTRY OF DEFAULT, ON ANY AND ALL COUNSEL AS WELL AS ON ANY  
12 PARTY WHO CAUSES NON-COMPLIANCE WITH THIS ORDER.

13 IT IS SO ORDERED.

14 Dated: May 31, 2017

15   
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17 SENIOR DISTRICT JUDGE