

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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PLANS, INC.,

NO. CIV. S-98-266 FCD EFB

Plaintiff,

MEMORANDUM AND ORDER

SACRAMENTO UNIFIED SCHOOL
DISTRICT, TWIN RIDGES
ELEMENTARY SCHOOL DISTRICT,
DOES 1-100,

Defendants

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This case comes before the court on plaintiff PLANS, Inc.'s ("plaintiff") motion to augment its trial exhibit list, previously included with the court's final pretrial conference order, and which governed the initial trial in this matter.¹ (Docket #229.) On September 28, 2005, the court entered judgment

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 230(g).

1 in favor of defendant Sacramento City Unified School District
2 ("SCUSD"), pursuant to Federal Rule of Civil Procedure 52(c), on
3 the ground plaintiff failed to meet its evidentiary burden to
4 establish that anthroposophy is a religion for purposes of the
5 Establishment Clause. On November 21, 2007, the Ninth Circuit
6 reversed this court's judgment, finding that the court erred in
7 excluding certain witnesses' percipient testimony. The Ninth
8 Circuit held that "because [plaintiff] intended to call [Betty
9 Staley, Crystal Olsen and Robert Anderson] . . . as percipient
10 witnesses, it did not need to comply with the court's deadline
11 for expert disclosures." (Docket #281.) This court had found
12 that the subject witnesses' proffered testimony was *expert*
13 opinion, and having failed to timely disclose the testimony,
14 plaintiff was precluded from offering it at trial. The Ninth
15 Circuit disagreed, and further emphasized that there was no
16 prejudice to SCUSD because plaintiff had disclosed the witnesses
17 as early as January 2001 and the district, itself, had designated
18 the witnesses as experts. (*Id.*)

19 Following the remand, this court granted defendant Twin
20 Ridges Elementary School District's motion to dismiss, leaving
21 SCUSD as the sole defendant. (Docket #295 [dismissing Twin
22 Ridges since as of June 30, 2007, it ceased chartering any
23 Waldorf method public schools].) Following this order, filed
24 March 4, 2008, there was no activity in the case until May 29,
25 2009, when plaintiff filed a substitution of attorney, replacing
26 Scott Kendall with Donald Michael Bush. The parties thereafter
27 requested extensions of time to file a joint status conference
28 statement. The court held a status conference on December 11,

1 2009.

2 At that conference, the court set (1) a further final
3 pretrial conference; (2) a trial date for Phase I of the trial
4 (to determine whether anthroposophy is a religion for
5 Establishment Clause purposes); and (3) a hearing date, in
6 advance of trial, for the parties' motions in limine. (Docket
7 #306.)² Plaintiff indicated that it may wish to move the court
8 to reopen discovery to permit plaintiff to modify its proffered
9 witnesses and evidence for trial. The court emphasized that the
10 Ninth Circuit's remand order only permitted plaintiff to offer at
11 trial the percipient testimony of Staley, Olsen and Anderson; it
12 did not permit plaintiff to reopen discovery or otherwise modify
13 the court's prior final pretrial conference order. The court
14 directed that if plaintiff sought any such actions, it must file
15 an appropriate motion under Rule 16.

16 By the instant motion, plaintiff does not seek to reopen
17 discovery but rather requests permission to modify its trial
18 exhibit list to delete certain original exhibits and add other
19 documents in support of its position that anthroposophy is a
20 religion. At this juncture, the court will permit plaintiff to
21 modify its exhibit list, as typically, the court does not render
22 any rulings with respect to proffered exhibits until trial. In
23 preparing their joint final pretrial conference statement,
24 parties submit with the statement their expected witnesses and
25 trial exhibits, which the court simply attaches as exhibits to
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27 ² Said dates were subsequently modified by Minute Order
28 of April 12, 2010 (Docket #313) due to plaintiff's request to
continue the final pretrial conference date.

1 its final pretrial conference order. (See e.g. Docket #229.)
2 Thereafter, at the time of trial, normally during the hearing on
3 motions in limine, the court rules on any objections to the
4 parties' respective witnesses and trial exhibits. The court will
5 follow its typical procedures in this case as well.

6 Therefore, both parties may file with their joint pretrial
7 conference statement amended witness and exhibit lists. Each
8 side may later object to the witnesses or exhibits, including on
9 the ground that the testimony and/or exhibit was not disclosed
10 during the course of discovery, at the time of the hearing on the
11 parties' motions in limine. Where appropriate, the parties shall
12 file separate motions in limine directed at specific evidence,
13 supported by a memorandum of points and authorities. At that
14 point, on full briefing, the court can properly consider possible
15 evidentiary objections, including relevancy, hearsay and
16 authentication.

17 Pursuant to the court's Minute Order of April 12, 2010
18 motions in limine will be heard on August 13, 2010, and trial of
19 Phase I will commence on August 31, 2010. At the December 2009
20 status conference, the court directed the parties to summarize,
21 in their joint final pretrial conference statement, each witness'
22 expected testimony, including any percipient testimony and/or
23 expert opinion. To facilitate the court's ruling on any
24 objections to the trial exhibits, the court orders the parties to
25 exchange all trial exhibits on or before August 2, 2010. If a
26 party moves to exclude any exhibit, it shall submit a copy of the
27 subject exhibit with its motion in limine. Provision of the
28 parties' final, trial exhibit binders will be as directed in the

1 court's final pretrial conference order, which shall issue
2 following the conference set for June 25, 2010.

3 IT IS SO ORDERED.

4 DATED: April 19, 2010



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6 FRANK C. DAMRELL, JR.
7 UNITED STATES DISTRICT JUDGE
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