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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 SYLVIA DARENSBURG, et al.,

No. C-05-01597 EDL

9 Plaintiff,

**ORDER FOLLOWING PRETRIAL  
CONFERENCE**

10 v.

11 METROPOLITAN TRANSPORTATION  
12 COMMISSION,

13 Defendant.  
14 \_\_\_\_\_/

15 On September 19, 2008, the Court held a pretrial conference in this matter. For the reasons  
16 stated at the hearing, the Court issues the following order:

- 17 1. Trial in this matter will run from 8:45 a.m. to 3:00 p.m., Monday through Thursday  
18 beginning on October 1, 2008, except for October 13, October 20 and October 23, 2008. The  
19 Court will conclude the trial day at 1:45 p.m. on October 27, 2008. Pursuant to the parties'  
20 agreement, the total number of hours for trial will be 60 hours, divided into 30 hours for each  
21 party.
- 22 2. The parties shall meet and confer regarding the order of presentation of witnesses, including  
23 the possibility of presenting some testimony from opposing sides "back to back" as described  
24 at the pretrial conference, and regarding the amount of notice to be given before calling a  
25 witness.
- 26 3. The parties stated that they would be filing amended objections to exhibits on September 22,  
27 2008.
- 28 4. Defendant's Motion in Limine to exclude all witnesses from the courtroom until called to  
testify is denied as to expert witnesses. Defendant clarified at the pretrial conference that it  
did not seek to exclude named Plaintiffs.

- 1 5. Defendant's Motion in Limine to exclude all hearsay statements is denied. The Court will  
2 address objections on this basis during trial.
- 3 6. Defendant's Motion in Limine to exclude testimony by witnesses without personal  
4 knowledge is denied. The Court will address objections on this basis during trial.
- 5 7. Defendant's Motion in Limine to exclude evidence of the parties' settlement discussions is  
6 granted.
- 7 8. Defendant's Motion in Limine to exclude time-barred evidence is denied with respect to pre-  
8 2003 evidence on the basis that while Plaintiffs' continuing violation theory may not be  
9 viable, historical information may be relevant as background. Defendant's Motion in Limine  
10 to exclude pre-1996 evidence is denied, but the Court notes that the probative value of this  
11 remote evidence may be limited.
- 12 9. Defendant's Motion in Limine to exclude evidence of legally impossible funding options is  
13 denied because the parties dispute what is impossible.
- 14 10. Defendant's Motion in Limine to exclude evidence of intentional discrimination unconnected  
15 to challenged agency decision is denied, although the Court notes that evidence going to  
16 intentional discrimination that is not also relevant to disparate impact is not admissible.
- 17 11. Defendant's Motion in Limine to bifurcate issue of Plaintiffs' standing to sue is denied.
- 18 12. Defendant's Motion in Limine to exclude evidence of classes not identified in second  
19 amended complaint is denied. Plaintiffs clarified at the pretrial conference that income level,  
20 age and physical conditions are not separate classes.
- 21 13. Defendant's Motion in Limine to exclude reports and testimony of Richard Berk is denied.  
22 Plaintiffs clarified that Mr. Berk will testify, if at all, on rebuttal regarding a comparison of  
23 the top seven transit operators, rather than the three operators compared in his initial expert  
24 report.
- 25 14. Defendant's Motion in Limine to exclude expert reports and testimony of Thomas Rubin is  
26 denied for the reasons stated in the Court's order on Defendant's objections to evidence in  
27 connection with summary judgment motions.
- 28 15. Defendant's Motion in Limine to exclude expert reports and testimony of Thomas Sanchez is

denied, although he may not testify as to intentional discrimination.

16. Ruling on Defendant's request for judicial notice is deferred.

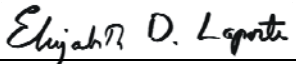
17. The parties withdrew their objections to witnesses based on Federal Rule of Civil Procedure 37(c). The parties shall meet and confer about which individual witnesses and AC Transit witnesses will be called at trial. Plaintiffs' remaining objections to Celia Kupersmith, Alan Zahradnik, Gayle Prior, Jim DeHart, Michael Scanlon, Maria Espinosa, Joel Slavitt, Gigi Harrington, Rick Ramacier, Cindy Dahlgren, Dorothy Dugger, Todd Morgan, Kenneth McDonald, Marguerite Fuller, Michael Burns and Marcella Rensi are overruled. Defendants' remaining objections to Therese McMillan, Alix Bockelman, Randy Rentschler, Doug Kimsey, Ann Flemmer, Lawrence Dahms, Trent Lethco, James Corless and Charles Purvis are overruled. Plaintiffs stated at the hearing that they do not intend to call Greg Karras, Andre Schmake, Carl Anthony and Frank Gallo as witnesses. With respect to Therese McMillan, the parties shall discuss which one or two of Plaintiffs' attorneys will examine Ms. McMillan, keeping in mind that in general, the Court will not permit more than one of Plaintiffs' attorneys to examine Ms. McMillan during the course of one day. Defendant's objection to H.E. Christian Peeples on the ground that he does not speak for the entire AC Transit Board of Directors is overruled based on Plaintiffs' clarification that Mr. Peeples will be called to testify only regarding matters within his personal knowledge and not for the entire Board. The parties shall meet and confer regarding witnesses who will testify as the person most knowledgeable as described on Plaintiffs' witness list.

18. The parties shall provide the Court with a witness binder with key exhibits.

19. The parties shall meet and confer regarding use of demonstrative exhibits and equipment in the courtroom.

**IT IS SO ORDERED.**

Dated: September 19, 2008

  
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ELIZABETH D. LAPORTE  
United States Magistrate Judge