

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RYAN KO,

Plaintiff(s),

vs.

CITY OF HAYWARD,

Defendant(s).

No. C 05-1686 MEJ

**ORDER VACATING DISCOVERY
COMPLIANCE HEARING**

**ORDER CONTINUING CERTAIN
PRETRIAL AND TRIAL DATES**

The Court is in receipt of the parties' Joint Status Report, filed April 21, 2009. (Dkt. #48.)

Upon review of the report, the Court hereby VACATES the April 30, 2009 discovery compliance hearing and CONTINUES certain pretrial and trial dates as follows:

A. Exchange and filing of Trial Papers:

1. By December 10, 2009, lead counsel who will try the case shall meet and confer with respect to the preparation and content of the joint pretrial conference statement and shall exchange (but not file or lodge) the papers described in paragraph 2 below.

2. By December 23, 2009, counsel shall file the papers described in Federal Rule of Civil Procedure 26(a)(3) and a joint pretrial conference statement including the following:

(A) Substance of the Action: A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed: A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material

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to be presented concerning the amount of damages.

(C) Undisputed Facts: A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(D) Disputed Factual Issues: A plain and concise statement of all disputed factual issues which remain to be decided.

(E) Agreed Statement: A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(F) Stipulations: A statement of stipulations requested or proposed for pretrial or trial purposes.

(G) Witness list: A list of all witnesses to be called for trial. The parties shall submit a page-length detailed summary of the substance of the proposed testimony of each witness, which shall also specify to which disputed fact the testimony relates and an estimate of the time required for direct and cross examination of each prospective witness.

(H) Exhibit list: A list of all exhibits to be offered at trial. The exhibit list shall list each proposed exhibit by its number or alphabetical letter, description and sponsoring witness. All documents shall be authenticated prior to trial.

(I) Estimated Time of Trial: An estimate of the number of hours needed for the presentation of each party's case.

(J) Settlement: A statement summarizing the status of the parties' settlement negotiations.

No party shall be permitted to offer any witness or exhibit in its case in chief that is not disclosed in its witness or exhibit list without leave of the Court for good cause shown.

3. Motions in limine: Counsel are directed to meet and confer to resolve any evidentiary disputes prior to filing motions in limine. Any motions *in limine* shall be filed by December 23, 2009. Any Opposition to motions *in limine* shall be filed by December 30, 2009. These matters will be deemed submitted on the papers without oral argument, unless the Court

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- orders otherwise.
4. Trial Briefs: Counsel shall file trial briefs setting forth the applicable legal standard, pursuant to Ninth Circuit authority, all significant disputed issues of law, including foreseeable procedural and evidentiary issues by January 8, 2010.
5. Joint Proposed Voir Dire (Jury Trial Only): Counsel should submit a **joint** set of requested voir dire to be posed by the Court by January 8, 2010. Any voir dire questions on which counsel cannot agree shall be submitted separately by January 8, 2010. Counsel will be allowed brief follow-up voir dire after the Court’s questioning.
6. Joint Proposed Jury Instructions (Jury Trial Only): Jury instructions § 1.01 through § 2.02 and § 3.01 through § 3.15 from the Manual of Model Civil Jury Instructions for the Ninth Circuit will be given absent objection. Counsel shall submit a **joint** set of additional proposed jury instructions by January 8, 2010. The instructions shall be ordered in a logical sequence, together with a table of contents. Any instruction on which counsel cannot agree shall be marked as “disputed,” and shall be included within the jointly submitted instructions and accompanying table of contents, in the place where the party proposing the instruction believes it should be given. Argument and authority for and against each disputed instruction shall be included as part of the joint submission, on separate sheets directly following the disputed instruction. The Court prefers that all jury instructions conform to the Manual of Model Civil Jury Instructions for the Ninth Circuit.
- If possible, counsel shall deliver to the Courtroom Deputy a copy of their joint proposed jury instructions on a computer disk (or other portable storage medium) in WordPerfect format. The disk label shall include the name of the parties, the case number and be entitled “Proposed Jury Instructions.”
- At the close of Defendant’s case in chief, the Court shall hear oral argument on the disputed jury instructions and will then render its rulings.
7. Proposed Verdict Forms, Joint or Separate (Jury Trial Only): Counsel shall submit any **joint** proposed verdict forms and shall submit their separate verdict forms by January 8, 2010.

1 Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their joint
2 proposed verdict forms on a computer disk (or other portable storage medium) in
3 WordPerfect. The disk label shall include the name of the parties, the case number and be
4 entitled "Proposed Verdict Forms."

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6 B. Pretrial Conference:

7 1. On January 7, 2010 at 10:00 a.m., the Court shall hold a pretrial conference in Courtroom B,
8 15th Floor of the Federal Building, located at 450 Golden Gate Avenue, San Francisco,
9 California. Lead counsel who will try the case must attend the pretrial conference. The
10 purpose of the pretrial conference is for the Court to rule on any issues raised in the final
11 pretrial conference statement, motions *in limine*, and to discuss the trial of the case.

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13 C. Final Pretrial Conference:

14 1. On February 4, 2010 at 10:00 a.m., the Court shall hold a final pretrial conference to address
15 any outstanding trial issues.

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17 D. Trial Date:

- 18 1. The trial shall commence [with jury selection taking place] on **February 8, 2010** (Trial
19 schedule: Monday through Thursday, at 1:30 p.m. to 5:00 p.m.). The trial shall last four
20 days.
- 21 2. For any documents, including the deposition of a witness testifying at trial, which will be
22 shown presented to a witness **but will not be admitted into evidence**, counsel shall bring
23 the original plus three clean copies of the documents. The original document will be handed
24 to the Court during testimony, and the clean copies of the document will be given to the
25 witness during the examination and to opposing counsel.
- 26 3. Counsel shall maintain their own exhibits during trial. Exhibits are to be premarked with
27 exhibit tags stapled to the upper lefthand corner. If a photo or chart is being used as an
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1 exhibit, the exhibit tag should be placed on the back side of the exhibit. **The Court will only**
2 **admit premarked exhibits which were listed on the earlier filed exhibit list.**

3 Plaintiff shall mark the exhibits numerically; Defendant shall mark the exhibits
4 alphabetically. The exhibit markers shall each contain the name and number of the case, the
5 number or alphabetical letter of the exhibit, and blank spaces to accommodate the date
6 admitted and the Deputy Clerk's initials.

- 7 4. On the day of trial, counsel shall bring the original premarked exhibits, a copy of the
8 premarked exhibits for opposing counsel and two binders which contain a copy of each
9 side's premarked exhibits for the Court. **The premarked exhibit binders are to be**
10 **designated with label dividers.** The premarked exhibit binders will be given to the
11 Courtroom Deputy on the morning of the trial.

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13 E. Jury Selection:

- 14 1. The Jury Commissioner will summon 20 to 25 prospective jurors. The Courtroom Deputy
15 will select their names at random and seat them in the courtroom in the order in which their
16 names are called.

17 Voir dire will be asked of sufficient venire persons that eight (or more for a lengthy
18 trial) will remain after all peremptory challenges and an anticipated number of hardship
19 dismissals and cause challenges have been made.

20 The Court will then take cause challenges, and discuss hardship claims from the
21 individual jurors, at side bar. The Court will inform the attorneys which hardship claims and
22 cause challenges will be granted, but will not announce those dismissals until the process is
23 completed. Each attorney may then list in writing up to three peremptory challenges. The
24 attorneys will review each other's lists and then submit them to the clerk.

25 Then, from the list of jurors in numerical order, the Court will strike the persons with
26 meritorious hardships, those excused for cause, and those challenged peremptorily. The
27 Court will then call the first eight people in numerical sequence remaining. These people

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will be the jury. All jurors remaining at the close of the case will deliberate. There are no alternates.

IT IS SO ORDERED.

Dated: April 24, 2009



MARIA-ELENA JAMES
United States Magistrate Judge