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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Grace DeLaCruz, et al.,

No. C 07-0866 JL

Plaintiffs,

CASE MANAGEMENT AND
PRETRIAL ORDER

v.

National Railroad Passenger Corporation,

Defendants.

Pursuant to Fed. R. Civ. P. 16 and Civ. L.R. 16-10(b), the following case management and pretrial order is entered:

1. TRIAL DATE

a. Jury trial will begin on Monday, July 6, 2009 at 9:30 a.m. in Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102.

b. The length of the trial will be not more than 5 days.

2. DISCOVERY

All discovery shall be completed by February 28, 2009;

Parties shall disclose experts by February 28, 2009;

Rebuttal of expert disclosure by March 28, 2009;

All expert witness discovery shall be completed by April 16, 2009.

1 In the event of a discovery dispute the parties shall use the following
2 procedure:

3 Parties shall meet and confer in person, or, if counsel are located outside the Bay
4 Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of
5 letters, telephone calls, or facsimile transmissions does not satisfy the requirement to meet
6 and confer.

7 If, after a good faith effort, the parties have not resolved their dispute, they shall
8 prepare a concise joint statement, of five pages or less, stating the nature and status of
9 their dispute. The parties shall not file affidavits or exhibits. If a joint statement is not
10 possible, each side may submit a two-page individual statement. The Court will advise the
11 parties regarding the need, if any, for formal briefing or a hearing.

12 3. MOTIONS

13 All dispositive motions shall be served and filed not less than **thirty-five (35)** days
14 prior to the scheduled hearing date which shall be on or before April 19, 2009. Any
15 opposition shall be served and filed no later than **twenty-one (21)** days prior to the hearing
16 date. Any reply to the opposition shall be served and filed no later than **fourteen (14)** days
17 prior to the hearing. Prior to a dispositive motion, the parties shall meet and confer and, at
18 the time the motion is filed, submit a joint statement of undisputed facts.

19 4. ALTERNATIVE DISPUTE RESOLUTION (ADR)

20 The Court hereby refers this case for **one** of the following:

- 21 a. A settlement conference to be scheduled before another Magistrate
22 Judge of this court within 90 days of the case management
23 conference. Counsel will be contacted by that judge's chambers with a
24 date and time for the conference as soon as is convenient to the
25 judge's calendar.
- 26 b. Referral to ADR for purpose of scheduling ENE.
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1 5. A further Case Management Conference will be held within 30 days of
2 unsuccessful settlement conference or ADR proceedings. Parties shall jointly propose a
3 date on a Wednesday at 10:30 a.m.

4 6. PRETRIAL CONFERENCE

5 a. A final pretrial conference shall be held on June 3, 2009, at 11:00
6 a.m., in Courtroom F, 15th Floor. Each party shall attend personally or by counsel who will
7 try the case.

8 b. **Not less than thirty (30) days** prior to the date of the pretrial
9 conference, all counsel or parties shall meet and fulfill the requirements of Civil Local Rule
10 16-10(b).

11 c. **Not less than twenty (20) days** prior to the pretrial conference,
12 counsel or parties shall

- 13 (l) serve and file a joint pretrial statement pursuant to Local Rule 16-10
14 (b);

15 The pretrial statement shall include the disclosures required by Fed. R. Civ. P.
16 26(a)(3) as well as the following:

17 THE ACTION

18 Substance of the Action

19 Relief Prayed

20 FACTUAL BASIS FOR THE ACTION

21 Undisputed Facts

22 Disputed Factual Issues

23 Agreed Statement

24 Stipulations

25 DISPUTED LEGAL ISSUES

26 (List)

27 TRIAL PREPARATION

28 Witnesses to be Called

- 1 Exhibits, Schedules and Summaries;
- 2 Trial
- 3 Estimate of Trial Time
- 4 Use of Discovery Responses at Trial
- 5 Further Discovery or Motions

6 TRIAL ALTERNATIVES AND OPTIONS

- 7 Settlement Discussions
- 8 Amendments - Dismissals
- 9 Bifurcation, Separate Trial of Issues

10 MISCELLANEOUS

11 Any other concerns of the parties

12 d. At the same time that the parties file their joint pretrial statement they
13 shall also:

14 (ii) Serve and file trial briefs, which shall specify each cause of
15 action and defense remaining to be tried along with a statement of the
16 applicable legal standard (no opposition shall be filed);

17 (iii) Serve and file motions *in limine*, which shall be contained in
18 one document. Motions in limine will be decided at the Pretrial
19 Conference.

20 e. Serve and file a list of excerpts from discovery that will be offered at
21 trial, specifying the witness, page and line references and whether the excerpt is to be
22 offered in lieu of testimony or as impeachment;

23 f. Serve and file a list of witnesses likely to be called at trial, in person or
24 by deposition, other than solely for impeachment or rebuttal, with a brief statement
25 describing the substance of the testimony to be given;

26 g. Serve and file a numerical list of exhibits (including demonstrative
27 exhibits that may be admitted into evidence but not those that are purely illustrative), with a
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1 brief statement describing the substance and purpose of each exhibit and the name of the
2 sponsoring witness;

3 h. Exchange exhibits which shall be premarked, tabbed and in binders
4 (plaintiff shall use numbers and defendant shall use letters); and deliver the original and
5 **two** duplicate sets of all premarked exhibits to chambers (exhibits are not to be filed) at
6 least one week before trial.

7 (See Label)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. _____

Exhibit No. _____

Date entered: _____

RICHARD W. WIEKING, Clerk

By: _____

Deputy Clerk

j. Serve and file proposed joint voir dire questions and joint jury
instructions for cases to be tried by jury (further instructions regarding jury instructions
below);

k. Serve and file proposed findings of fact and conclusions of law for cases
to be tried by the Court.

l. Serve and file a proposed verdict form which contains no reference to
submitting party.

1 m. **Two courtesy copies** of trial briefs and motions in limine shall be
2 provided.

3 n. No party shall be permitted to call any witness or offer any exhibit in its
4 case in chief that is not disclosed in these pretrial filings without leave of court and for good
5 cause.

6 7. **Not less than nine calendar days** prior to the pretrial conference, counsel or
7 parties shall serve and file any opposition or objection to those items required by section 3
8 (e), (f), (i),(j), (k) and (l) of this order. Additionally, counsel or parties shall file any
9 objections to the qualifications of expert witnesses contained in the opposing party's
10 witness list. Objections not filed as required will be deemed waived. No replies shall be
11 filed. All motions and objections shall be heard at the pretrial conference unless otherwise
12 ordered.

13 8. JURY TRIAL

14 a. Counsel shall submit an **agreed upon set** of additional voir dire
15 questions to be posed by the Court. Any voir dire questions on which counsel cannot
16 agree may be submitted separately. Counsel will be allowed brief follow-up voir dire after
17 the Court's questioning.

18 b. The following jury instructions from the Manual of Model Civil Jury
19 Instructions for the Ninth Circuit (April 2007) will be given absent objection: 1.1B, 1.1C, 1.3,
20 1.6 - 1.14, 1.18, 1.19, 2.1 - 2.4, 2.11, 3.1 - 3.4.. The Ninth Circuit Manual of Model Civil
21 Jury Instructions is available on the web site for the U.S. District Court for the Northern
22 District of California at www.cand.uscourts.gov. Click on the 9th Circuit home page button
23 at the lower left of the first screen and then choose the Manual of Model Civil Jury
24 Instructions from the list on the right hand side of the next screen. Counsel shall also
25 submit an agreed upon set of case-specific instructions, using the Ninth Circuit Manual of
26 Model Civil Jury Instructions where appropriate. Do not submit duplicates of those listed
27 above. Any instructions to which counsel cannot agree may be submitted separately.

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1 Each requested instruction shall be typed in full on a separate page with citations to the
2 authority upon which it is based and a reference to the party submitting it. A **second blind**
3 **copy** of each instruction and verdict form shall also be submitted omitting the citation to
4 authority and the reference to the submitting party.

5 9. All documents filed with the Clerk of the Court shall list the civil case number
6 followed by the initials "JL." One copy shall be clearly marked as a **chambers** copy.

7 Plaintiff shall re-file the second amended complaint.

8 The parties shall appear for a further case management conference on April 26 at
9 10:30 a.m. Counsel shall provide the court with an updated case management conference
10 statement a few days prior to the conference.

11 IT IS SO ORDERED.

12 DATED: November 19, 2008

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16 James Larson
17 Chief Magistrate Judge
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