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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 RONALD LEMAS,

No. C 07-0958 SI

8 Plaintiff,

**FINAL PRETRIAL SCHEDULING  
ORDER**

9 v.

10 JILL BROWN, et al.,

11 Defendants.  
\_\_\_\_\_ /

12 On March 12, 2009, the Court held a final pretrial conference in the above captioned matter,  
13 which is set for jury trial beginning March 23, 2009. All parties were represented by counsel. The  
14 following matters were resolved:  
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16 1. **Number of jurors and challenges:** There shall be a jury of 7 members. Each side shall  
17 have up to four peremptory challenges.  
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19 2. **Voir dire:** The court will conduct general voir dire, and counsel for each side shall have  
20 up to 20 minutes total to question the panel.  
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22 3. **Jury instructions:** Counsel have submitted separate and conflicting proposed jury  
23 instructions. No later than **Wednesday, March 18, 2009**, counsel shall submit one complete set of  
24 proposed instructions, containing both agreed upon instructions (which shall be so noted), and contested  
25 instructions, all in the order in which they should be read to the jury. Where contested instructions are  
26 included, they should be annotated both with the proponent's authority for seeking the instruction and  
27 the opponent's reason for opposition. Where feasible, competing instructions addressing the same point  
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1 shall be included together in the single set of proposed instructions. The final submission shall be efiled,  
2 with a courtesy hard copy delivered to chambers, and also submitted to the court on disk, suitable for  
3 reading by WordPerfect X3 (windows) **on or before March 18, 2009.**

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5 4. **Trial exhibits:** **No later than March 20, 2009,** the parties shall submit their trial  
6 exhibits, in binders with numbered tabs separating and identifying each exhibit. The court shall be  
7 provided with three sets (for the court, the file and the witness) and each side shall provide one set for  
8 the other side. To the extent that original documents are to be used as exhibits in the case, they should  
9 be included in the set of exhibits for the court.

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11 5. **Motion to bifurcate trial:** Plaintiff moves to bifurcate the trial, such that the first phase  
12 would resolve defendant's negligence *vel non*, and the second phase (with the same jury) would resolve  
13 causation and damages. Plaintiff argues that the first phase can be completed promptly, with relatively  
14 few witnesses, whereas the second phase will require the testimony of many more witnesses, including  
15 expensive expert testimony (as reflected the witness lists of the parties), and will include substantially  
16 more prejudicial information concerning plaintiff's criminal history, recidivism and current  
17 incarceration status. Defendant objects that not much time will be saved by phasing, and that prejudice  
18 can be ameliorated by jury instructions. However, the Court finds that the matter may be tried in a more  
19 efficient and a fairer manner by phasing the evidence. The motion to bifurcate is GRANTED. It is  
20 further ordered that during opening statements in the first phase, no reference should be made to the  
21 witnesses or evidence anticipated to be presented in the second phase, absent prior order of Court.

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23 6. **Timing of trial:** The parties estimate that the entire trial should take approximately 6  
24 days to present evidence (4 days for plaintiff, 2 days for defendant). Given that the claims will be  
25 phased, the Court will allocate approximately 2-1/2 days to the first phase, and 3-1/2 days to the second  
26 phase. Based on these estimates and allocations, each side shall have 30 minutes for opening statements  
27 in the first phase, and 30 minutes for opening statements in the second phase; each side shall have 6  
28 hours total for presentation of evidence, which includes direct and cross-examination and presentation

1 of all exhibits, in the first phase; each side shall have 9 hours total for presentation of evidence, which  
2 includes direct and cross-examination and presentation of all exhibits, in the second phase; each side  
3 shall have up to 30 minutes for closing arguments after the first phase; and each side shall have up to  
4 45 minutes for closing arguments after the second phase.

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6 7. **Trial schedule:** Jury trials are generally conducted Monday through Thursday; jury  
7 trials are generally not conducted on Fridays, although deliberating juries are free to deliberate on  
8 Fridays. The trial day runs from 8:30 a.m. until 3:30 p.m., with a 15 minute break at 10:00 a.m., a 45  
9 minute break at 12:00 noon and a 15 minute break at 2:00 p.m., all times approximate.

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11 8. **Motions in limine:** The parties filed various motions in limine, as follows:

12 **Plaintiff's motions:**

13 **No. 1: Motion to exclude testimony of defense expert David Tristan:** DENIED; plaintiff's  
14 objections go to the weight of Tristan's expert testimony, not its admissibility, and the issues can be  
15 explored on cross-examination.

16 **No. 2: Motion to exclude testimony of defense expert Albert Ferrari:** DENIED; Ferrari's  
17 testimony is relevant to understanding how plaintiff's fall occurred; plaintiff's objections to accuracy  
18 of the testimony can be explored on cross-examination.

19 **No. 3: Motion to exclude details of plaintiff's criminal history:** GRANT re: first phase;  
20 deferred as to second phase. Plaintiff seeks to prevent defendant from exploring the facts underlying  
21 plaintiff's prior criminal convictions, arguing unfair prejudice and consumption of time in light of  
22 marginal relevance. As to the first phase, the Court agrees, and defendant will be allowed only to  
23 explore the number of felony convictions and the name and date of the crime committed. At the second  
24 phase, defendant may present an offer of proof concerning what information about plaintiff's prior  
25 felony convictions, and in what format, he seeks to introduce. The Court will evaluate those questions  
26 on a case by case basis.

27 **No. 4: Motion to exclude surveillance video of plaintiff:** DENIED; but the video is  
28 admissible only in the second phase of trial and if properly authenticated.

1        **No. 5: Motion to exclude “evidence, testimony or argument that defendant Cecil was not**  
2 **the individual who was escorting plaintiff”**: DENIED, for the reasons set out by defendant in his  
3 opposition papers.

4        **No. 6: Motion to exclude hearsay statements and testimony of P. Hayes and V.**  
5 **DeCoudres**: GRANTED as to hearsay statements; DENIED as to testimony, provided defendants make  
6 Ms. Hayes and Ms. DeCoudres available for interview, by phone or in person, prior to trial.

7        **No. 7 and 8: Motion to exclude evidence or witnesses not produced previously**: DENIED  
8 as overbroad, without prejudice to specific objections to specific evidence or witnesses at trial.

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10        **Defendant’s Motions:**

11        **Motion to exclude evidence concerning identity of reporting employee Peterson**: DENIED.  
12 Plaintiff may question Guillaumin concerning his report. The Court does not anticipate plaintiff would  
13 waste his trial time calling the non-witness Petersons as witnesses at trial.

14        **Motion to limit number of witnesses testifying on the same subject**: DENIED, without  
15 prejudice to specific objections at time of trial. Both parties have listed far more witnesses than they  
16 can realistically expect to call. The Court does not anticipate that either side will waste its trial time  
17 calling redundant, repetitive witnesses. Specific objections to that effect will be entertained at trial.

18        **Motion to exclude evidence concerning incident reporting**: DENIED, without prejudice to  
19 specific objections at time of trial. Such evidence could be relevant to negligence.

20        **Motion to exclude evidence of extraneous or dismissed issues**: DENIED, without prejudice  
21 to specific objections at time of trial.

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23        9.        **Plaintiff’s objections to newly-disclosed witnesses**: Plaintiff objected to witnesses  
24 identified/listed for the first time by defendants in their pretrial papers. As to witnesses identified for  
25 the first time in defendant’s October, 2008 filing (Brown, Gonzalez, Conditto, Tagliabue, DeCoudres,  
26 Hayes, Curcio, Anderson, and Sanchez), the motion is DENIED on condition that at least 48 hours prior  
27 to calling such witness to testify, defendant provide plaintiff an offer of proof concerning what that  
28 witness’ testimony will be. As to witnesses first identified in defendant’s March, 2009 filings


1 (Mansfield, Ma), the motion is GRANTED, subject to reconsideration based on offer of proof  
2 concerning the need for impeachment-only testimony.

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4 10. **Further Settlement Conference:** The parties discussed a potential new approach to  
5 achieving a settlement in the case. They are directed to contact Magistrate Judge Vadas to arrange for  
6 a further conference with him prior to trial.

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8 11. **Plaintiff's attendance at trial:** Plaintiff is currently in CDCR custody. The parties shall  
9 work together to arrange for his appearance at trial by Monday, March 23, 2009 at 8:30 a.m.

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11 **IT IS SO ORDERED.**

12 Dated: March 12, 2009

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15 SUSAN ILLSTON  
16 United States District Judge  
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