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UNITED STATES DISTRICT COURT
Northern District of California

LEN BRIESE,

Plaintiff(s),

No. C 08-4233 MEJ

v.

CASE MANAGEMENT ORDER

WILLIAM JAMES TILLEY,

Defendant(s).

_____ /

Having reviewed the parties' statement of availability, (Dkt. #23), the Court issues the following case management order.

J. Exchange and filing of Trial Papers:

1. By 8/25/2010 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 9/9/2010, 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 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.

UNITED STATES DISTRICT COURT
For the Northern District of California

- 1 (D) Disputed Factual Issues: A plain and concise statement of all disputed factual issues
2 which remain to be decided.
- 3 (E) Agreed Statement: A statement assessing whether all or part of the action may be
4 presented upon an agreed statement of facts.
- 5 (F) Stipulations: A statement of stipulations requested or proposed for pretrial or trial
6 purposes.
- 7 (G) Witness list: A list of all witnesses to be called for trial. The parties shall submit a
8 page-length detailed summary of the substance of the proposed testimony of each
9 witness, which shall also specify to which disputed fact the testimony relates, and an
10 estimate of the time required for direct and cross examination of each witness.
- 11 (H) Exhibit list: A list of all exhibits to be offered at trial. The list shall state each
12 proposed exhibit by its number or alphabetical letter, description and sponsoring
13 witness. All documents shall be authenticated prior to trial.
- 14 (I) No party shall be permitted to offer any witness or exhibit that is not disclosed in its
15 witness or exhibit list, except with leave of the Court for good cause shown.
- 16 (J) Estimated Time of Trial: An estimate of the number of hours needed for the
17 presentation of each party's case.
- 18 (K) Settlement: A statement summarizing the status of the parties' settlement
19 negotiations.
- 20 3. Motions *in limine*: Counsel are directed to meet and confer to resolve any evidentiary
21 disputes prior to filing motions in limine.
- 22 (A) Any motions *in limine* shall be filed by 9/9/2010.
- 23 (B) Any Opposition to motions *in limine* shall be filed by 9/16/2010.
- 24 (C) These matters will be deemed submitted on the papers without oral argument, unless
25 the Court orders otherwise.
- 26 4. Trial Briefs: Counsel shall file trial briefs setting forth the applicable legal standard,
27 pursuant to Ninth Circuit authority, for all significant disputed issues of law, including
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- 1 foreseeable procedural and evidentiary issues, by 9/24/2010.
- 2 5. Joint Proposed Voir Dire: Counsel shall file a **joint** set of requested voir dire to be posed by
3 the Court by 9/24/2010. Any voir dire questions on which counsel cannot agree shall also be
4 filed separately by 9/24/2010. Counsel will be allowed brief follow-up voir dire after the
5 Court's questioning.
- 6 6. Joint Proposed Jury Instructions:
- 7 (A) Counsel shall file a **joint** set of additional proposed jury instructions by 9/24/2010.
8 Jury instructions from the Manual of Model Civil Jury Instructions for the Ninth
9 Circuit should be used whenever possible. The instructions shall be ordered in a
10 logical sequence, together with a table of contents.
- 11 (B) Any instruction on which counsel cannot agree shall be marked as "disputed" and
12 included within the jointly submitted instructions and accompanying table of
13 contents, in the place where the party proposing the instruction believes it should be
14 given. Argument and authority for and against each disputed instruction shall be
15 included as part of the joint submission, on a separate page directly following the
16 disputed instruction.
- 17 (C) The Court prefers that all jury instructions conform to the Manual of Model Civil
18 Jury Instructions for the Ninth Circuit.
- 19 (D) Counsel shall deliver to the Courtroom Deputy a copy of their joint proposed jury
20 instructions on a portable storage medium (such as a USB thumb drive) in
21 WordPerfect format. The label shall include the name of the parties, the case number
22 and be entitled "Proposed Jury Instructions."
- 23 (E) At the close of Defendant's case in chief, the Court shall hear oral argument on the
24 disputed jury instructions and will then render its rulings.
- 25 7. Proposed Verdict Forms, Joint or Separate: Counsel shall file any **joint** proposed verdict
26 forms, as well as any separate verdict forms, by 9/24/2010. Counsel shall deliver to the
27 Courtroom Deputy a copy of their joint proposed verdict forms on a portable storage medium
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1 in WordPerfect. The label shall include the name of the parties, the case number, and be
2 entitled "Proposed Verdict Forms."

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4 K. Pretrial Conference:

5 On 9/23/2010 at 10:00 a.m., the Court shall hold a pretrial conference in Courtroom B, 15th
6 Floor, 450 Golden Gate Avenue, San Francisco, California. Lead counsel who will try the
7 case **must** attend the pretrial conference. The purpose of the pretrial conference is for the
8 Court to rule on any issues raised in the pretrial conference statement, motions *in limine*, and
9 to discuss the trial of the case.

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11 L. Final Pretrial Conference:

12 On 10/21/2010 at 10:00 a.m. in Courtroom B, the Court shall hold a final pretrial conference
13 to address any outstanding trial issues.

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15 M. Trial Date:

- 16 1. The trial (including jury selection) shall commence on 10/25/2010 (Trial schedule: Monday
17 through Thursday, at 1:30 p.m. to 5:00 p.m.). The trial shall last 8 days.
- 18 2. For any documents, including the deposition of a witness testifying at trial, which will be
19 shown to a witness but not admitted into evidence, counsel shall bring the original plus three
20 copies of the documents. The original document will be handed to the Court during
21 testimony and the copies will be given to the witness during the examination and to opposing
22 counsel.
- 23 3. (A) Counsel shall maintain their own exhibits during trial. Exhibits are to be premarked
24 with exhibit tags attached to the upper lefthand corner. If a photo or chart is being
25 used as an exhibit, the exhibit tag should be placed on the back side of the exhibit.
26 The Court will only admit premarked exhibits which were listed on the earlier filed
27 exhibit list.

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

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

N. Jury Selection:

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

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

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

4. From the list of jurors in numerical order, the Court will strike the persons with meritorious hardships, those excused for cause, and those challenged peremptorily. The Court will then call the first eight people in numerical sequence remaining. These people will be the jury. All jurors remaining at the close of the case will deliberate. There are no alternates (unless there is a lengthy trial).

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O. Sanctions:

Failure to comply with this Order is cause for sanctions under Federal Rule of Civil Procedure 16(f).

P. Transcripts and Recording Devices:

1. Counsel requesting a daily transcript shall contact Debra Campbell, Supervisor Court Reporting Services, at (415) 522-2079, at least ten days in advance of the trial date.
2. If any video or tape recording equipment or demonstrative devices will be used, a signed order will need to be obtained at least ten days in advance of the trial date for the items to clear security.

Q. Questions:

All questions regarding these instructions should be directed to Brenda Tolbert, Courtroom Deputy Clerk to Judge James, at (415) 522-4708.

IT IS SO ORDERED.

Dated: April 6, 2010



Maria-Elena James
Chief United States Magistrate Judge