

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

FREDDIE M. DAVIS,  
Plaintiff,

v.

JAMES E. AYALA and DARRYL GRIFFITH,  
Defendants.

---

No. C 09-2629 SI

**FINAL PRETRIAL SCHEDULING  
ORDER**

On September 28, 2011, the Court held a final pretrial conference in the above captioned matter. All parties were represented by counsel. The following matters were resolved:

1. **Date of trial:** Jury trial in this matter has been set to commence October 11, 2011. However, in light of the anticipated length of this trial and other calendar commitments of the Court and counsel, the parties agreed to continue the trial date until November 28, 2011.

2. **Number of jurors and challenges:** There shall be a jury of 8 members. Each side shall have up to four peremptory challenges.

3. **Voir dire:** The court will conduct general voir dire, and counsel for each side shall have up to 30 minutes total to question the panel.

4. **Jury instructions:** Counsel have submitted a set of proposed jury instructions, which reflect that they have agreed on almost none of the necessary instructions. Counsel are ordered to meet

1 and confer prior to the now-continued trial date, in an effort to reach consensus on most instructions.  
2 The Court advises that it prefers unadorned versions of the standard Ninth Circuit instructions, and that  
3 it will not give argumentative or redundant instructions. The parties' amended Joint Instruction shall  
4 be provided to the Court no later than November 21, 2011.

5  
6 5. **Trial exhibits:** No later than November 21, 2011, the parties shall submit their trial  
7 exhibits, in binders with numbered tabs separating and identifying each exhibit. The court shall be  
8 provided with three sets (for the court, the file and the witness) and each side shall provide one set for  
9 the other side. To the extent that original documents are to be used as exhibits in the case, they should  
10 be included in the set of exhibits for the court.

11  
12 6. **Timing of trial:** The parties originally estimated that the trial would take from 20 to 24  
13 trial days which, with 4-day trial weeks, amounts to 5 to 6 weeks of trial time.<sup>1</sup> At the pretrial  
14 conference, counsel agreed that trial could be completed in 3 weeks (12 days). Based on this revised  
15 estimate, each side shall have 45 minutes for opening statements; each side shall have 24 hours total  
16 for presentation of evidence, which includes direct and cross-examination and presentation of all  
17 exhibits; and each side shall have up to 1 hour for closing argument. In the event a punitive damage  
18 phase is required, each side shall have up to 15 minutes for opening statement; up to 1 hour to present  
19 evidence; and up to 30 minutes for closing argument.

20  
21 7. **Trial schedule:** Jury trials are generally conducted Monday through Thursday; jury  
22 trials are generally not conducted on Fridays, although deliberating juries are free to deliberate on  
23 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  
24 minute break at 12:00 noon and a 15 minute break at 2:00 p.m., all times approximate.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> As the Court noted at the conference, plaintiffs identified 43 potential witnesses, of whom 7  
28 (witnesses 3,4,5,6,7,8 and 9) were to testify to exactly the same thing. In addition, of the 12 witnesses  
identified by defendants, 9 were witnesses already identified by plaintiffs. It was clear, therefore, that  
elimination of overlap and cumulative testimony could substantially reduce the time needed for trial.

1           8.       **Motions in limine:** The parties filed numerous motions in limine, as follows:

2                   **Plaintiff's motions:**

3                   **No. 1, to bifurcate liability and damages:** Plaintiff seeks to bifurcate trial of liability from  
4 trial of damages, arguing that it will expedite the trial, allow “highly prejudicial” evidence of settlement  
5 with PHS to be kept from the jury during the liability phase, and reduce the cost of litigation. Defendant  
6 opposes the motion. The Court does not find that bifurcation would substantially save time, since except  
7 for the damages experts, most witnesses would have information on both topics. Further, the Court does  
8 not find that information concerning prior settlement with PHS is unduly prejudicial. The motion to  
9 bifurcate is DENIED.

10                   **No. 2, to exclude evidence of “irrelevant and stale complaints, grievances and**  
11 **discipline:** Plaintiff seeks to exclude evidence of complaints against her and discipline imposed on her  
12 which are either irrelevant or “stale.” The Court finds that in general plaintiff’s conduct on the job will  
13 be relevant to the claims in the case. However, the Court will consider any objections at time of trial  
14 to questions which would elicit irrelevant or unduly prejudicial information. DENIED without prejudice  
15 to specific objections to specific questions at time of trial.

16                   **No. 3, to exclude evidence of settlement with PHS:** Plaintiff withdrew this motion at the  
17 pretrial conference.

18                   **No. 4, to exclude Dr. Lipian and “improperly disclosed expert witnesses”:** To the extent  
19 this is a *Daubert* motion to exclude testimony by Dr. Lipian, it is DENIED as unsupported. To the  
20 extent this is a motion to exclude inadmissible opinion testimony from non-retained experts, the motion  
21 is DENIED without prejudice to specific objections to specific questions at time of trial.

22                   **No. 5, to exclude references to discovery disputes:** DENIED as framed. All parties and  
23 all counsel are ordered to act respectfully toward one another during the course of the trial.

24                   **No. 6, to exclude prior litigation by plaintiff:** Unopposed; GRANTED.

25                   **No. 7, to exclude surprise witnesses and use of undisclosed documents:** DENIED as  
26 framed, because premature and unsupported; but without prejudice to specific objections to specific  
27 questions or documents at time of trial.

28                   **No. 8, to exclude lay opinion re defendants’ discriminatory intent:** DENIED as framed,

1 because premature and unsupported; but without prejudice to specific objections to specific questions  
2 or documents at time of trial.

3 No. 9, to exclude inadmissible character evidence: Although framed as a motion to  
4 exclude “character” evidence, this motion seeks to exclude “false and unsubstantiated allegations that  
5 [plaintiff] was threatening or physically aggressive in the workplace.” Plaintiff’s conduct on the job will  
6 be relevant to the claims in this case, and admissible evidence concerning that conduct will be received.  
7 DENIED as framed, without prejudice to specific objections to specific questions

8  
9 **Defendants’ motions:**

10 No. A, to exclude plaintiff’s testimony about Dr. Rivoire’s comments: Dr. Rivoire, a  
11 psychologist who previously treated plaintiff, is dead. Defendants seeks to prevent plaintiff from  
12 testifying about “what he told her.” Without more context, the Court cannot determine whether such  
13 testimony would be admissible. DENIED as framed, without prejudice to specific objections to specific  
14 questions at trial.

15 No. B, to exclude NLRB charges against PHS: This motion will be addressed in a  
16 separate order.

17 No. C, to exclude statements from inmates at Santa Rita Jail: Defendants seek to exclude  
18 as hearsay plaintiff’s statements about what inmates at Santa Rita Jail told her about what defendant  
19 Griffith had said. The Court agrees that such testimony would be inadmissible hearsay; even if offered  
20 not for the truth but for plaintiff’s state of mind, the statement would only be relevant to these  
21 defendants if true. Inmates may provide such testimony; plaintiff may not. GRANTED.

22 No. D, to exclude statements from sheriff’s deputies at Santa Rita Jail: Defendants seek  
23 to exclude as hearsay plaintiff’s statements about what non-defendant sheriff’s deputies said to her.  
24 Without more context, the Court cannot determine what such statements might be or why they might  
25 be offered. DENIED as framed, without prejudice to specific objections to specific questions at trial.

26 No. E, to exclude “speculation” about motives: No witnesses may speculate about other  
27 persons’ motives. To that extent the motion is GRANTED.

28 No. F, to exclude plaintiff from “blaming” these defendants for acts of PHS: DENIED

1 as framed, without prejudice to specific objections to specific questions at trial.

2 No. G, to exclude complaints by nurses against Sharon Gober: Information about  
3 plaintiff's petition activity concerning Sharon Gober is relevant to the claims in this case. DENIED as  
4 framed, without prejudice to specific objections to specific questions at trial.

5

6 **IT IS SO ORDERED.**

7

8 Dated: October 6, 2011



9  
10 

---

SUSAN ILLSTON  
United States District Judge

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28