

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

LAURIE SMITH,

Plaintiff,

No. C 09-02903 WHA

v.

AMERICAN AIRLINES, INC.,
and DOES 1 to 50,

**AMENDED CASE
MANAGEMENT ORDER**

Defendants.

_____ /
This amended case management order supersedes the original case management order filed on November 3, 2009 (Dkt. No. 26). The undersigned will grant counsel’s request to continue the discovery deadlines and trial date in this action, notwithstanding its misgivings as to whether counsel have been diligent in their efforts to prepare for and carry out their discovery-related obligations. This will be the only continuance granted in this action. No further requests will be approved.

One important *caveat* must be emphasized. While the Court will do its best to hear the case on its new trial date of April 4, 2011, this action may have to trail on the account of a very heavy criminal calendar and other civil cases that have been waiting their turn. Despite this inconvenience, counsel *must* be ready to try this case and should not ask for further continuances.

With this backdrop in mind, the Court enters the following amended case management order pursuant to FRCP 16 and Civil Local Rule 16-10:

- 1 1. All initial disclosures under FRCP 26 have already been made.
- 2 2. The deadline to seek leave to add any new parties or pleading amendments has passed.
- 3 3. The non-expert discovery cut-off date shall be **SEPTEMBER 15, 2010**.
- 4 4. The last date for designation of expert testimony and disclosure of full expert reports
5 under FRCP 26(a)(2) as to any issue on which a party has the burden of proof
6 (“opening reports”) shall be **SEPTEMBER 15, 2010**. Within **FOURTEEN CALENDAR**
7 **DAYS** of said deadline, all other parties must disclose any expert reports on the same
8 issue (“opposition reports”). Within **SEVEN CALENDAR DAYS** thereafter, the party with
9 the burden of proof must disclose any reply reports rebutting specific material in
10 opposition reports. Reply reports must be limited to true rebuttal and should be very
11 brief. They should not add new material that should have been placed in the opening
12 report and the reply material will ordinarily be reserved for the rebuttal or sur-rebuttal
13 phase of the trial. If the party with the burden of proof neglects to make a timely
14 disclosure, the other side, if it wishes to put in expert evidence on the same issue
15 anyway, must disclose its expert report within the fourteen-day period. In that event,
16 the party with the burden of proof on the issue may then file a reply expert report
17 within the seven-day period, subject to possible exclusion for “sandbagging” and, at all
18 events, any such reply material may be presented at trial only after, if at all, the other
19 side actually presents expert testimony to which the reply is responsive. The cutoff for
20 all expert discovery shall be **FOURTEEN CALENDAR DAYS** after the deadline for reply
21 reports. In aid of preparing an opposition or reply report, a responding party may
22 depose the adverse expert sufficiently before the deadline for the opposition or reply
23 report so as to use the testimony in preparing the response. Experts must make
24 themselves readily available for such depositions. Alternatively, the responding party
25 can elect to depose the expert later in the expert-discovery period. An expert, however,
26 may be deposed only once unless the expert is used for different opening and/or
27 opposition reports, in which case the expert may be deposed independently on the
28 subject matter of each report. At least **28 CALENDAR DAYS** before the due date for

1 opening reports, each party shall serve a list of issues on which it will offer any expert
2 testimony in its case-in-chief (including from non-retained experts). This is so that all
3 parties will be timely able to obtain counter-experts on the listed issues and to facilitate
4 the timely completeness of all expert reports. Failure to so disclose may result in
5 preclusion.

6 5. As to damages studies, the cut-off date for *past damages* will be as of the expert report
7 (or such earlier date as the expert may select). In addition, the experts may try to
8 project *future damages* (*i.e.*, after the cut-off date) if the substantive standards for
9 future damages can be met. With timely leave of Court or by written stipulation, the
10 experts may update their reports (with supplemental reports) to a date closer to the time
11 of trial.

12 6. At trial, the direct testimony of experts will be limited to the matters disclosed in their
13 reports. Omitted material may not ordinarily be added on direct examination.
14 This means the reports must be complete and sufficiently detailed.
15 Illustrative animations, diagrams, charts and models may be used on direct examination
16 only if they were part of the expert's report, with the exception of simple drawings and
17 tabulations that plainly illustrate what is already in the report, which can be drawn by
18 the witness at trial or otherwise shown to the jury. If cross-examination fairly opens
19 the door, however, an expert may go beyond the written report on cross-examination
20 and/or redirect examination. By written stipulation, of course, all sides may relax these
21 requirements.

22 7. To head off a recurring problem, experts lacking percipient knowledge should avoid
23 vouching for the credibility of witnesses, *i.e.*, whose version of the facts in dispute is
24 correct. This means that they may not, for example, testify that based upon a review of
25 fact depositions and other material supplied by counsel, a police officer did (or did not)
26 violate standards. Rather, the expert should be asked for his or her opinion based —
27 explicitly — upon an assumed fact scenario. This will make clear that the witness is
28 not attempting to make credibility and fact findings and thereby to invade the province

1 of the jury. Of course, a qualified expert can testify to relevant customs, usages,
2 practices, recognized standards of conduct, and other specialized matters beyond the
3 ken of a lay jury. This subject is addressed further in the trial guidelines referenced in
4 paragraph 15 below.

- 5 8. Counsel need not request a motion hearing date and may notice non-discovery motions
6 for any Thursday (excepting holidays) at 8:00 a.m. The Court sometimes rules on the
7 papers, issuing a written order and vacating the hearing. If a written request for oral
8 argument is filed before a ruling, stating that a lawyer of four or fewer years out of law
9 school will conduct the oral argument or at least the lion's share, then the Court will
10 hear oral argument, believing that young lawyers need more opportunities for
11 appearances than they usually receive.
- 12 9. The last date to file dispositive motions shall be **OCTOBER 28, 2010**. No dispositive
13 motions shall be heard more than 35 days *after* this deadline, *i.e.*, if any party waits
14 until the last day to file, then the parties must adhere to the 35-day track.
- 15 10. The **FINAL PRETRIAL CONFERENCE** shall be at **2:00 P.M. on MARCH 21, 2011**. For the
16 form of submissions for the final pretrial conference and trial, please see paragraph 15
17 below.
- 18 11. A **JURY TRIAL** shall begin on **APRIL 4, 2011**, at **7:30 A.M.**, in Courtroom 9, 19th Floor,
19 450 Golden Gate Avenue, San Francisco, California, 94102. The trial schedule and
20 time limits shall be set at the final pretrial conference. Although almost all trials
21 proceed on the date scheduled, it may be necessary on occasion for a case to trail,
22 meaning the trial may commence a few days or even a few weeks after the date stated
23 above, due to calendar congestion and the need to give priority to criminal trials.
24 Counsel and the parties should plan accordingly, including advising witnesses.
- 25 12. Counsel may not stipulate around the foregoing dates without Court approval.
- 26 13. While the Court encourages the parties to engage in settlement discussions, please do
27 not ask for any extensions on the ground of settlement discussions or on the ground that
28 the parties experienced delays in scheduling settlement conferences, mediation or ENE.

1 The parties should proceed to prepare their cases for trial. No continuance (even if
2 stipulated) shall be granted on the ground of incomplete preparation without competent
3 and detailed declarations setting forth good cause.

4 14. To avoid any misunderstanding with respect to the final pretrial conference and trial,
5 the Court wishes to emphasize that all filings and appearances must be made — on pain
6 of dismissal, default or other sanction — unless and until a dismissal fully resolving the
7 case is received. It will not be enough to inform the clerk that a settlement in principle
8 has been reached or to lodge a partially executed settlement agreement or to lodge a
9 fully executed agreement (or dismissal) that resolves less than the entire case.

10 Where, however, a fully-executed settlement agreement clearly and fully disposing of
11 the entire case is lodged reasonably in advance of the pretrial conference or trial and
12 only a ministerial act remains, the Court will arrange a telephone conference to work
13 out an alternate procedure pending a formal dismissal.

14 15. If you have not already done so, please read and follow the “Supplemental Order to
15 Order Setting Initial Case Management Conference in Civil Cases Before Judge
16 William Alsup” and other orders issued by the Clerk’s office when this action was
17 commenced. Among other things, the supplemental order explains when submissions
18 are to go to the Clerk’s Office (the general rule) versus when submissions may go
19 directly to chambers (rarely). With respect to the final pretrial conference and trial,
20 please read and follow the “Guidelines For Trial and Final Pretrial Conference in Civil
21 Jury Cases Before The Honorable William Alsup.” All orders and guidelines
22 referenced in the paragraph are available on the district court’s website at
23 <http://www.cand.uscourts.gov>. The website also includes other guidelines for
24 attorney’s fees motions and the necessary form of attorney time records for cases
25 before Judge Alsup. If you do not have access to the Internet, you may contact Deputy
26 Clerk Dawn K. Toland at (415) 522-2020 to learn how to pick up a hard copy.

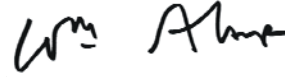
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16. All pretrial disclosures under FRCP 26(a)(3) and objections required by FRCP 26(a)(3) must be made on the schedule established by said rule.

IT IS SO ORDERED.

Dated: June 22, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE