

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRELL WHITLEY, et al.,
Plaintiffs.
v.
NATIONAL RAILROAD PASSENGER
CORPORATION,
Defendant.

Case No. [12-cv-01781-JSC](#)

PRETRIAL ORDER

Following the Further Case Management Conference held on February 27, 2014, IT IS
HEREBY ORDERED THAT:

I. CASE MANAGEMENT SCHEDULE

- Deadline for Settlement Conference with Judge James May 2, 2014
- Fact Discovery Cut-Off: June 30, 2014
- Deadline for Hearing Dispositive Motions: July 31, 2014

II. TRIAL DATE

- A. Jury trial will begin on September 8, 2014, at 8:30 a.m., in Courtroom F, 15th Floor, U.S. District Court, 450 Golden Gate, San Francisco, California.
- B. The Court is expecting the length of the trial to not exceed 10 court days.

III. PRETRIAL CONFERENCE

A Final Pretrial Conference shall be held on August 21, 2014, at 2:00 p.m., in Courtroom F, 15th Floor. Lead trial counsel for each party shall attend.

- A. At least seven days prior to date of the Final Pretrial Conference the parties shall do the following:

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1 1. In lieu of preparing a Joint Pretrial Conference Statement, the parties shall
2 meet and confer in person, and then prepare and file a jointly signed Proposed Final Pretrial Order
3 that contains: (a) a brief description of the substance of claims and defenses which remain to be
4 decided; (b) a statement of all relief sought; (c) all stipulated facts; (d) a joint exhibit list in
5 numerical order, including a brief description of the exhibit and Bates numbers, a blank column for
6 when it will be offered into evidence, a blank column for when it may be received into evidence,
7 and a blank column for any limitations on its use; and (e) each party’s separate witness list for its
8 case-in-chief witnesses (including those appearing by deposition), including, for all such witnesses
9 (other than party plaintiffs or defendants), a short statement of the substance of his/her testimony
10 and, separately, what, if any, non-cumulative testimony the witness will offer. For each witness,
11 state an hour/minute time estimate for the direct examination (only). Items (d) and (e) should be
12 submitted as appendices to the proposed order. The proposed order should also state which issues, if
13 any, are for the Court to decide, rather than the jury.

14 2. File a joint set of proposed instructions on substantive issues of law arranged
15 in a logical sequence. If undisputed, an instruction shall be identified as “Stipulated Instruction No.
16 ____ Re _____,” with the blanks filled in as appropriate. If disputed, each version of the
17 instruction shall be inserted together, back to back, in their logical place in the overall sequence.
18 Each such disputed instruction shall be identified as, for example, “Disputed Instruction No. ____
19 Re _____ Offered by _____,” with the blanks filled in as appropriate. All
20 disputed versions of the same basic instruction shall bear the same number. Any modifications to a
21 form instruction must be plainly identified. If a party does not have a counter version and simply
22 contends that no such instruction in any version should be given, then that party should so state (and
23 explain why) on a separate page inserted in lieu of an alternate version. With respect to form
24 preliminary instructions, general instructions, or concluding instructions, please simply cite to the
25 numbers of the requested instructions in the current edition of the Ninth Circuit Model Jury
26 Instructions. Other than citing the numbers, the parties shall not include preliminary, general, or
27 concluding instructions in the packet.

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1 3. File a separate memorandum of law in support of each party’s disputed
2 instructions, if any, organized by instruction number.

3 4. File a joint set of proposed voir dire questions supplemented as necessary by
4 separate requests.

5 5. File trial briefs on any controlling issues of law.

6 6. File proposed verdict forms, joint or separate.

7 7. File and serve any objections to exhibits.

8 8. File a joint simplified Statement of the Case to be read to the jury during voir
9 dire as part of the proposed jury instructions. Unless the case is extremely complex, this statement
10 should not exceed one page.

11 B. Any motions in limine shall be submitted as follows: at least twenty (20) calendar
12 days before the conference, the moving party shall serve, but not file, the opening brief. At least ten
13 (10) calendar days before the conference, the responding party shall serve the opposition. There will
14 be no reply. When the oppositions are received, the moving party should collate the motion and the
15 opposition together, back-to-back, and then file the paired sets at least seven (7) calendar days
16 before the conference. Each motion should be presented in a separate memorandum and properly
17 identified, for example, “Plaintiff’s Motion in Limine No. 1 to Exclude” Each party is limited
18 to bringing five motions in limine. The parties are encouraged to stipulate where possible, for
19 example, as to the exclusion of witnesses from the courtroom. Each motion should address a single,
20 separate topic, and contain no more than seven pages of briefing per side.

21 C. Hard-copy courtesy copies of the above documents shall be delivered by NOON the
22 day after filing. The Joint Proposed Final Pretrial Order, jury instructions, and verdict form shall be
23 submitted via e-mail as attachments to JSCpo@cand.uscourts.gov. The Court requests that all hard-
24 copy submissions be three-hole-punched.

25 **IV. PRETRIAL ARRANGEMENTS**

26 A. Should a daily transcript and/or real-time reporting be desired, the parties shall make
27 arrangements with Debra Campbell, Supervisor of the Court Reporting Services, at (415) 522-2079,
28 at least ten (10) calendar days prior to the trial date.

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WITNESSES

At the close of each trial day, all counsel shall exchange a list of witnesses for the next two full court days and the exhibits that will be used during direct examination (other than for impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall provide any objections to such exhibits and shall provide a list of all exhibits to be used with the same witness on cross-examination (other than for impeachment). The first notice shall be exchanged prior to the first day of trial. All such notices shall be provided in writing.

EXHIBITS

A. Prior to the Final Pretrial Conference, counsel must meet and confer in person to consider all exhibit numbers and objections and to eliminate duplicate exhibits and confusion over the precise exhibit.

B. Use numbers only, not letters, for exhibits, preferably the same numbers as were used in depositions. Blocks of numbers should be assigned to fit the need of the case (e.g., Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single exhibit should be marked only once. If the plaintiff has marked an exhibit, then the defendant should not remark the exact document with another number. Different versions of the same document, e.g., a copy with additional handwriting, must be treated as different exhibits with different numbers. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. _____,” not as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.”

C. The exhibit tag shall be in the following form:

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT 100
Case No. _____
Date Entered _____
By _____ Deputy Clerk

1 Counsel preferably will make the tag up in a color that will stand out (yet still allow for
2 photocopying), but that is not essential. Place the tag on or near the lower right-hand corner or, if a
3 photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The
4 parties must jointly prepare a single set of all trial exhibits that will be the official record set to be
5 used with the witnesses and on appeal. Each exhibit must be tagged, three-hole-punched, separated
6 with a label divider identifying the exhibit number, and placed in 3-ring binders. Spine labels
7 should indicate the numbers of the exhibits that are in the binders. Each set of exhibit binders
8 should be marked as “Original.” Deposit the exhibits with the deputy clerk seven (7) days before
9 the Pretrial Conference.

10 D. Counsel must consult with each other and with the deputy clerk at the end of each
11 trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If there
12 are any differences, counsel should bring them promptly to the Court’s attention.

13 E. In addition to the official record exhibits, two sets of bench binders containing copies
14 of the exhibits must be provided to the Court seven (7) days before the Pretrial Conference, one
15 should be marked as “Chambers Copies” and the other as “Clerk’s Copies.” Each exhibit must be
16 separated with a label divider identifying the exhibit number. (An exhibit tag is unnecessary for the
17 bench set.) Spine labels should indicate the numbers of the exhibits that are in the binders.

18 F. Before the closing arguments, counsel must confer with the deputy clerk to make
19 sure the exhibits in evidence are in good order.

20 G. Exhibit notebooks for the jury will not be permitted without prior permission from
21 the Court. Publication must be by poster blow-up, overhead projection, or such other method as is
22 allowed in the circumstances. It is permissible to highlight, circle or underscore in the enlargements
23 as long as it is clear that it was not on the original.

24 **CHARGING CONFERENCE**

25 As the trial progresses and the evidence is heard, the Court will fashion a comprehensive set
26 of jury instructions to cover all issues actually being tried. Prior to the close of the evidence, the
27 Court will provide a draft final charge to the parties. After a reasonable period for review, one or
28 more charging conferences will be held at which each party may object to any passage, ask for

1 modifications, or ask for additions. Any instruction request must be renewed specifically at the
2 conference or it will be deemed waived, whether or not it was requested prior to trial. If, however, a
3 party still wishes to request an omitted instruction after reviewing the Court's draft, then it must
4 affirmatively re-request it at the charging conference in order to give the Court a fair opportunity to
5 correct any error. Otherwise, as stated, the request will be deemed abandoned or waived.

6 **IT IS SO ORDERED.**

7 Dated: March 3, 2014

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10 JACQUELINE SCOTT CORLEY
11 United States Magistrate Judge
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