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

United States District Court
Northern District of California

CHERYL BINDER,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION,

Defendant.

Case No.: 12-cv-04807 JSC
PRETRIAL ORDER

Following the parties' submission of a Joint Case Management Conference Statement on January 14, 2013, IT IS HEREBY ORDERED THAT:

I. CASE MANAGEMENT SCHEDULE

- Fact Discovery Cut-Off: September 23, 2013
- Deadline for Hearing Dispositive Motions: November 21, 2013
- Plaintiff's Expert Witness Disclosures: December 20, 2013
- Plaintiff's Experts' Depositions: January 10, 2014
- Defendant's Expert Witness Disclosures: January 31, 2014
- Defendant's Experts' Depositions: February 20, 2014

1 Expert Discovery Cutoff:

March 3, 2014

2 Parties shall appear for a further Case Management Conference on September 5, 2013,
3 at 1:30 p.m., in Courtroom F, 15th Floor, U.S. District Court, 450 Golden Gate, San
4 Francisco, California. Counsel may contact Court Call at 1-888-882-6878 to make
5 arrangements to appear by telephone.

6 The Court further orders that private mediation shall occur within 120 days of the date
7 of this Order. If the parties cannot agree on a private mediator within 30 days of the date of
8 this order, the parties shall notify the Court of such disagreement and the Court will refer the
9 parties to a volunteer mediator program.

10 **II. TRIAL DATE**

11 A. Jury trial will begin on April 21, 2014, at 8:30 a.m., in Courtroom F, 15th Floor,
12 U.S. District Court, 450 Golden Gate, San Francisco, California.

13 B. The Court is expecting the length of the trial to not exceed seven court days.

14 **III. PRETRIAL CONFERENCE**

15 A Final Pretrial Conference shall be held on April 3, 2014, at 2:30 p.m., in Courtroom
16 F, 15th Floor. Lead trial counsel for each party shall attend.

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

19 1. In lieu of preparing a Joint Pretrial Conference Statement, the parties
20 shall meet and confer in person, and then prepare and file a jointly signed Proposed Final
21 Pretrial Order that contains: (a) a brief description of the substance of claims and defenses
22 which remain to be decided; (b) a statement of all relief sought; (c) all stipulated facts; (d) a
23 joint exhibit list in numerical order, including a brief description of the exhibit and Bates
24 numbers, a blank column for when it will be offered into evidence, a blank column for when
25 it may be received into evidence, and a blank column for any limitations on its use; and (e)
26 each party's separate witness list for its case-in-chief witnesses (including those appearing by
27 deposition), including, for all such witnesses (other than party plaintiffs or defendants), a
28 short statement of the substance of his/her testimony and, separately, what, if any, non-

1 cumulative testimony the witness will offer. For each witness, state an hour/minute time
2 estimate for the direct examination (only). Items (d) and (e) should be submitted as
3 appendices to the proposed order. The proposed order should also state which issues, if any,
4 are for the Court to decide, rather than the jury.

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

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

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

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

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

26 7. File and serve any objections to exhibits.

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

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

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

19 **IV. PRETRIAL ARRANGEMENTS**

20 A. Should a daily transcript and/or real-time reporting be desired, the parties shall
21 make arrangements with Debra Campbell, Supervisor of the Court Reporting Services, at
22 (415) 522-2079, at least ten (10) calendar days prior to the trial date.

23 B. During trial, counsel may wish to use overhead projectors, laser-disk/computer
24 graphics, poster blow-ups, models, or specimens of devices. Equipment should be shared by
25 all counsel to the maximum extent possible. The Court provides no equipment other than an
26 easel. The United States Marshal requires a court order to allow equipment into the
27 courthouse. For electronic equipment, parties should be prepared to maintain the equipment
28 or have a technician handy at all times. The parties shall tape extension cords to the carpet for

1 safety. The parties may work with the deputy clerk, Ada Means (415-522-2015), on all
2 courtroom-layout issues.

3 **SCHEDULING**

4 Trial will be conducted from 8:30 a.m. to 2:30 or 3:00 p.m., depending on the
5 preference of the jury and the parties, Monday through Friday. Counsel must arrive by 8:15
6 a.m., or earlier as needed, for any matters to be heard out of the presence of the jury. The jury
7 will be called at 8:30 a.m.

8 **THE JURY**

9 In civil cases, there are no alternate jurors and the jury is selected as follows:
10 Eighteen to twenty jurors are called to fill the jury box and the row in front of the bar, and are
11 given numbers (1 through 18). The remaining potential jurors will be seated in the public
12 benches. Hardship excuses will usually be considered at this point. The Court will then ask
13 questions of those in the box and in the front of the bar. Counsel may then conduct a limited
14 voir dire. Challenges for cause will then be addressed out of the presence of the potential
15 jurors. The Court will consider whether to fill in the seats of the stricken jurors. If so,
16 questions will be asked of the additional jurors and cause motions as to them will be
17 considered. After a short recess, each side may exercise its allotment of peremptory
18 challenges out of the presence of the potential jurors. The eight (or such other size as will
19 constitute the jury) surviving the challenge process with the lowest numbers become the final
20 jury. For example, if the plaintiff strikes 1, 5, and 7 and the defendant strikes 2, 4, and 9, then
21 3, 6, 8, 10, 11, 12, 13, and 14 become the final jury. If more (or fewer) than eight jurors are to
22 be seated, then the starting number will be adjusted. So too if more than a total of six
23 peremptories are allowed. Once the jury selection is completed, the jurors' names will be read
24 again and they will be seated in the jury box and sworn. The Court may alter this procedure in
25 its discretion and after consultation with the parties.

26 **WITNESSES**

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

7 **EXHIBITS**

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

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

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

21
22 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

23
24 **TRIAL EXHIBIT 100**

25
26 Case No. _____

27 Date Entered _____

28 By _____

Deputy Clerk

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

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

16 E. In addition to the official record exhibits, a single, joint set of bench binders
17 containing a copy of the exhibits must be provided to the Court seven (7) days before the
18 Pretrial Conference, and should be marked as “Chambers Copies.” Each exhibit must be
19 separated with a label divider identifying the exhibit number. (An exhibit tag is unnecessary
20 for the bench set.) Spine labels should indicate the numbers of the exhibits that are in the
21 binders.

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

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

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CHARGING CONFERENCE

As the trial progresses and the evidence is heard, the Court will fashion a comprehensive set of jury instructions to cover all issues actually being tried. Prior to the close of the evidence, the Court will provide a draft final charge to the parties. After a reasonable period for review, one or more charging conferences will be held at which each party may object to any passage, ask for modifications, or ask for additions. Any instruction request must be renewed specifically at the conference or it will be deemed waived, whether or not it was requested prior to trial. If, however, a party still wishes to request an omitted instruction after reviewing the Court's draft, then it must affirmatively re-request it at the charging conference in order to give the Court a fair opportunity to correct any error. Otherwise, as stated, the request will be deemed abandoned or waived.

IT IS SO ORDERED.

Dated: January 24, 2013



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE