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

United States District Court
Northern District of California

GARY HESTERBERG,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No.: 13-cv-01265 JSC
PRETRIAL ORDER

Following the Case Management Conference held on July 11, 2013, IT IS HEREBY ORDERED THAT:

I. CASE MANAGEMENT SCHEDULE

- Deadline for parties to hold settlement conference: October 11, 2013
- Fact Discovery Cut-Off: December 20, 2013
- Expert Disclosures: December 20, 2013
- Expert Discovery Cut-Off: February 7, 2014
- Dispositive Motion Hearing Deadline: February 27, 2014

Parties shall appear for a further Case Management Conference on November 21, 2013, at 1:30 p.m., in Courtroom F, 15th Floor, U.S. District Court, 450 Golden Gate, San

1 Francisco, California. Counsel may contact Court Call at 1-888-882-6878 to make
2 arrangements to appear by telephone.

3 **II. TRIAL DATE**

4 A. Jury trial will begin on April 28, 2014, at 8:30 a.m., in Courtroom F, 15th Floor,
5 U.S. District Court, 450 Golden Gate, San Francisco, California.

6 B. The Court is expecting the length of the trial to not exceed five court days.

7 **III. PRETRIAL CONFERENCE**

8 A Final Pretrial Conference shall be held on April 14, 2014, at 2:00 p.m., in Courtroom
9 F, 15th Floor. Lead trial counsel for each party shall attend.

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

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

26 2. File a joint set of proposed instructions on substantive issues of law
27 arranged in a logical sequence. If undisputed, an instruction shall be identified as "Stipulated
28 Instruction No. ____ Re _____," with the blanks filled in as appropriate. If disputed,

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

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

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

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

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

19 7. File and serve any objections to exhibits.

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

23 B. Any motions in limine shall be submitted as follows: at least twenty (20)
24 calendar days before the conference, the moving party shall serve, but not file, the opening
25 brief. At least ten (10) calendar days before the conference, the responding party shall serve
26 the opposition. There will be no reply. When the oppositions are received, the moving party
27 should collate the motion and the opposition together, back-to-back, and then file the paired
28 sets at least seven (7) calendar days before the conference. Each motion should be presented

1 in a separate memorandum and properly identified, for example, “Plaintiff’s Motion in
2 Limine No. 1 to Exclude” Each party is limited to bringing five motions in limine. The
3 parties are encouraged to stipulate where possible, for example, as to the exclusion of
4 witnesses from the courtroom. Each motion should address a single, separate topic, and
5 contain no more than seven pages of briefing per side.

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

10 **IV. PRETRIAL ARRANGEMENTS**

11 A. Should a daily transcript and/or real-time reporting be desired, the parties shall
12 make arrangements with Debra Campbell, Supervisor of the Court Reporting Services, at
13 (415) 522-2079, at least ten (10) calendar days prior to the trial date.

14 B. During trial, counsel may wish to use overhead projectors, laser-disk/computer
15 graphics, poster blow-ups, models, or specimens of devices. Equipment should be shared by
16 all counsel to the maximum extent possible. The Court provides no equipment other than an
17 easel. The United States Marshal requires a court order to allow equipment into the
18 courthouse. For electronic equipment, parties should be prepared to maintain the equipment
19 or have a technician handy at all times. The parties shall tape extension cords to the carpet for
20 safety. The parties may work with the deputy clerk, Ada Means (415-522-2015), on all
21 courtroom-layout issues.

22 **SCHEDULING**

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

27 **THE JURY**

28 In civil cases, there are no alternate jurors and the jury is selected as follows:

1 Eighteen to twenty jurors are called to fill the jury box and the row in front of the bar, and are
2 given numbers (1 through 18). The remaining potential jurors will be seated in the public
3 benches. Hardship excuses will usually be considered at this point. The Court will then ask
4 questions of those in the box and in the front of the bar. Counsel may then conduct a limited
5 voir dire. Challenges for cause will then be addressed out of the presence of the potential
6 jurors. The Court will consider whether to fill in the seats of the stricken jurors. If so,
7 questions will be asked of the additional jurors and cause motions as to them will be
8 considered. After a short recess, each side may exercise its allotment of peremptory
9 challenges out of the presence of the potential jurors. The eight (or such other size as will
10 constitute the jury) surviving the challenge process with the lowest numbers become the final
11 jury. For example, if the plaintiff strikes 1, 5, and 7 and the defendant strikes 2, 4, and 9, then
12 3, 6, 8, 10, 11, 12, 13, and 14 become the final jury. If more (or fewer) than eight jurors are to
13 be seated, then the starting number will be adjusted. So too if more than a total of six
14 peremptories are allowed. Once the jury selection is completed, the jurors' names will be read
15 again and they will be seated in the jury box and sworn. The Court may alter this procedure in
16 its discretion and after consultation with the parties.

17 **WITNESSES**

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

25 **EXHIBITS**

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

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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 re-mark 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:

<p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA</p> <p style="text-align: center;">TRIAL EXHIBIT 100</p> <p>Case No. _____</p> <p>Date Entered _____</p> <p>By _____</p> <p style="text-align: center;">Deputy Clerk</p>
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Counsel preferably will make the tag up in a color that will stand out (yet still allow for photocopying), but that is not essential. Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The parties must jointly prepare a single set of all trial exhibits that will be the official record set to be used with the witnesses and on appeal. Each exhibit must be tagged, three-hole-punched, separated with a label divider identifying the exhibit number, and placed in 3-ring binders. Spine labels should indicate the numbers of the exhibits that are in the binders.

1 Each set of exhibit binders should be marked as “Original.” Deposit the exhibits with the
2 deputy clerk seven (7) days before the Pretrial Conference.

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

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

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

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

19 **CHARGING CONFERENCE**

20 As the trial progresses and the evidence is heard, the Court will fashion a
21 comprehensive set of jury instructions to cover all issues actually being tried. Prior to the
22 close of the evidence, the Court will provide a draft final charge to the parties. After a
23 reasonable period for review, one or more charging conferences will be held at which each
24 party may object to any passage, ask for modifications, or ask for additions. Any instruction
25 request must be renewed specifically at the conference or it will be deemed waived, whether
26 or not it was requested prior to trial. If, however, a party still wishes to request an omitted
27 instruction after reviewing the Court’s draft, then it must affirmatively re-request it at the
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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: July 11, 2013



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE