

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

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KIAN R. MCCARTHY,  
Plaintiff,  
v.  
MEGAN J. BRENNAN,  
Defendant.

Case No. [15-cv-03308-JSC](#)

**PRETRIAL ORDER**

Following the Further Case Management Conference held on July 13, 2017, IT IS  
ORDERED THAT:

**I. CASE MANAGEMENT SCHEDULE**

- Last Day to Move to Amend: September 15, 2017
- Fact Discovery Cut-Off: January 12, 2018
- Expert Witness Disclosures: January 26, 2018
- Rebuttal Expert Witness Disclosures: February 12, 2018
- Expert Discovery Cutoff: March 9, 2018
- Deadline for Hearing Dispositive Motions: May 24, 2018

**II. TRIAL DATE**

- A. Jury trial will begin on July 23, 2018, 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 July 5, 2018, 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

1 the following:

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

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

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  
4 by 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  
9 voir dire as part of the proposed jury instructions. Unless the case is extremely complex, this  
10 statement 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  
13 ten (10) calendar days before the conference, the responding party shall serve the opposition.  
14 There will be no reply. When the oppositions are received, the moving party should collate the  
15 motion and the opposition together, back-to-back, and then file the paired sets at least seven (7)  
16 calendar days before the conference. Each motion should be presented in a separate memorandum  
17 and properly identified, for example, “Plaintiff’s Motion in Limine No. 1 to Exclude . . . .” Each  
18 party is limited to bringing five motions in limine. The parties are encouraged to stipulate where  
19 possible, for example, as to the exclusion of witnesses from the courtroom. Each motion should  
20 address a single, 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  
22 the day after filing. The Joint Proposed Final Pretrial Order, jury instructions, and verdict form  
23 shall be submitted via e-mail as attachments to JSCpo@cand.uscourts.gov. The Court requests that  
24 all hard-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  
27 make arrangements with Rick Duvall, Supervisor of the Court Reporting Services, at  
28 (415) 522-2079, at least ten (10) calendar days prior to the trial date.



1 this procedure in its discretion and after consultation with the parties.

2 **WITNESSES**

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

9 **EXHIBITS**

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

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

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

23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
<b>TRIAL EXHIBIT 100</b>
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  
12 there are any differences, counsel should bring them promptly to the Court’s attention.

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

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

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

25 **CHARGING CONFERENCE**

26 As the trial progresses and the evidence is heard, the Court will fashion a comprehensive  
27 set of jury instructions to cover all issues actually being tried. Prior to the close of the evidence,  
28 the Court will provide a draft final charge to the parties. After a reasonable period for review, one

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

7 **IT IS SO ORDERED.**

8 Dated: July 13, 2017

9   
10 \_\_\_\_\_  
11 JACQUELINE SCOTT CORLEY  
12 United States Magistrate Judge

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**BACKGROUND**

HAVE EACH OF THE 20 PROSPECTIVE JURORS ANSWER ALOUD THE GENERAL BACKGROUND QUESTIONS ON THE SHEET THAT HAS BEEN HANDED OUT.

1. Please state your name:
2. Please state the city in which you live:
  - a. How long have you lived there?
  - b. Where else have you lived in the past 5 years?
3. What is your current occupation?
  - a. How long have you been so employed?
  - b. What are your previous occupations, if any?
  - c. Have you or any member of your family been employed by a law firm?
4. Please give us the following information about your family:
  - a. Are you married?
    1. If so, what is your spouse's current occupation and by whom is your spouse employed?
  - b. Do you have any children?

If so:

    1. How many?
    2. What ages?
    3. What are their occupations, if any?
5. Are there any other adults living in your household?
  - a. If so, how are they related to you, and what is their age and occupation?