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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION  
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8 IVANA KIROLA, et al.,

9 Plaintiffs,

10 vs.

11 THE CITY AND COUNTY OF SAN  
12 FRANCISCO, et al.,

13 Defendants.  
14  
15

Case No: C 07-03685 SBA

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION FOR LEAVE TO AMEND  
EXHIBIT LIST, WITNESS LIST,  
AND TO PERMIT SUPPLEMENTAL  
REPORTS OF PLAINTIFFS'  
EXPERTS D. PAUL REGAN AND  
ERICH SEAMON**

Dkt. 523

16 The parties are presently before the Court on Plaintiffs' Motion for Leave to Amend  
17 Exhibit List, Witness List, and to Permit Supplemental Expert Reports, filed on March 29,  
18 2011. Dkt. 523. Having read and considered the papers filed in connection with this matter  
19 and being fully informed, the Court hereby GRANTS IN PART and DENIES IN PART the  
20 motion for the reasons set forth below. The Court, in its discretion, finds this matter suitable  
21 for resolution without oral argument. See Fed.R.Civ.P. 78(b).

22 **I. PROCEDURAL BACKGROUND**

23 The parties are familiar with the facts of this case, which will not be repeated in detail.  
24 At the January 25, 2011 pretrial conference, the Court granted Defendant the City and County  
25 of San Francisco ("City") leave to amend its trial exhibit list to reflect the current conditions in  
26 the City's public rights of way, libraries, park facilities, and financial condition, as the initial  
27 trial date in this matter had been continued. See Dkt. 462. The Court also granted the parties  
28 leave to conduct additional discovery directed to the new exhibits identified in the City's

1 motion for leave. On March 29, 2011, Plaintiffs filed the instant Motion for Leave to Amend  
2 Exhibit List, Witness List, and to Permit Supplemental Expert Reports. The City opposes  
3 Plaintiffs' motion in part, as discussed below. Trial in this matter is scheduled for April 4,  
4 2011.

5 **II. ANALYSIS**

6 Plaintiffs assert that their proposed amendments to their witness list and trial exhibit list  
7 are necessary in view of the additional discovery conducted with respect to the City's newly  
8 added exhibits. In addition, Plaintiffs seek leave to supplement the reports of their experts D.  
9 Paul Regan and Erich Seamon.

10 **A. WITNESS LIST**

11 Plaintiffs seek to amend their witness list to include Lucas Tobin, the ADA Program  
12 Coordinator for the City's Recreation and Parks Department, and five unidentified "custodian  
13 of records" witnesses. See Wallace Decl. Ex. A at 1-2, Dkt. 521. The City indicates that it  
14 does not object to the addition of these witnesses. See City's Opp. at 6, Dkt. 534. Therefore,  
15 Plaintiffs' motion for leave to add these witnesses is GRANTED.

16 **B. EXHIBIT LIST**

17 As indicated, Plaintiffs seek to amend their exhibit list to include documents  
18 purportedly identified as the result of discovery directed to the City's amendment to its exhibit  
19 list. See Wallace Decl. Ex. A. Plaintiffs' proposed amendment includes over three hundred  
20 exhibits.

21 In response, the City objects to seven exhibits containing an unidentified number of  
22 photographs purportedly taken by class members showing barriers that they have encountered  
23 throughout the City. Plaintiffs assert that these exhibits are necessary to reflect current  
24 conditions in the City. The City objects on the ground that Plaintiffs fail to indicate why such  
25 photographic evidence was not available to Plaintiffs prior to the originally scheduled trial  
26 date, or how these exhibits are necessitated by the City's amended exhibit list. The Court  
27 agrees. Therefore, Plaintiffs' motion for leave to add these exhibits (specifically, Exhibits  
28 4024, 4025, 4044, 4070, 4071, 4101, and 4102) is DENIED.

1           Moreover, the City makes several general, blanket objections to categories of exhibits  
2 on various evidentiary grounds, including hearsay and the fact that some exhibits are “batch  
3 exhibits” containing many pages. However, the City fails to specifically identify to which of  
4 the remaining additional exhibits such objections are made. For that reason, the objections are  
5 overruled. Moreover, the admissibility of each item will depend on the circumstances  
6 surrounding its offer into evidence. Accordingly, these objections are denied without prejudice  
7 to renewal of specific objections when and if the evidence is offered. As such, Plaintiffs’  
8 motion for leave to add the remaining proposed exhibits is GRANTED.

9           **C.     EXPERT REPORTS**

10           Mr. Regan is Plaintiffs’ financial expert who will testify at trial regarding the City’s  
11 financial condition, while Mr. Seamon is Plaintiffs’ Geographic Information Systems expert  
12 who has created maps reflecting the City’s curb ramps based on the City’s Curb Ramp  
13 Information System (“CRIS”) database. Plaintiffs argue that supplementation of Mr. Regan  
14 and Mr. Seamon’s expert reports is necessary in view of the new financial information  
15 provided by the City in its updated exhibit list, as well as the City’s updates to its CRIS  
16 database.

17           The City objects to the supplementation of Mr. Regan’s report on the ground that  
18 Plaintiffs have not provided his proposed supplemental report to the City, precluding it from  
19 evaluating the new material and conducting an additional deposition of Mr. Regan, if  
20 necessary. City’s Opp. at 6. The City does not object to Plaintiffs supplementing Mr.  
21 Seamon’s report, which it has received from Plaintiffs, provided that Plaintiffs are required to  
22 produce Mr. Seamon’s electronic files supporting his updated opinions and make Mr. Seamon  
23 available for deposition before he testifies at trial.

24           As Plaintiffs failed to disclose Mr. Regan’s proposed supplemental report to the City,  
25 Plaintiffs’ request for leave to supplement his expert report is DENIED. Plaintiffs’ request to  
26 supplement Mr. Seamon’s expert report is GRANTED. Plaintiffs shall provide to the City Mr.  
27 Seamon’s electronic files by no later than 7:00 p.m. on April 1, 2011, and shall make Mr.  
28 Seamon available for deposition. However, the parties are advised that there will be no change

1 to the trial date, trial schedule, or the trial time allotted in this case, and they are responsible for  
2 completing Mr. Seamon's deposition, if necessary, in time for him to testify at trial.

3 **III. CONCLUSION**

4 For the reasons stated above,

5 IT IS HEREBY ORDERED THAT:


6 1. Plaintiffs' motion for leave to amend its exhibit list to include Exhibits 4024,  
7 4025, 4044, 4070, 4071, 4101, and 4102 is DENIED; Plaintiffs' motion for leave to amend  
8 with respect to the remaining exhibits identified in their motion is GRANTED.

9 2. Plaintiffs' motion for leave to amend their witness list to include Lucas Tobin  
10 and five unidentified "custodian of records" witnesses is GRANTED.

11 3. Plaintiffs' motion for leave to supplement the expert report of Mr. Regan is  
12 DENIED, and Plaintiffs' motion for leave to supplement the expert report of Mr. Seamon is  
13 GRANTED. Plaintiffs shall provide to the City Mr. Seamon's electronic files by no later than  
14 7:00 p.m. on April 1, 2011, and shall make Mr. Seamon available for deposition in time for  
15 him to testify at trial. This order terminates Docket 523.

16 IT IS SO ORDERED.

17 Dated: April 1, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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