

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 **CHRISTOPHER SLAIGHT, ET. AL,**

6 Plaintiffs,

7 vs.

8 **TATA CONSULTANCY SERVICES, LTD,**

9 Defendant.

Case No. 15-cv-01696-YGR

**PRETRIAL ORDER NO. 8 RE:
OCTOBER 26, 2018 PRETRIAL
CONFERENCE**

10 Having considered the filings to date and the arguments and other submissions presented at
11 the Pretrial Conference held on October 26, 2018, and for good cause shown, the Court **ORDERS**
12 as follows:

- 13 1. **Juror Questionnaire & Jury Selection**: Jury selection shall commence on **Friday,**
14 **November 2, 2018.** Counsel must arrive in court to proceed promptly at **8:30 a.m.** Jury
15 selection will begin at **9:00 a.m.** The Court will provide each party with two copies of each
16 completed juror questionnaire. The Court will empanel nine (9) jurors.
- 17 2. **Exhibits & Exhibit Lists**: The Court has received the parties' exhibit lists. (Dkt. Nos. 611,
18 612.) The parties are instructed to submit electronic versions of all exhibits by no later than
19 **Thursday, November 1, 2018,** pursuant to Pretrial Order No. 3. (*See* Dkt. No. 591.) The
20 parties are instructed to bring physical copies of exhibits they intend to offer at trial. Given the
21 sheer enormity of the exhibit lists, the parties shall not bring a copy of ALL exhibits to the
22 courtroom. Notwithstanding the forgoing, the parties are warned that time is limited, and
23 delay due to the failure to have exhibits readily accessible may occur given a failure to plan
24 properly. The trial clock does not pause for delays of any kind.
- 25 3. **Aggregate Amount of Punitive Damages**: The Phase I jury, who will determine liability
26 and the availability of punitive damages, will also determine the aggregate amount of punitive
27 damages to be awarded. The parties shall follow the process set out in Pretrial Order No. 3,
28 paragraph 27. In determining the aggregate amount of punitive damages, the jury may

1 consider defendant’s financial condition. In addition, because punitive damages must be
2 proportionate to compensatory damages, the Court **RESERVES** for after Phase II the issue of
3 whether any punitive damages award needs to be either allocated or reduced.¹

4 With respect to plaintiffs’ arguments regarding the other purposes for which financial
5 information is probative, the Court **RESERVES** to consider the proffer on a case-by-case basis.
6 The Court has reviewed Exhibit Number 1147-A and finds it not admissible. Evidence of
7 global finances, while arguably admissible for punitive damages purpose, is more prejudicial
8 than probative of defendant’s labor costs and resources in the United States market.

- 9 4. **Evidence of Individualized Termination Decisions:** The Court previously issued an order
10 deeming defendant’s termination files inadmissible. (*See* Dkt. No. 605.) That order, which
11 pertained to those files only, did *not* conclude as a general matter that any and all evidence of
12 defendant’s nondiscriminatory intent is inadmissible. In the interest of fairness, the Court
13 notes that because plaintiffs are permitted to enter into evidence anecdotal information,
14 defendant will be allowed to do the same for purposes of rebutting plaintiffs’ *prima facie* case.
- 15 5. **Affirmative Defense of Bona Fide Occupational Qualification (“BFOQ”):** Pretrial Order
16 No. 3 addresses only the *availability* of the BFOQ affirmative defense based on the Court’s
17 finding that the defense was properly preserved. The Court reiterates here its position
18 regarding anecdotal evidence.
- 19 6. **Exhibit Nos. 261 and 272:** Defendant shall submit for *in camera* review Exhibits 261 and
20 272 regarding the issue of privilege. Defendant is warned that if the issue is not resolved in a
21 timely manner, witnesses may be recalled to testify.
- 22 7. **Plaintiffs’ Augmented Exhibit List:** The Court has already ruled on the issues defendant
23 raises regarding plaintiffs’ “augmented” exhibit list and will not address them further.
- 24 8. **Plaintiffs’ Augmented Witness List:** The Court will not limit plaintiffs’ witness list to
25 exclude individuals who were disclosed only in the context of plaintiffs’ deposition

26
27
28

¹ Neither party objected to this process at the Pretrial Conference. Nor did they offer any competing alternative to deal with the hybrid situation of a *Teamsters* phased approach to trial.

1 designations. Defendant had fair warning of this anticipated evidence. Its objection at this
2 point reflects nothing more than inappropriate gamesmanship.


3 9. **Hiring-Related Witnesses at Trial:** The Court will not limit plaintiffs' witness list based on
4 defendant's perception of the nature of witnesses' testimony. The Court will resolve any
5 objections to particular witnesses at trial.

6 10. **Accuracy of Plaintiffs' Summaries:** The Court will not exclude plaintiffs' summaries
7 wholesale. To the extent that defendant raises issues with plaintiffs' calculations as to the
8 underlying information contained therein, counsel may raise those issues during cross-
9 examination.²

10 This Order terminates Docket Numbers 602 and 606.

11 **IT IS SO ORDERED.**

12 Dated: October 29, 2018

13 
14 **YVONNE GONZALEZ ROGERS**
15 **UNITED STATES DISTRICT COURT JUDGE**

16
17
18
19
20
21
22
23
24
25
26
27
28

² Plaintiffs' administrative motion for leave to file a reply to defendant's further response to plaintiffs' motion *in limine* no. 4 (Dkt. No. 602) is **DENIED AS MOOT**. As stated on the record, while the parties should assume that any late-produced documents will not be admitted, the Court will address the documents on a case-by-case basis at trial, to the extent necessary.

In addition, in the interest of preventing the release of personal, identifiable information, plaintiffs' administrative motion to file under seal thirty-one exclusion request forms (Dkt. No. 606) is **GRANTED**.