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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CHRISTOPHER CORCORAN, ET AL.,**

Plaintiffs,

v.

**CVS PHARMACY, INC.,**

Defendant.

Case No. 4:15-CV-3504-YGR

**PRETRIAL ORDER NO. 5 RE: TRIAL  
LOGISTICS**

**TO ALL PARTIES AND COUNSEL OF RECORD:**

On May 26, 2021, the Court conducted a pre-trial conference focused primarily on logistics. The Court confirms herein, and where necessary, modifies prior orders given the current state of COVID-19 protocols at the courthouse where the jury trial is scheduled to begin on June 7, 2021.

**1. Trial Schedule**

Trial days shall include Monday through Friday with the anticipation that the evidentiary proceedings should conclude on June 22 or 23, 2021. Court breaks are extended from 15 minutes to 20 minutes given the limits on access to bathroom facilities.

The Court confirms that parties may have ten persons in the courtroom *during* trial. (Pretrial Order No. 3.) During jury selection, the Court can accommodate five (5) persons, rather than the three (3) previously ordered. (Pretrial Order No. 4.)

**2. Jury Selection**

The Court anticipates providing completed questionnaires from the prospective jurors to the parties on May 27, 2021. The parties shall meet and confer in an attempt to stipulate to those that may be excused and shall provide the Court with their perspectives via e-mail by **9:00 a.m.** on **Tuesday, June 1, 2021**. The parties are reminded that ultimately, it is the Court's decision to

United States District Court  
Northern District of California

1 excuse with respect to hardship.

2 In accordance with Model Rule of Professional Conduct 3.5(b) and Formal Opinion for  
3 466, the parties “may review a juror’s or potential juror’s Internet presence, which may include  
4 postings by the juror or potential juror in advance of and during the trial, but . . . may not  
5 communicate directly or through another with a juror or potential juror.” A party “may not, either  
6 personally or through another, send an access request to a juror’s electronic social media. An  
7 access request is a communication to a juror asking the juror for information that the juror has not  
8 made public and that would not be the type of *ex parte* communication prohibited by Model Rule  
9 3.5(b).” Further, to the extent that a party asks any follow-up questions to a prospective juror  
10 during *voir dire* regarding information obtained from the review, the party shall disclose the  
11 review to the juror.

12 The Court will do a physical walk-through with the parties on **Friday, June 4, 2021**, at  
13 **9:00 a.m.** The parties shall meet at the jury orientation room on the fourth floor of the Oakland  
14 courthouse.

15 **3. Trial Exhibits**

16 The parties are excused from delivering hard copies of the Court’s exhibit set on Friday,  
17 May 28, 2021. They shall coordinate with chambers to deliver the same during the week of June  
18 1, 2021. Courtesy copies of the exhibits on flash drives shall also be provided. Official admitted  
19 exhibits shall be delivered on a rolling basis to the Courtroom Deputy as the exhibits are admitted.

20 The parties shall send to the Court color copies of the expert disclosures previously  
21 referenced with the bubbles/annotations showing and in color.

22 **4. Witnesses**

23 The parties shall meet and confer with respect to any witnesses who may be requesting to  
24 appear remotely via Zoom platform given the COVID-19 pandemic. If a witness will be  
25 appearing remotely, the following shall apply:

- 26 i. Each party shall ensure that all trial participants have requisite hardware,  
27 software, and Internet resources, and sufficient training to participate  
28 seamlessly at trial, including ensuring that all participants are online and know

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how to connect so that the trial may commence at 8:30 a.m. each trial day. Each party shall also make available and display for use when needed all documents to be used as exhibits at trial. Hard copies of exhibits shall be sent in advance to the witness with the instruction that the package **shall not** be opened prior to the witness’s testimony.

ii. Hardware Requirements and Recommendations. In order to conduct the trial on the Zoom platform, each participant must have, at a minimum, the following resources:

1. An internet connection – broadband wired or wireless (3G or 4G/LTE)
2. Speakers or headphones and a microphone – built-in or USB plug-in or wireless Bluetooth
3. A webcam or HD webcam – built-in or USB plug-in or a HD cam or HD camcorder with video capture card
4. *See* <https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux> for a discussion of system requirements for various computer systems. Each party shall be responsible for ensuring that each witness that party intends to call shall meet such specifications, at that party’s expense.

iii. Security. The Court will use its standard security protocols during the trial.

The parties shall meet and confer with respect to the ordering of witnesses, especially for those who are traveling, and on the topic of whether “unavailability” (for purposes of analyzing whether deposition testimony will be allowed) is, at this point, stipulated.

With respect to the parties’ continuing inability to resolve objections to deposition designations beyond those previously submitted to the Court, they will each be required to present the testimony in a question/answer mode during their trial presentation and the Court will rule on objections in the same manner as it would have had the testimony been presented live. Video presentation will not be allowed if the Court is making evidentiary rulings. Alternatively, the parties may stipulate to hire a retired judge to resolve the designation disputes as long as such

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stipulation is without any right to appeal to the district court.


**5. Trial Conference**

The next pretrial conference shall occur at **9:00 a.m.** on **Wednesday, June 2, 2021**, via the Zoom platform. The parties shall meet and confer with respect to an agenda and submit it to the Court no later than 2:00 p.m. the prior day.

The parties are reminded to review this Court’s prior orders which addressed some of the topics discussed during this conference, such as the punitive damages phase, if any.

**IT IS SO ORDERED.**

Dated: May 27, 2021

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE