

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JOSE ACOSTA, Jr.,**

**Plaintiff,**

**v.**

**No. 15-cv-0530 SMV/LAM**

**UNITED STATES OF AMERICA,**

**Defendant.**

**ORDER RESULTING FROM PRETRIAL CONFERENCE**

THIS MATTER is before the Court on issues heard at the pretrial conference on March 30, 2017. The Court heard from counsel on their exhibit and witness lists. The Court also discussed at the pretrial conference the following matters: the trial schedule, opening statements, witness order and availability, and courtroom technology. Having reviewed the pertinent filings and relevant law, and being otherwise fully advised in the premises, the Court makes the following rulings:

**Exhibits**

**Consolidated Exhibits**

The parties filed a Consolidated Exhibit List on March 20, 2017. [Doc. 61]. The Court admits into evidence Exhibits 1–83, all exhibits in the Consolidated Exhibit List.

**Defendant's Exhibits**

Defendant filed an Exhibit List on March 20, 2017. [Doc. 58]. Plaintiff objected to Defendant's Exhibit G on March 27, 2017. [Doc. 66]. Defendant filed an Amended Exhibit List on March 28, 2017. [Doc. 69]. The Court admits into evidence Exhibits E and H from

Defendant's Amended Exhibit List. Plaintiff's objection to Defendant's Exhibit G is SUSTAINED; the Court excludes from evidence Exhibit G. The Court also excludes as cumulative all other exhibits in Defendant's Exhibit List [Doc. 58] and Amended Exhibit List [Doc. 69].

### **Witnesses**

Plaintiff filed a Witness List on March 20, 2017. [Doc. 60]. Defendant did not respond or object to it. Defendant filed a Witness List on March 20, 2017. [Doc. 57]. Plaintiff objected to Defendant's proposed witness, Javier Rivera, identified by Defendant as a “[r]ebuttal witness on train operations utilized by Union Pacific Railroad,” on March 27, 2017. [Doc. 66]. Plaintiff's objection is SUSTAINED. However, the Court may reconsider its ruling if Plaintiff elicits testimony from one of its witnesses or otherwise introduces evidence on this subject.

### **Findings of Fact and Conclusions of Law**

Plaintiff filed his Proposed Findings of Fact and Conclusions of Law on March 20, 2017. [Doc. 62]. Defendant filed no response or objection. Defendant filed its Proposed Findings of Fact and Conclusions of Law on March 20, 2017. [Doc. 59]. Plaintiff objected to Defendant asserting “the affirmative defense of contributory negligence.” [Doc. 67]. The Court will defer ruling on this issue. The Court notes that New Mexico, whose law the parties agree governs this case, has adopted a pure comparative negligence scheme in apportioning fault in negligence cases. *See Scott v. Rizzo*, 1981-NMSC-021, 96 N.M. 682; *Bartlett v. New Mexico Welding Supply, Inc.*, 1982-NMCA-048, 98 N.M. 152.

## **Other Matters**

### **Trial Schedule**

The Court has set aside four days for trial beginning April 18, 2017. Court will begin at 8:30 a.m. and conclude by 5:00 p.m. each day, with a lunch break from 11:30 a.m. to 1:00 p.m.

### **Opening Statements**

Each side may have 30 minutes for opening statements.

### **Witnesses**

Witnesses will be called in the order listed on the witness lists. If a party needs to amend the order in which its witnesses will be called, counsel must coordinate in advance with opposing counsel and notify the Court. Witnesses must be ready and available when called to testify. Counsel must furnish each witness with copies of the exhibits he or she anticipates using with the witness before the witness takes the stand. Counsel need not provide copies of exhibits to the Court. Rather, counsel need only identify orally the exhibit number or letter to which he or she is referring and allow adequate time for the Court to locate the exhibit in its own exhibit binder.

### **Courtroom Technology**

If a party plans to use any courtroom technology, counsel should coordinate with Information Services personnel, who can be reached at (505) 348-2110. Counsel must be prepared to ably operate any courtroom technology that he or she plans to utilize. Counsel must be prepared to proceed irrespective of whether the technology is working or not.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Objections to Defendant's Witness and Exhibit List [Doc. 66] are **SUSTAINED**.

**IT IS SO ORDERED.**



---

**STEPHAN M. VIDMAR**  
United States Magistrate Judge  
Presiding by Consent