

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

CAMAL RASHADA,)	
)	
PLAINTIFF,)	CIVIL ACTION
)	FILE NO. 2016CV270270
v.)	
)	Judge Newkirk
METROPOLITAN ATLANTA RAPID)	
TRANSIT AUTHORITY,)	(Jury Trial Demand)
)	
DEFENDANT.)	
_____)	

CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the Consolidated Pre-Trial Order in the above-styled case submitted by counsel for the parties hereinabove listed:

1.

The name, address and phone number of the attorneys who will conduct the trial are as follows:

Plaintiff:

Keith E. Fryer, Esq.
Fryer, Shuster, Lester & Pollack, P.C.
1050 Crown Pointe Parkway
Suite 410
Atlanta, Georgia 30338-7701
Georgia Bar No. 279037

Defendant:

Metropolitan Atlanta Rapid Transit Authority (MARTA):
Vincent D. Hyman, Esq.
Georgia Bar No.381163
MARTA
Legal Services Department—Sixth Floor
2424 Piedmont Road NE
Atlanta, Georgia 30324-3330

2.

Plaintiff and Defendant are in agreement that the estimated time for trial is 4-5 days. The case will be tried before a twelve-person jury.

3.

There are no motions or other matters pending for consideration by the Court except as follows:

For Plaintiff:

Plaintiff Camal Rashada previously filed a *Motion in Limine to Admit Evidence of Other Similar Incidents*, date stamped by this honorable Court on May 9, 2017, although no ruling on the same was handed down. Plaintiff Camal Rashada also filed his *Second* and *Third Trial Motions in Limine* on November 2, 2011 with the Court. Plaintiff Camal Rashada additionally filed his *Objections to Defendant Metropolitan Atlanta Rapid Transit Authority's Request for Special Interrogatories to the Jury and Motion in Limine to Preclude Apportionment against Norred & Associates, Inc.* with the Court on February 26, 2018. The parties have filed any and all additional *Motions in Limine* concurrently herewith this Proposed Pre-Trial Order. However, all counsel reserve the right to file any additional motions, including *Motions in Limine* which should not, in any way, delay the trial of this case, before or during trial, as issues arise.

For Defendant:

On November 14, 2017, Defendant filed its request for Special Interrogatories to the Jury, and on May 4, 2018 filed Defendant's Notice and Request for the Court to take Judicial Notice and Bench Brief in support of its Motions in Limine for the admission of Plaintiff's workers' compensation settlement and apportionment. Defendant also anticipates filing objections to

Plaintiff's medical records if and to the extent that they were not properly identified during discovery, pursuant to O.C.G.A. § 24-8-826, formerly codified as O.C.G.A. § 24-3-18 or to the extent that said medical records or providers do not comply with O.C.G.A. § 24-9-902. Defendant also reserves the right to file motions pursuant to O.C.G.A. §§ 9-11-50, 9-11-54, 9-11-56 and 24-7-702 the presentation and hearing of which should not in any way delay the trial of the case. Further, Defendants reserve the right to file motion(s) where applicable to have witnesses declared unavailable and to allow the use of their deposition testimony at trial. Defendants further reserve the right to present motions in limine or other pre-trial evidentiary motions, the presentation and hearing of which should not in any way delay the trial of the case.

4.

A jury will be qualified as to the relationship with the following:

By Plaintiff:

- a. Camal Rashada;
- b. Officers, directors, and employees of Metropolitan Atlanta Rapid Transit Authority (MARTA);
- c. Plaintiff's Attorney, Keith E. Fryer, and any member of his firm, Fryer, Shuster, Lester & Pollack, P.C.; and
- d. Defendant's attorney, Vincent D. Hyman, and any member of the Metropolitan Atlanta Rapid Transit Authority legal department.

By Defendant:

The individuals, entities and/or firms listed under Plaintiff's jury qualifications are acceptable to Defendant.

5.

- a. All discovery has been completed unless otherwise noted, and the Court will not consider any further *Motions to Compel Discovery* except for good cause shown. The parties, however, shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.
- b. The names of the parties as shown in the caption to this order are correct and complete, and there is no question as to the misjoinder or non-joinder of any parties.

For Defendant:

The parties, however, shall be permitted to take depositions of any person for the preservation of evidence for use at trial. Parties may also depose material witnesses who were not identified prior to the submission of the pre-trial order.

6.

The following is the Plaintiff's brief and succinct outline of the case and contentions:

On July 19, 2015, Plaintiff Camal Rashada was acting as a security guard with his employer, Norred & Associates, and was guarding a Metropolitan Atlanta Rapid Transit Authority (hereinafter MARTA) fare cart being operated by a MARTA employee, Jimmy Arnold. On the above referenced date, Jimmy Arnold, acting within the course and scope of his employment with MARTA, drove the fare cart into the back of Plaintiff Camal Rashada. As a result of the collision between the fare cart and Plaintiff Camal Rashada, Plaintiff Camal Rashada suffered personal injuries, including herniated disks in his back and neck. The collision referred to hereinabove proximately resulted from the negligence of Jimmy Arnold acting within the course and scope of his employment with Defendant MARTA in failing to keep a proper

lookout and in failing to maintain control over the fare cart. On the date of the collision with Plaintiff Camal Rashada, Jimmy Arnold drove the fare care into other fixed objects including, but not limited to, an elevator door causing damage to the elevator system. Because of the injuries suffered by Plaintiff Camal Rashada, Plaintiff Camal Rashada incurred medical expenses including, but not limited to, physician services, prescription expenses, physical therapy, and radiology in an amount in excess of \$79,000.00, and will continue to incur such expenses into the future. Future medical expenses are estimated in excess of \$100,000.00. As a result of the collision referred to hereinabove, and due to the injuries suffered by Plaintiff Camal Rashada, Plaintiff Camal Rashada was disabled from his employment with Norred & Associates after July 19, 2015. As a result of suffering disability from his employment, Plaintiff Camal Rashada has lost an average of \$586.60 per week from July 20, 2015, and through February 26, 2018 or for a period of 135 weeks, and claims past lost wages in the amount of \$79,191.00. Plaintiff claims future lost wages in the amount of \$265.20 per week (\$586.60 - \$321.30) through his work-life expectancy of 70 years, totaling $\$265.30 * 416 \text{ weeks} = \$110,364.80$.

At all times relevant to Plaintiff's Complaint for Damages, Jimmy Arnold was acting within the course and scope of his employment with Defendant MARTA, and Defendant MARTA is liable for all negligent acts of its employee, Jimmy Arnold, under the principle of *respondeat superior*. Defendant MARTA may be liable for negligently hiring and retaining Jimmy Arnold to operate the motorized fare cart in the event this Court finds that apportionment between Jimmy Arnold and MARTA is appropriate.

Defendant objects to Plaintiff's statement of the case because the same are not brief and succinct statements of fact but are conclusory and argumentative and would not be proper to read Plaintiff's argumentative statements to the jury during the Court's preliminary instructions.

The following is the Defendant's brief and succinct outline of the case and contentions:

On July 19, 2015, Mr. Camal Rashada was a Norred and Associates ("Norred") security guard. Mr. Rashada on that day was assigned to accompany MARTA revenue agent, Jimmy Arnold. He met Mr. Arnold at the Five Points station. Mr. Arnold's job duties for that day entailed operating the revenue cart to retrieve tokens/coins/money, restock and/or service the Token Vending Machines ("TVMs") along the North and South rail line stations. Mr. Rashada's job duties while accompany the revenue agent requires him to be aware of his surroundings, attentive and keep a specified safe distance from the revenue cart. On that date, Mr. Rashada failed to pay proper attention and keep a safe distance from the revenue cart while it was in motion and the revenue cart contacted Mr. Rashada in his back.

Mr. Rashada filed for workers' compensation benefits with his employer, Norred and Associates ("Norred"). In accordance with workers' compensation protocol, Mr. Rashada was initially seen by Dr. Chadwick, MD and according to Dr. Chadwick's medical evaluation and records Mr. Rashada had inadvertently disclosed to him that he had recently injured himself while riding a bicycle, prior to the July 19, 2015 incident. Dr. Chadwick ordered MRIs of Mr. Rashada's cervical and lumbar spine, which were performed and read by Dr. Klipper. Based on Rashada's disclosure about his prior bicycle incident and Dr. Chadwick's initial examination, Norred contested and denied Mr. Rashada's workers' compensation claim and did not pay him any benefits. Eventually, Norred and Mr. Rashada entered into a no liability settlement agreement in the amount of \$50,000 wherein Mr. Rashada admitted that he did not sustain a compensable work-related injury.

Plaintiff objects to Defendant's statement of the case and contentions therein as not being brief and succinct, and for being conclusory, argumentative, and not supported by the evidence. Plaintiff additionally objects to Defendant's attempts to bring in collateral sources of evidence, including Plaintiff's workers' compensation claim. Plaintiff further objects to the Defendant bringing in reference to Plaintiff's long-standing medical conditions of hypertension and diabetes, as the presence of these diseases is not relevant to the injuries sustained in the incident that is the basis of the case. Lastly, Plaintiff objects to Defendant's admission of evidence of fault against Norred & Associates, Inc., on the grounds that Defendant has not given timely notice to Plaintiff regarding apportionment to any non-party, nor has any evidence of fault been proven to exist against Norred & Associates, Inc., and Plaintiff has filed his *Objections to Defendant Metropolitan Rapid Transit Authority's Request for Special Interrogatories to the Jury and Motion in Limine to Preclude Apportionment Against Norred & Associates, Inc.*

8.

By Plaintiff:

The issues for determination by the jury are as follows:

Negligence, Causation, and Damages.

By Defendant:

a. Whether Defendant's employee's alleged negligence was the proximate cause of Plaintiff's alleged injuries and/or damages?

b. Whether Plaintiff was exercising ordinary care for his own safety when he should have been able to see and hear the audible sound and lights that are emitted from the revenue cart?

c. Whether Plaintiff was exercising ordinary care for his own safety when he failed to position himself in such a manner to see the revenue cart and avoid being struck in the back by the cart?

d. If Defendant's employee was negligent in any manner, whether Plaintiff could have avoided any injury or damages complained of by the exercise of ordinary care for his safety?

e. Whether liability and/or damages should be apportioned, pursuant to O.C.G.A. § 51-12-33, et seq.

f. Whether Plaintiff is entitled to recover compensatory and/or special damages?

g. Whether Plaintiff failed to mitigate his damages, pursuant to O.C.G.A. § 51-12-11?

9.

By Plaintiff:

Specifications of negligence, negligent hiring, entrustment and *respondeat superior*, which include the following: O.C.G.A. §§ 51-1-2; 51-1-4; 51-1-6; 51-2-1; 51-2-2; 51-12-1; 51-12-7; and 51-12-14.

Defendant objects to the specifications of negligence as it relates to negligent hiring, entrustment and/or training, insofar as the Court has ruled on Defendant's Motion for Judgment on the Pleadings.

By Defendant:

Defendant contends that when a person is injured by the negligence of another, [he/she] must mitigate [his/her] damages as far as is practicable by the use of ordinary care and diligence. See O.C.G.A. § 51-12-11. If Defendant was negligent in any manner, and Plaintiff could have

avoided any injury or damages complained of by the exercise of ordinary care for his safety, he would not be entitled to recover. O.C.G.A. § 51-11-7.

10.

If the case is based on a contract, either oral or written, the terms of the contract are as follows:

Not applicable.

11.

The types of damages and the applicable measure of damages are as follows:

By the Plaintiff:

- a. **General Damages:** Unliquidated, for the jury to determine in their enlightened conscience as fair and impartial damages, including, but not limited to, pain, suffering, and permanent disability.
- b. **Special Damages:** Hospital, medical, prescription expenses, and lost wages in an amount to be established by evidence and determined at trial.

Defendant's objection: Defendant objects and asserts that Plaintiff is barred from claiming any special damages to the extent that they have not been specially pled or itemized pursuant to O.C.G.A. § 9-11-9 (g). Defendant also specifically objects to the introduction of any new medical evidence or providers at this point.

By the Defendant: None

12.

If the case involves divorce each party shall present to the court at the pre-trial conference the affidavits as required by Rule 24.2.

Not applicable.

13.

The following facts are stipulated:

Jurisdiction and venue.

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiff or the Defendant. Unless noted, the parties have stipulated to the authenticity of the documents listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury.

(a) By the Plaintiff:

1. Plaintiff's wage records;
2. 1949 Annuity Mortality Table, Ultimate;
3. All documents and things listed by Defendant MARTA;
4. Time and Distance Motion Video from Plaintiff's expert Sean Alexander;
5. All photographs and testing information generated by Plaintiff's expert Sean Alexander at the inspection of the fare cart;
6. Plaintiff's medical bills from Nova Medical Center, One Call Care Medical, and Polaris Spine & Neurosurgery;
7. Defendant MARTA's personnel file for Jimmy Arnold;
8. Defendant MARTA's Policies and Procedures regarding the Investigation of Bus Accidents or Incidents;
9. Defendant MARTA's Departmental Procedure regarding Breeze Vending Machine Collections/Serviceing;

10. Defendant MARTA's Employee Jimmy Arnold's statement regarding the accident, undated;
11. Defendant MARTA'S Maximus InfoCenter MR-Work Order Detail from May 27, 2016 regarding equipment identified as "N6-CCTV-27055" and described as "LB-CAM55: CTR PLAT/N WAYSIDE ACCESS GATE";
12. Defendant MARTA's Drug and Alcohol Policy Manual 2011, Revision 2, May 2014;
13. Defendant MARTA's Contract Proposal B32346-A, "Armed Security Coverage for Revnue [sic] Operations";
14. Defendant MARTA's Work Rules for Fixed Route Bus and Mobility Operations, Revised January 8, 2008;
15. Defendant MARTA's Pull Sheet showing the servicing of the Breeze Card Machines on July 19, 2015;
16. Plaintiff Camal Rashada's Personnel File;
17. Defendant MARTA's station video from Lindbergh Station;
18. Defendant MARTA's station video from Buckhead Station;
19. Defendant MARTA's station video from Lenox Station;
20. All photographs taken at the scene;
21. Photographs of the racquet used by Plaintiff Camal Rashada to play racquetball;
22. All exhibits to the depositions of Hubert Gee, Jimmy Arnold, Perfidia Collier, and Vicki Dewberry;
23. Defendant MARTA's Fare Cart Manual for PR4200 Fare Cart produced by CART America, Inc. ;

24. Defendant MARTA's Agreement for Armed Security Coverage for Revenue Operations B32346-A;
25. Labor Agreement – MARTA and Amalgamated Transit Union 732 “Section XLII: Revenue Collection Department”;
26. Defendant MARTA's “Revenue Operations Breeze Card Roll Out Plan”;
27. Plaintiff Camal Rashada's text messages to “Riggins” with Norred & Associates;
28. Plaintiff's Counsel's spoliation letter addressed to Elizabeth O'Neill, Esq., of MARTA Legal Services dated August 10, 2015 requesting preservation of documentary and videographic evidence;
29. All exhibits to the deposition of Amber R. Stern, Ph.D., P.E., taken on February 22, 2018;
30. All exhibits to the deposition of Sean Alexander taken on
31. All exhibits to the deposition of R. Darr McKeown, M.D., taken on February 22, 2018;
32. Surveillance video of Camal Rashada;
33. All pleadings filed in the case; and
34. All documents produced by Defendant Metropolitan Atlanta Rapid Transit Authority during the pendency of discovery.

Defendant's reservation and/or objection: **Defendant objects to any document or thing that was not identified, produced or supplemented in accordance with the Georgia Civil Practice Act. In particular, Defendant has not received during its discovery request any “text messages” that were sent between Camal Rashada and Mr. Riggins of Norred & Associates.** Defendant objects to the introduction of any evidence that is the subject of any previous motions in limine or other pre-trial motion or ruling by the court. Defendant

reserves its right to object as to the authenticity of the documents and exhibits listed by Plaintiff until such time as Defendant has had an opportunity to review and examine the documents and exhibits. Defendant further reserves its right to inspect and insure that the proper foundation has been laid for the admission of any evidence offered by the Plaintiff at trial. Defendant expressly reserves the right to object to the admission of any proposed evidence at the time of trial and reserves the right to introduce documentary evidence in rebuttal.

(b) By The Defendant:

1. Pleadings of Record
2. Defendant's Interrogatories, Request for Production of Documents and Request for Admissions to Plaintiff;
3. Defendant's initial responses and supplemental responses to Plaintiff's initial and subsequent Request for Production of Documents to Defendant;
4. Plaintiff's medical records, narratives, images, scans, reports, bills and/or statements;
5. All Documents and things listed by the Plaintiff;
6. MARTA's MR-Work Order Detail for Camera Repair;
7. Any Incident Report and/or Statement Written by Jimmy Arnold;
8. Any Incident Report and/or Statement Written by Camal Rashada;
9. Norred & Associates, Inc. Activity Report TMVA Filled Out by Camal Rashada;
10. Certified Copy of Armed Security Guard Coverage for Revenue Operations Contract Between MARTA and Norred & Associates;

11. Excerpts from MARTA Labor Agreement with Revenue Department Concerning Seniority;
12. MARTA Work Rules, which only apply to Bus, Mobility and Railcar Operations;
13. Breeze Card Roll Out Procedure and/or Plan;
14. MARTA's station video from Lindbergh Station;
15. MARTA's station video from Buckhead Station;
16. MARTA's station video from Lenox Station;
17. All photographs taken at or around the Lindberg Station area;
18. All exhibits and/or things to the depositions of Camal Rashada, Hubert Gee, Jimmy Arnold, Perfidia Collier, and Vicki Dewberry;
19. MARTA's Fare Cart Manual for PR4200 Fare Cart produced by CART America, Inc.;
20. Time and 3D Video Illustrating Relative Distance, Acceleration and Deceleration between the Revenue Fare Cart and Camal Rashada for Lindbergh and Lenox Train Stations from Defendant's expert Dr. Amber R. Stern;
21. Any Photograph and/or Video footage of Camal Rashada;
22. All scans, photographs, videos and testing information generated by Defendant's expert Dr. Amber R. Stern;
23. Photographs of the Revenue Truck;
24. Photographs and/or video clips of the Revenue Fare Cart;
25. Norred Personnel Documents for employee Camal Rashada;
26. Georgia Department of Human Resources Wage and Employee Information;
27. Georgia Department of Labor Documents;

28. Norred Security Training Certificates and/or Awards - Camal Rashada;
29. Certified Copy of Camal Rashada's Workers' Compensation File, which would include the General Release and Indemnity Agreement in Settlement of All Claims between Plaintiff and his former employer;
30. Any Google or aerial photographs;
31. MARTA's published Rail Station Map;
32. Any photographs depicting or taken at the scene;
33. Any item, report, document, and/or data utilized by any medical expert, including, but not limited to, any medical records, tests, photographs, video recreations, demonstrative aids, notes, etc.;
34. Any and all documents produced by non-party entities and/or medical providers during the pendency of this action;
35. Curriculum Vitae and various documents referencing any physicians' and/or experts' qualifications;
36. Any and all depositions of Plaintiff's and/or Defendant's medical providers and/or experts, including any and all documents, exhibits, videos, images or photographs that were attached thereto;
37. If necessary, any impeachment and/or rebuttal evidence

Defendant hereby notifies the Plaintiff of its intent to introduce the above-referenced certified documents, pursuant to O.C.G.A. § 24-9-902, and in which Plaintiff either produced or received during the pendency of this action or the workers' compensation matter.

Plaintiff's reservation and/or objection: Plaintiff reserves his right to object as to the authenticity of the documents and exhibits listed by Defendant until such time as Plaintiff has had an

opportunity to review and examine the documents and exhibits. Plaintiff further reserves the right to inspect and insure that the proper foundation has been laid for the admission of any evidence offered by the Defendant at trial. Plaintiff expressly reserves the right to object to the admission of any proposed evidence at the time of trial and reserves the right to introduce documentary evidence in rebuttal. Plaintiff objects to the introduction of evidence relating to his previous workers' compensation injury in 2013, as well as evidence relating to the settlement of his workers' compensation claims in 2015 and 2016

15.

Special authorities relied upon by Plaintiff relating to peculiar evidentiary or other legal questions are as follows: *None*.

16.

Special authorities relied upon by Defendant relating to peculiar evidentiary or other legal questions are as follows:

The mere fact that an accident happened and the plaintiff may have sustained injuries or damages affords no basis for recovery against a particular defendant unless the plaintiff carries the burden of proof and shows that such accident and damages were caused by specific acts of negligence on the part of that defendant. See *Turner v. Masters*, 304 Ga. App. 855, 857 (2010). Defendant also believes that its proposed motions in limine may contain cases or authority that would be specific to or support evidentiary issues if they arise during trial.

17.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18.

The testimony of the following persons may be introduced by deposition:

(a) By the Plaintiff:

1. Sean Alexander;
2. R. Darr McKeown, M.D.;
3. Max R. Steuer, M.D.;
4. Shane Mangrum, M.D.;
5. Scott L. Dixon, P.T.;
6. Christa Springston, M.D.;
7. Jimmy Arnold;
8. Hubert Gee;
9. Perfidia Collier;
10. Vicki Dewberry;
11. Lorenzo Betts;
12. Emma Ihsan;
13. Mr. Riggins or other Norred & Associates employees;
14. John Wilkins;
15. Ricky Betts;
16. Tonya Young;
17. Ryan Luppino;
18. Kelvin Smith;
19. William Wells;
20. Denise T. Walker;
21. Any witnesses listed by Defendant MARTA; and

22. Dan Colman, Chip Davis, or other Courtroom Visuals employees.

Defendant's objection: Defendant objects to the introduction of any deposition testimony, unless a proper showing, pursuant to O.C.G.A. § 9-11-32, *et seq.*, at trial is made, though this does not prevent any deposition from being used for other purposes allowed by the GA Civil Practice Act. Defendant objects to portions of Dr. Rick Darr McKeown, M.D. recent deposition as it relates to any unqualified opinions regarding surgery or other medical procedures that he is not qualified to render as a radiologist and any similar testimony or statement that he may have made in his February 23, 2016 videotaped and stenographic deposition, which will be the subject of Defendant's motion in limine.

(b) By Defendant:

Deposition of Camal Rashada, including any exhibits introduced therein.

Deposition of Perfida Collier, including any exhibits introduced therein.

Deposition of Hubert Gee, including any exhibits introduced therein.

Deposition of Jimmy Arnold, including any exhibits introduced therein.

Deposition of Dr. Michael J. Kalson, including any exhibits introduced therein.

Deposition of Vicki Dewberry, including any exhibits introduced therein.

Plaintiff's objection: Plaintiff objects to the introduction of any deposition testimony, unless a proper showing, pursuant to O.C.G.A. § 9-11-32, *et seq.*, at trial is made, though this does not prevent any deposition from being used for other purposes allowed by the Georgia Civil Practice Act.

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial.

The following are lists of witnesses the:

- a. Plaintiff will have present: Plaintiff Camal Rashada.
- b. Plaintiff may have present:
 1. Any witness listed by Defendant MARTA
 2. Sean Alexander;
 3. R. Darr McKeown, M.D.;
 4. Max R. Steuer, M.D.;
 5. Shane Mangrum, M.D.;
 6. Scott L. Dixon, P.T.;
 7. Christa Springston, M.D.;
 8. Jimmy Arnold;
 9. Hubert Gee;
 10. Perfidia Collier;
 11. Vicki Dewberry;
 12. Lorenzo Butts;
 13. Emma Ihsan;
 14. Mr. Riggins or other Norred & Associates employees;
 15. John Wilkins;
 16. Ricky Betts;
 17. Tonya Young;
 18. Ryan Luppino;
 19. Kelvin Smith;
 20. William Wells;

21. Denise T. Walker; and

22. Dan Colman, Chip Davis, or other Courtroom Visuals employees.

c. Defendant will have present at trial:

None.

d. Defendant may have present at trial:

1. Perfidia Collier;
2. Hubert Gee;
3. Jimmy Arnold;
4. Dr. Michael J. Kalson - expert (videotaped deposition);
5. Vicki Dewberry;
6. Kelvin Smith (Norred);
7. Denise T. Walker;
8. Reginald Davis;
9. Jeff Morley;
10. Larry D. Kelley;
11. Walter H. Tardieff, Jr.;
12. Euita Clark;
13. Eric V. Brimm;
14. Dr. Amber R. Stern (Expert);
15. Dr. Brian S. Chadwick, MD;
16. Dr. Darr McKeown, MD;
17. Dr. David M. Klipper, D.O.;
18. Dr. Ezequiel Cassinelli, MD;

19. Dr. Henry Anderson, MD;
20. Dr. Lee A. Kelley, MD;
21. Dr. Christa Springston, MD;
22. MARTA Representative;
23. Any witnesses shown on Plaintiff's may or will call witness list
24. Any medical billing or treatment witnesses
25. Pam Carson (Norred & Associates)
26. Any witness necessary for impeachment or rebuttal

Defendant reserves the right to supplement its witness list up to and at time of trial. Opposing counsel may rely on representation that the designated party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

Plaintiff objects to the admission of any deposition testimony of witnesses not deposed in the subject action. Plaintiff additionally objects to the introduction of Dr. Michael Kalson's deposition testimony, as Dr. Kalson has not been designated as an expert by Defendant.

Defendant further contends that Plaintiff cannot object to Dr. Kalson insofar as he only propounded Request for Production during the pendency of this case and did not seek the identification of expert witness through interrogatories. Furthermore, Dr. Kalson's expert deposition was taken on May 18, 2017 and Plaintiff's counsel was present for this deposition.

20.

The form of all possible verdicts to be considered by the jury are as follows:

By the Plaintiff:

"We the jury, find in favor of the Plaintiff in the amount of _____"

---or---

"We the jury, find in favor of the Defendant."

By the Defendant:

Defendant contends that since one or more parties are asserting that either party was negligent that a special jury verdict form will be necessary to comply with the new comparative negligence statute and *Clark v. Rush*, 312 Ga. App. 333 (2011).

VERDICT FORM

Question 1: (check all that apply)

_____ We, the jury, find in favor of Plaintiff Camal Rashada against Defendant MARTA and, award damages to Plaintiff in the amount of: \$ _____.

OR

_____ We, the jury, find in favor Defendant Metropolitan Atlanta Rapid Transit Authority (MARTA) and against the Plaintiff.

Question 2:

If you found in favor of Plaintiff Camal Rashada, but also believe that he or another non-party was at fault please allocate the percentage of fault between the Plaintiff, the non-party (Norred & Associates, Inc.) and Defendant MARTA as follows (Note: the total must equal 100 percent and do not reduce any damages you may have awarded to Plaintiff in your response to

Question 1, if any):

_____ % Plaintiff Camal Rashada;
_____ % Non-Party (Norred & Associates, Inc.);
_____ % Defendant Metropolitan Atlanta Rapid Transit Authority (MARTA)

100% Total.

Plaintiff objects to Defendant's proposed verdict form attempting to apportion liability to Norred & Associates, Inc., as Defendant has failed to produce any evidence of fault against Norred & Associates, Inc.

Defendant's response: Pursuant to O.C.G.A. § 51-12-33 (c), In assessing percentages of fault, the trier of fact shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit.

(d) (1) Negligence or fault of a nonparty shall be considered **if the plaintiff entered into a settlement agreement with the nonparty or** if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault.

The connector or word "or" is disjunctive rather than conjunctive meaning that a party can comply with either of the connected provisions. See Defendant's Bench Brief in support of the admission of the workers' compensation settlement and apportionment.

21.

- a. The possibility of settlement is poor; prior attempts at mediation failed.
- b. The parties do want the case reported.
- c. Plaintiff Camal Rashada requests take-down of opening and closing statements, the presentation of evidence; and the jury charge.
- d. Defendant MARTA requests take down of : (same as stated by Plaintiff)
- e. The cost of any take-down will be shared equally by the parties.

This ____ day of _____, 2018.

Respectfully submitted,

/s/ Keith E. Fryer

Keith Fryer

Georgia Bar Number 279037

Fryer, Shuster, Lester & Pollack, P.C.

1050 Crown Pointe Parkway

Suite 410

Atlanta, Georgia 30338-7701

/s/ Vincent D. Hyman

Vincent D. Hyman, Esq.

Georgia Bar No. 381163

Metropolitan Atlanta Rapid Transit Authority

Legal Services Department – Sixth Floor

2424 Piedmont Road NE

Atlanta, Georgia 30324-3330

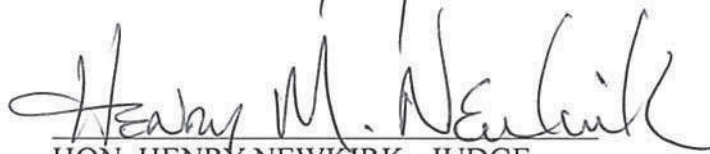
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CAMAL RASHADA,)	
)	
PLAINTIFF,)	
)	
v.)	CIVIL ACTION
)	FILE NO. 2016CV270270
METROPOLITAN ATLANTA RAPID)	
TRANSIT AUTHORITY,)	JUDGE: NEWKIRK
)	
DEFENDANT.)	
_____)	

ORDER

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the PRE-TRIAL ORDER in the above case and supersedes the pleadings, which may not be further amended except by order of the court to prevent manifest injustice or as otherwise provided herein.

SO ORDERED THIS 15th DAY OF MAY, 2018.


HON. HENRY NEWKIRK, JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

Copies To:

Keith E. Fryer, Esq.
Fryer, Shuster, Lester & Pollack, P.C.
1050 Crown Pointe Parkway
Suite 410
Atlanta, Georgia 30338-7701
(T): (770) 668-9300
(F): (770) 668-9465
kfryer@galegal.com

Vincent D. Hyman, Esq.
Metropolitan Atlanta Rapid Transit Authority
Legal Services Department – Sixth Floor
2424 Piedmont Road NE
Atlanta, Georgia 30324-3330
(T): (404) 848-5220
(F): (404) 848-5225
vhyman@itsmarta.com