

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**MISCELLANEOUS NO. 3:07-MC-47
(Doc. No. 2)**

IN RE:)
)
STANDING ORDER GOVERNING)
CIVIL CASE MANAGEMENT)
BEFORE THE HONORABLE)
FRANK D. WHITNEY)
_____)

This Order shall apply to all civil actions, excluding those exempted by Paragraph 1(b) of the Court's Initial Scheduling Order (appended hereto as Exhibit A), which are filed on or after 15 May 2007 and assigned to the docket of the Honorable Frank D. Whitney.

Upon the opening of a civil case falling within the parameters described above, the Clerk of Court shall immediately cause to be entered upon the docket and served upon the party initiating the suit an official copy of the Initial Scheduling Order, appended hereto as Exhibit A. This Initial Scheduling Order prescribes the duties and responsibilities of the parties and counsel from the filing of the complaint until the Rule 26(f) Initial Attorney's Conference and the submission of a proposed discovery plan.

Upon receipt of the parties' Certification of Initial Attorneys' Conference and proposed discovery plan, the judicial officer presiding over scheduling matters shall, if necessary, hold an initial pretrial conference pursuant to Fed. R. Civ. P. 16(a) and Local Civil Rule 16.1(B) [Proposed Local Civil Rule 16.1(C)], and thereafter enter a comprehensive Case Management Order substantially conforming to the model appended hereto as Exhibit B (where a jury trial has been demanded) or Exhibit C (where no jury trial has been demanded). This Case Management Order



prescribes the duties and responsibilities of the parties and counsel from the beginning of discovery through trial.

When ruling upon any motion or request which may be made or any dispute which may arise under this Initial Scheduling Order or Case Management Order, a magistrate judge to whom authority has been delegated shall:

1. Construe the Court's directives consistently by reading these provisions in harmony with each other and other applicable law, and by treating similarly situated litigants alike;
2. Apply the rules of decision established by this Order or other applicable law so as to effectuate the broader purposes of this Order, primary among which is to provide litigants with a high degree of certainty and predictability with respect to scheduling and other procedural matters arising in the course of civil litigation; and
3. Make a prompt disposition that promotes the most expedient resolution of the lawsuit consistent with the ends of justice.

IT IS SO ORDERED.

Signed: May 14, 2007


Frank D. Whitney
United States District Judge 

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

INITIAL SCHEDULING ORDER)
)
[Entered pursuant to the Standing Order)
Governing Civil Case Management Before)
the Honorable Frank D. Whitney,)
Misc. No. 3:07-MC-47 (Doc. No. 2)])

THIS MATTER has been assigned to the docket of the Honorable Frank D. Whitney. Pursuant to the Standing Order Governing Civil Case Management Before the Honorable Frank D. Whitney, Misc. No. 3:07-MC-47 (Doc. No. 2), the Court hereby sets the following requirements and deadlines for service, pleading and motions practice, conference activities, initial disclosures, and submission of the parties' certification and report of initial attorneys' conference.

1. PRELIMINARY

- a. **Service.** Plaintiff(s) (including defendants in the capacity of third-party plaintiffs) shall be responsible for serving a copy of this Order on the defendants along with service of the pleadings and summons. (In removed actions, the removing party shall be responsible for the service of this Order along with the notice of removal.) If service of the relevant pleading has already been obtained prior to the docketing of this Order, a copy must be served on the required parties within the next five (5) calendar days.
- b. **Scope.** This Initial Scheduling Order is intended to apply to adversarial civil cases in which all parties are represented by counsel and traditional discovery will be sought. Cases involving review of a previously developed record, such as habeas corpus, bankruptcy appeals, social security appeals, certain ERISA benefits cases, *et*

cetera, are not subject to this Order. If counsel believe that this Order was filed in this case in error they should immediately notify the Court. In addition, no provision of this Order is intended to supersede any contrary statute or rule applicable to certain specialized forms of civil action (*e.g.*, adequate notice and claim periods in *in rem* suits; an automatic stay in certain securities and class/derivative actions, or where a party is in bankruptcy, *et cetera*), and parties should promptly seek relief from, or clarification of, any provision of this Order in the event that an apparent conflict arises.

2. OUT OF STATE COUNSEL

- a. ***Pro Hac Vice Admission.*** Out of state counsel may apply for admission *pro hac vice* provided that out of state counsel are affiliated with a local attorney who is responsible for signing documents filed with the Court. In so signing, local counsel shall be held accountable for the substance of such submissions under Rule 11(b) of the Federal Rules of Civil Procedure. Local counsel must attend all pre- and post-trial hearings, but upon request may be excused by the Court from attendance at trial.
- b. **Special Admission.** Special admission without affiliation of local counsel shall not be allowed except upon a showing of exceptional hardship, or in cases where the United States or one of its officers or agencies is a party.

3. PLEADING & PRELIMINARY MOTIONS

- a. **Pleading.** Except as hereinafter provided, pleadings shall be served at such times and under such circumstances as required by Rules 4 and 12-14 of the Federal Rules of Civil Procedure. Extensions of time to serve pleadings shall not be granted except

by leave of court for good cause shown (consent of opposing counsel alone is not sufficient). Absent extraordinary circumstances, no party shall receive more than one extension of time to serve a pleading, with any such extension being no more than twenty (20) days in duration.

b. Preliminary Motions – How Presented.

- i. For purposes of the following paragraphs, “preliminary motion” means any motion (dispositive or otherwise) made in advance of the start of discovery, including motions made pursuant to Rule 12 of the Federal Rules of Civil Procedure, motions to remand, motions for change of venue, and motions for interim relief pursuant to Rule 65.
- ii. Motions to dismiss based on any of the defenses set forth in Rule 12(b), if contained in the answer, shall be construed by the Court as placeholders which preserve the defense for future adjudication (*e.g.*, at summary judgment or trial). See (Proposed) Local Civil Rule 7.1(C)(1). If a defendant desires preliminary adjudication of a Rule 12(b) defense, subject to the limitations described below, a motion along with a supporting memorandum of law must be filed separately from the answer.
- iii. Every preliminary motion shall be made in writing and include, or be accompanied by, a brief statement of the factual and legal grounds on which the motion is based. A memorandum of law shall always state the “Bottom Line Up Front” – that is, the introductory paragraph(s) shall: (i) identify with particularity each issue in dispute; (ii) concisely (*i.e.*, in one or two sentences)

state why the party should prevail on the issue, directing the Court's attention to what the party believes to be the controlling legal authority or critical fact in contention; and (iii) if applicable, state the remedy or relief sought.

- iv. Unless prior permission has been granted in compliance with the requirements of Paragraph 3(b)(vi), memoranda of law in support of or in opposition to any preliminary motion contemplated by this Order shall not exceed 4,500 words, and reply memoranda shall not exceed 1,500 words. Headings, footnotes, quotations and citations do count toward the page and word limitation. The case caption, table of contents, table of authorities, and any certificates of counsel do not count toward the limitation. The memorandum of law shall include a certificate by the attorney (or the party if unrepresented), subject to Rule 11, that the submission complies with the foregoing word limitation. Non-complying briefs will be stricken summarily from the record.
- v. The briefing schedule set forth in current Local Civil Rule 7.1(B) [(Proposed) Local Civil Rule 7.1(E)] is hereby incorporated by reference and shall control unless otherwise ordered by the Court. Upon request of a party or on its own motion, however, the Court reserves the right to set abbreviated briefing schedules in particular cases.
- vi. Any motion to extend the foregoing time and/or word limitations shall be filed immediately upon counsel learning of the need for the same and in any event no fewer than three (3) business days in advance of the filing deadline

sought to be modified.¹ The moving party must show consultation with opposing counsel regarding the requested extension and must inform the Court of the views of opposing counsel on the request. If a party fails to make the requisite showing, the Court will summarily deny the request for extension. Any motion for an extension must also be accompanied by a separately submitted proposed form of order.² Motions for extensions shall not be granted except upon a showing of good cause (consent of opposing counsel alone is not sufficient). Truly exceptional circumstances must exist to modify deadlines that impact a scheduled motions hearing or trial date, which extensions may only be granted by Order of the presiding district judge.

c. Preliminary Motions – Effect Of Filing.

- i. The filing of a pre-answer motion to dismiss for one or more of the reasons set forth in Rule 12(b)(1), 12(b)(2), 12(b)(4), or 12(b)(5), or a motion for more definite statement pursuant to Rule 12(e), will toll the time required to plead responsively until ten (10) days following disposition of the motion. See Fed. R. Civ. P. 12(a)(4). The time in which to hold a Rule 26(f) initial attorneys' conference and to commence with discovery will likewise be tolled unless the party opposing the motion petitions the Court for limited fact

¹ Any motion filed outside this deadline will be considered only upon a showing of excusable neglect in addition to good cause.

² Proposed orders shall be submitted to Chambers electronically, in WordPerfect (WPD) or Rich Text (RTF) format, utilizing the CyberClerk feature of CM/ECF.

discovery and demonstrates that such discovery is necessary to adjudicate the preliminary motion.

- ii. The filing of any other preliminary motion – including motions made pursuant to Rules 12(b)(3), 12(b)(6), and 12(b)(7) – will NOT presumptively toll the time required to plead an answer, counterclaims, and/or third-party complaint. Pursuant to Rule 12(d), the Court may elect to defer ruling on issues raised in Rule 12 and similar motions until the close of discovery,³ consider evidence extrinsic to the pleadings, and dispose of the issues presented as provided in Rule 56. Accordingly, a defendant who contemplates filing a Rule 12(b)(6) motion must still serve and file a timely responsive pleading and prepare to commence with discovery as provided below. Such defendant may, however, file concurrent with its answer a Rule 12(b)(6) or 12(c) motion together with a request for preliminary hearing, pursuant to Rule 12(d), for good cause shown. Examples of good cause include, without limitation: (i) the claims set forth in the complaint are facially frivolous; (ii) the claims are subject to preclusion or are otherwise barred by the absence of a necessary condition precedent; (iii) the defendant asserts the defense of immunity from suit; or (iv) the defendant asserts the availability of a defense under the Federal Arbitration Act. An Order denying

³ While motions to remand and motions concerning venue typically will be decided as early in the case as practicable, the Court includes them in the group of preliminary motions that do not stay the pleading schedule and commencement of discovery in recognition of the fact that the litigation is likely to go forward in some forum even if not the United States District Court for the Western District of North Carolina.

a defendant a preliminary hearing on a Rule 12 defense will in no way prejudice the party from raising the same arguments at summary judgment.

d. Preliminary Motions – Disposition.

- i. Pursuant to 28 U.S.C. § 636(b) and the Court’s Standing Order governing Referrals to Magistrate Judges, Misc. No. 3:06-MC-83, preliminary motions may be referred to a United States Magistrate Judge for recommended disposition by memorandum and recommendation (M&R), or, if appropriate, for full disposition by memorandum and order (M&O).
- ii. Any party aggrieved by the magistrate judge’s decision on any motion may, within ten (10) days thereafter, appeal to the district judge for *de novo* review of a M&R, or for clear error review of a M&O, by filing specific objections. Unless prior permission has been granted, the objections (inclusive of any memorandum of law) shall not exceed 2,000 words, stating with particularity those aspects of the decision asserted to be erroneous and a perspicuous factual or legal basis supporting that position. Within ten (10) days after service of the objections or motion, a response not to exceed 2,000 words may be filed. Unless otherwise ordered by the Court, no further briefing will be allowed and district court review will be conducted on the record as developed more fully before the magistrate judge.

4. INITIAL ATTORNEYS’ CONFERENCE

- a. Within fourteen (14) calendar days following joinder of the issues (as defined herein), the parties or their counsel shall confer as provided by Rule 26(f) and

conduct an Initial Attorneys' Conference ("IAC"). "Joinder of the issues" occurs when the last responsive pleading is filed, as set forth in Paragraph 3(c), regardless of whether a preliminary motion is pending.

- b. Protocol for Discovery of Electronically Stored Information. In order to assist the parties in preparing for and conducting discovery of electronically stored information ("ESI"), the Court has issued the Standing Order on Protocol for Discovery of Electronically Stored Information in Civil Cases Before the Honorable Frank D. Whitney, which is available for reference at Misc. No. 3:07-MC-47 (Doc. No. 4). The purpose of the Protocol is to facilitate the just, speedy, and inexpensive conduct of discovery involving ESI in civil cases, and to promote, whenever possible, the resolution of disputes regarding the discovery of ESI without Court intervention. The parties shall review the Protocol, carefully consider its immediate impact on initial disclosures, the joint proposed discovery plan, and the retention of data, and follow its guidelines accordingly.
- c. Within five (5) calendar days after the IAC, the parties shall file a Certification of Initial Attorneys' Conference ("CIAC") and a joint proposed discovery plan conforming to the requirements set forth below. The template CIAC and Discovery Plan provided by the Clerk's office shall be disregarded to the extent that it is inconsistent with the mandates of this Order.
- d. Within fourteen (14) calendar days after the IAC, the parties must exchange initial disclosures required by Rule 26(a)(1). If the parties choose to stipulate out of or object to the mandatory initial disclosure procedure, they must so indicate in their

proposed discovery plan.

5. CASE MANAGEMENT TRACKS

- a. Civil cases will be assigned to one of three case management tracks: **Simple/Fast Track**; **Standard Track**; or **Complex/Extended Track**. Cases involving *pro se* litigants presumptively will be assigned to the **Simple/Fast Track**, and all other cases presumptively will be assigned to the **Standard Track**, unless the parties demonstrate to the satisfaction of the judicial officer presiding over the initial scheduling conference that a different case management track is more appropriate for just and expedient adjudication of the case.
- b. With due regard given to the fact that not every case will fall cleanly into a pre-defined category, the following general deadlines and limitations (or close approximations thereof, subject to modification by leave of court for good cause shown) will apply depending on which case management track the case is assigned:

	Simple/ Fast Track	Standard Track	Complex/ Extended Track⁴
Initial Disclosures (α)	14 days after IAC	14 days after IAC	14 days after IAC
Motion to Amend the Pleadings Deadline	4 weeks after α	6 weeks after α	8 weeks after α
Completion of Discovery Deadline (δ)	12 weeks after α	24 weeks after α	36 weeks after α
Discovery Guidelines Written discovery requests allowed (per party per method of written discovery): Total hours of oral deposition allowed (per party, excluding experts):	20 20	25 30	30 50
Expert Reports Plaintiff: Defendant: Rebuttal:	3 weeks before δ 3 weeks before δ None anticipated	8 weeks before δ 4 weeks before δ Any time before δ	10 weeks before δ 6 weeks before δ 2 weeks before δ
ADR Deadline	14 days after δ	14 days after δ	14 days after δ
Dispositive Motions Deadline	28 days after δ	28 days after δ	28 days after δ
Word Limits (Briefs on Dispositive Motions) Memo in support or opposition: Reply Memo:	4,500 words 1,500 words	6,000 words 2,000 words	9,000 words 3,000 words

- c. Irrespective of the case management track to which this matter ultimately is assigned, counsel should expect that oral arguments on dispositive motions will be heard on the first available motions calendar after dispositive motions are expected to ripen, and counsel should be ready for trial during the next available trial calendar following a motions hearing. The Court's Standing Order Governing the

⁴ In cases complex enough to warrant bifurcation of discovery, the parties may propose, instead of a single 36-week discovery period, separate phases (e.g., of 12- and 24-weeks), with or without an intermediate motions deadline.

Calendaring of Hearings and Trials Before the Honorable Frank D. Whitney is available for reference at Misc. No. 3:07-MC-47 (Doc. No. 1).

- d. Case management tracks and corresponding discovery limits will be determined and assigned primarily with regard to the anticipated nature and complexity of the case. However, where counsel anticipate extended conflicts of time during the period in which the case will be litigated (*e.g.*, due to personal or professional obligations, family or medical leave, or vacation that has been secured in advance, *et cetera*), the deadlines may be extended by a period of not more than eight (8) weeks beyond that which otherwise would be justified based solely on the nature and complexity of the case.

6. JOINT SUBMISSION OF A PROPOSED DISCOVERY PLAN

- a. Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties shall submit a CIAC and joint proposed discovery plan, which will guide the Court in issuing a case management order as provided by Rule 16(b). The parties are required to follow the guidelines set forth below and may not merely follow the template provided by the Clerk's office.
- b. The parties' joint proposed discovery plan shall contain:
 - i. A thorough discussion of the anticipated nature and complexity of the case;
 - ii. The parties' preference as to which case management track the case should be assigned, along with adequate justification if the parties seek permission to opt out of the default case management track (see Paragraph 5(a)). Where there is disagreement the parties shall state the basis of such disagreement,

with the burden being principally on the party seeking more expansive discovery limits to justify the need for the same;

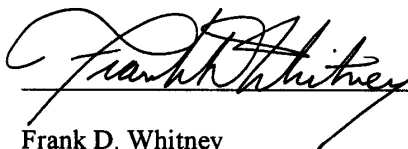
- iii. Any requests for specific modifications from the suggested deadlines and limitations set forth in the above table, along with adequate justification for the proposed modification. For example, an ADR deadline of fourteen (14) days after the deadline for completion of discovery is typically the latest date that the Court will consider allowing the parties to submit to ADR. However, if the parties believe that the case would benefit from early mediation, an earlier deadline may be proposed in the parties' joint discovery plan;
- iv. Whether or not there is unanimous and voluntary consent of all parties to the exercise of jurisdiction by a United States magistrate judge pursuant to 28 U.S.C. § 636(c);
- v. Whether or not the parties request that an initial pretrial conference be held prior to the entry of a comprehensive Case Management Order. Initial pretrial conferences (and subsequent oversight of discovery) typically will be conducted by a magistrate judge except in more complex cases (*e.g.*, patent, MDL, class and derivative actions).


7. COMPUTATION OF TIME

- a. The time periods prescribed by Court Order or Local Rule shall be computed as provided in Rule 6 of the Federal Rules of Civil Procedure, unless otherwise directed by the Court.
- b. If an Order of the Court specifies a time period in terms of "calendar days:"

- i. Intervening weekends and holidays shall be counted in the computation even if the specified time period is shorter than eleven (11) days in duration; and
- ii. The time period prescribed by the Court shall be deemed to be inclusive of any additional three (3) day allowance for service provided by Fed. R. Civ. P. 6(e) and (Proposed) Local Civil Rule 7.1(E).

IT IS SO ORDERED.


Frank D. Whitney
United States District Judge



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DOCKET NO. X:XX-CV-XXX-W

XXXXXX,

Plaintiff,

vs.

XXXXXX,

Defendant.

**CASE MANAGEMENT
ORDER
(JURY TRIAL)**

THIS MATTER, upon assignment to the Honorable Frank D. Whitney, and following conference of counsel pursuant to Local Civil Rule 16.1(A), shall be governed by the following Case Management Order entered pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. This Order is intended to supplement, not supplant, the Court’s previously entered Initial Scheduling Order.

DEADLINES AT A GLANCE

Initial Disclosures:	_____
Expert Reports:	
Plaintiffs’	_____
Defendants’	_____
Rebuttal	_____
Discovery Completion:	_____
ADR:	_____
Dispositive Motions (filed):	_____
Dispositive Motions (hearing):	_____
Pretrial Submissions:	_____
Final Pretrial Conference:	_____
Trial Setting:	_____

1. DISCOVERY

- a. Track Assignment.** This case is assigned to the _____ case management track.
- b. Deadline for Completion of All Discovery; Extensions.** All discovery shall be commenced or served in time to be completed by _____. Pursuant to Rule 29, the Court preauthorizes the parties to stipulate to the taking of discovery beyond the discovery completion deadline provided that any such extension expires not later than fourteen (14) calendar days prior to the scheduled trial term and a joint stipulation memorializing the extension is filed on the record.¹ Otherwise, discovery requests that seek responses or schedule depositions after the discovery completion deadline are not enforceable except by Order of the Court for good cause shown. If a party moves for an extension of time to respond to discovery requests or to extend the discovery deadline, the result of consultation with opposing counsel must be stated in the motion.
- c. Discovery Guidelines.** Each party may propound no more than __ interrogatories to any other party; each party may serve no more than __ requests for production on any other party; each party may submit no more than __ requests for admission to any other party; and each party may conduct more than ____ hours of oral deposition.²

¹ Stipulated extensions of the deadline for completion of all discovery will not alter the dates and deadlines for filing, briefing, and hearing dispositive motions, nor do they provide grounds for a continuance of a trial setting.

² This provision does not supersede the requirements of Rule 30(d)(2) (limiting oral deposition of any given witness to one day of seven hours) but only provides a mechanism for capping the total amount of depositions a party may take. Only time on the record shall be counted against this limit, and time will be assessed against the party whose counsel is questioning the witness, irrespective of which party noticed the

Parties may, by agreement, increase the numbers set forth above or, if unable to agree, may seek Court intervention where good cause exists.

- d. Disclosures and Supplementation.** Initial pretrial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) were exchanged on _____ [shall be exchanged no later than _____]. Supplementation of disclosures under Rule 26(e) shall be served at such times and under such circumstances as required by that rule. Counsel should bear in mind that seldom should anything be included in the final Rule 26(a)(3) pretrial disclosures that has not previously appeared in the initial Rule 26(a)(1) disclosures or a Rule 26(e) supplement made sufficiently in advance of the discovery deadline to put opposing counsel in a realistic position to make strategic judgments about whether to pursue follow-up discovery concerning the witness or exhibit disclosed. A party that fails to comply in good faith with this requirement may be subject to appropriate sanctions pursuant to Fed. R. Civ. P. 37(c)(1).
- e. Expert Reports.** Reports from retained experts under Rule 26(a)(2) shall be due from the Plaintiff(s) no later than _____ and from the Defendant(s) no later than _____. [Supplementation of expert reports under Rule 26(e) shall be due by _____.]
- f. Responses to Interrogatories and Requests for Admission.** Every response to an interrogatory or request for admission, and every objection thereto, shall be preceded by the original number and complete text of the corresponding interrogatory or request for admission.

deposition.

- g. The Maintenance of Discovery Materials.** Discovery materials are not to be filed unless used to support or oppose a motion. All counsel are advised to consult (Proposed) Local Civil Rule 26.2, which provides that while depositions, interrogatories, and requests for admission, and responses thereto, must still be served on all parties, they are no longer to be filed except upon Order of the Court. The parties are solely responsible for the preservation of any and all discovery materials they may generate.
- h. Protective Orders; Filings Under Seal.** In order to avoid unnecessary delay in responding to discovery requests, the Court has adopted a standing protective order that is applicable to each case before the undersigned, subject to supplementation, modification, or vacatur, as the need may arise, upon motion of a party. See Standing Protective Order for Civil Cases Before the Honorable Frank D. Whitney, Miscellaneous No. 3:07-MC-47 (Doc. No. 3). Even with a protective order governing confidential documents in place, however, Court filings may be kept under seal only upon written motion of a party satisfying the requirements of Stone v. University of Maryland Medical System Corp., 855 F.2d 178, 180-81 (4th Cir. 1988) and (Proposed) Local Civil Rule 6.1. Specifically, any motion to seal shall set forth: (i) a non-confidential description of the material sought to be sealed; (ii) a statement of reasons sufficient to overcome the public's presumptive right of access; (iii) a statement as to why sealing is necessary (*i.e.*, why there are no adequate alternatives to filing under seal); (iv) a statement as to the period of time the party seeks to have the material maintained under seal and as to how the matter is to be handled upon

unsealing; and (v) supporting statutes, case law, or other authority.

- i. Motions to Compel.** Consistent with the spirit, purpose, and explicit directives of the Federal Rules of Civil Procedure and this District's Local Rules, the Court expects all parties (and counsel) to attempt in good faith to resolve discovery disputes without the necessity of court intervention. Failing this, the parties are required, within fourteen (14) calendar days after a discovery dispute arises,³ to schedule and submit to an informal telephonic conference before the referral magistrate judge (or the presiding district judge, if the magistrate judge is unavailable prior to the expiration of the 14 days). The judicial officer presiding over such a teleconference shall have jurisdiction to: (i) mediate the parties' own resolution of the dispute; (ii) make a summary legal determination on the merits of the dispute, if appropriate; (iii) require the aggrieved party to file a written motion to compel and/or set an abbreviated briefing schedule, if appropriate; and (iv) award appropriate sanctions pursuant to Rule 37.

2. ALTERNATIVE DISPUTE RESOLUTION

- a. Method of ADR.** The method of ADR required to be utilized in this case is _____.
- b. ADR Deadline.** The deadline for completing ADR and filing a report on the results is _____.
- c. Settlement Procedures.** If at any time a settlement is reached it shall be reported

³ This time limitation may only be extended with leave of Court for good cause shown, and failure to timely submit to this procedure will result in the objection being deemed waived.

immediately to the Court, in writing, together with a realistic target date by which the parties can have a formal stipulation of dismissal filed. Upon notification of settlement, the Court will enter an Order nominally dismissing the case without prejudice to the right of any party to reopen it should the settlement not be consummated as contemplated.

3. MOTIONS

- a. **Motions Deadlines.** Any motion for leave to join additional parties or otherwise to amend the pleadings shall be filed by _____.⁴ All dispositive and other pretrial motions except for motions to continue and motions *in limine* shall be filed no later than _____. Parties may not extend these deadlines by agreement and stipulated extensions of the deadline for completion of all discovery will not alter the motions deadline.
- b. **Proposed Form of Order.** All pretrial motions other than motions made pursuant to Rules 12(b), 12(c), 23, 56, or 65(a) of the Federal Rules of Civil Procedure shall be accompanied at the time of filing with a proposed form of order stating the requested relief. Proposed orders shall be submitted to Chambers electronically, in WordPerfect (WPD) or Rich Text (RTF) format, utilizing the CyberClerk feature of CM/ECF.
- c. **Memoranda of Law; Requirements and Deadlines.** All relevant portions of the Court's Initial Scheduling Order remain in full force and effect (including the

⁴ A motion to amend the pleadings made after this deadline is, in effect, a motion to amend this scheduling order, and party seeking to do so will have the burden of satisfying not only Rule 15's "justice so requires" standard but also Rule 16(b)'s "good cause" standard.

provisions regarding content of memoranda of law, attorney certifications, briefing schedules, computation of time, extensions, and objections to or reconsideration of a magistrate judge's decision), except that the Court sets the following new word limits:

- i. Unless prior permission has been granted, memoranda of law in support of or in opposition to any discovery or evidentiary motion shall not exceed 3,000 words, and reply memoranda will not be permitted in discovery or evidentiary disputes.
- ii. Unless prior permission has been granted, memoranda of law in support of or in opposition to any dispositive motion shall not exceed _____ words, and reply memoranda shall not exceed _____ words.

d. Exhibits. A copy of all exhibits upon which a party relies in support of or in opposition to a motion shall be included as an "Appendix" or "Attachment" thereto and filed with the Court. If a party's exhibits aggregate to 25 or more pages, a courtesy copy of the exhibits (bound, indexed, and tabbed for ease of reference) shall be mailed or hand delivered to Chambers as soon as practicable after filing.⁵ The Chambers address is: 195 Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202.

e. Hearings.

⁵ Exhibits that are under seal should be included in the exhibit notebook but should be clearly distinguishable from the non-sealed exhibits (*e.g.*, reproduced onto colored paper).

- i. Scheduling. Counsel should expect that the calendaring of dispositive motions for hearing will be the general rule, not the exception, as an accommodation for the Court's strict page limits. In this case, oral arguments on dispositive motions will be held during the week of _____, unless, upon reviewing the briefs, the Court in its discretion deems oral argument unnecessary. Deputy Clerk Candace Cochran (Tel: 704.350.7402) will assist the Court and counsel in setting a specific time and date during the designated week and should be counsel's point of contact for that purpose.
- ii. Procedure. Oral arguments shall be limited to fifteen (15) minutes per side, but may be extended at the discretion of the presiding district judge. After arguments are heard and before a ruling is issued, the parties will be provided an opportunity to discuss settlement. Accordingly, counsel are directed to have their clients or representatives with settlement authority either present in the courtroom or readily available by telephone at the time of hearing. Counsel are advised that the Court may elect to issue an immediate decision on the record in open court in lieu of a written order, and/or request the prevailing party to prepare a written draft order memorializing the Court's decision.

4. PRETRIAL AND TRIAL PROCEDURES

- a. **Trial**. This case shall be tried **with** a jury. Counsel should be prepared to proceed to trial at the first available mixed term of court commencing on or after

_____. Trial is anticipated to last ___ days.

- b. Final Pretrial Conference.** A final pretrial conference shall set during the week _____ at a date and time to be noticed by the Court. On or before the date of the final pretrial conference, counsel shall seriously revisit the possibility of settlement and be prepared at conference to inform the Court of the parties' efforts.
- c. Pretrial Submissions.** The Court requires the following pretrial submissions to be jointly drafted and submitted to Chambers at least seven (7) calendar days prior to the final pretrial conference:
- i. Proposed Pretrial Order. This document shall contain:
- (1) A joint statement of the case, the purpose of which is to acquaint the jury with the nature of the case. Unless the case is extremely complex, this statement should not ordinarily exceed one page.
 - (2) Stipulations as to all issues of law or fact to which the parties can agree for purposes of streamlining trial. If a party fails to stipulate to a fact (*e.g.*, the authenticity of a document) without articulating a good faith basis for disputing it, the Court shall assess against that party the opposing party's costs (including the cost of subpoena service, witness travel costs and fees, and reasonable attorney's fees) incurred in proving the fact at trial. See Fed. R. Civ. P. 37(c)(2).
 - (3) A brief synopsis (no argument) of the legal or factual contentions about which the parties have been unable to stipulate. Any advocacy should be reserved for a trial brief which may be submitted as

provided in Paragraph 4(d) below.

- (4) A list of exhibits that each party may offer at trial (except those offered solely for impeachment or cross-examination), numbered sequentially; a brief description of the exhibit; any stipulations as to authenticity or admissibility; and the basis for any objections. This information shall be entered into a table in substantially the following format (the last two columns should be left blank to be completed by the courtroom clerk at trial):

Exh. No.	Description	Stipulation – Authenticity	Stipulation – Admissibility	Objections	Identified By	Admitted
1	Police Report	Yes	No	Hearsay		
2	Draft of Contract	No	No	Foundation, Relevance, Parol Evidence		

- (5) Designations by volume, page and line of all portions of pleadings and discovery materials, including depositions, interrogatories, and requests for admission, that each party may offer at trial (except those offered solely for impeachment or cross-examination); cross-designations; a brief description of the substance of the designation; and the basis for any objections. This information should be entered into a similar table format as the exhibit list.
- (6) A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

- (7) A statement of the qualifications of any expert witness a party may offer at trial, unless the parties have stipulated to the qualifications of the expert witness as provided above.
- ii. Proposed Voir Dire. The general procedures governing voir dire is set forth in the Court's Standing Order Governing Jury Selection and Instruction in Civil Cases Before the Honorable Frank D. Whitney, Miscellaneous No. 3:07-MC-47 (Doc. No. 5). In addition to the Court's standard voir dire, counsel may prepare and jointly submit a single compilation of voir dire questions sought to be asked, also noting the agreement or objection of other parties to each proposed question. Pursuant to Rule 47(a), the Court will ask prospective jurors only such of the proposed voir dire as it deems proper.
- iii. Proposed Jury Instructions. The general procedures governing jury instruction is set forth in the Court's Standing Order Governing Jury Selection and Instruction in Civil Cases Before the Honorable Frank D. Whitney, Miscellaneous No. 3:07-MC-47 (Doc. No. 5). Any objections to, or requests for modification or supplementation of, the Court's pattern jury instructions must be made at this time or may be deemed waived. In addition to the Court's generally-applicable pattern jury instructions, counsel should prepare and jointly submit a single compilation of proposed jury instructions that are narrowly tailored to the anticipated issues arising at trial (*e.g.*, the elements of the claims and defenses at issue), subject to supplementation at the close of evidence, as necessary, as contemplated by Rule 51. Counsel

shall identify and index each proposed instruction by number and heading, and support each proposed instruction with adequate legal authority. Where there is disagreement as to any instruction, this jointly prepared submission shall disclose the basis for a party's objection and (if applicable) provide a proposed alternate instruction.

- iv. Exhibit Notebooks. Copies of all proffered documentary exhibits (including designated portions of discovery materials), properly bound, indexed, and tabbed.⁶ In addition, if counsel proposes to publish exhibits electronically through the multimedia technology available in the courtroom, counsel shall submit to Chambers a CD-ROM containing the pertinent files (in JPEG or PDF format for documents and images and MPEG format for audio/video), named according to the corresponding exhibit number assigned to the exhibit in the proposed pretrial order. These exhibit notebooks and CD-ROMs are to be courtesy copies for the Court's personal use at trial. Counsel should be aware that each party will bear sole responsibility for maintaining the actual exhibits offered by that party and admitted at trial.

All working drafts of documents (*e.g.*, the proposed pretrial order, voir dire, jury instructions) shall be submitted to Chambers electronically, in either WordPerfect (WPD) or Rich Text (RTF) format, utilizing the CyberClerk feature of CM/ECF. Submissions required to be made in a tangible medium (*e.g.*, hard copies of papers

⁶ The Court requests three complete exhibit notebooks – one for the Judge, one for the Clerk, and one for the Witness stand.

and exhibits) must be sent so as ensure their receipt in Chambers by the deadlines set forth herein.

- d. Motions *in limine* and Trial Briefs.** To the extent that contested issues of law and evidentiary objections can be anticipated in advance of trial, trial briefs and/or motions *in limine*, if appropriate, shall be filed on the Monday prior to the first day of the trial term during which the case has been calendared. Written responses shall be due on the Thursday prior to the first day of the trial term. Word limits for motions *in limine* shall be governed by Paragraph 3(c)(i) and word limits for trial briefs shall be governed by Paragraph 3(c)(ii).
- e. Video Depositions.** If video depositions are taken and counsel intend to use them at trial, counsel are directed to resolve any objections and edit the video accordingly so that the video may be shown without interruption. Failure to do this prior to trial will result in objections being deemed to be waived.
- f. *De Bene Esse* Depositions.** *De bene esse* trial depositions may not be taken outside of the discovery period without consent of all parties or leave of court upon a showing: (i) that the deponent will be unavailable at trial for one of the reasons set forth in Rule 32(a)(3) and, if the reason for unavailability is that the witness resides outside of the Court's subpoena power, that the party desiring the testimony has first made a good faith effort to obtain the voluntary attendance of the witness at trial; (ii) that the witness had not previously been deposed in a discovery deposition, or that exigent facts exist which would justify reopening the deposition; (iii) that the deposition can be scheduled at least fourteen (14) calendar days before the first day

of the trial term during which the case has been calendared; and (iv) that no substantial and irreparable prejudice will result to an adverse party on account of the taking of the deposition.

- g. Trial Subpoenas.** Counsel must subpoena all witnesses at least fourteen (14) calendar days before the first day of the trial term during which the case has been calendared. The Court may elect not to enforce subpoenas that have not been issued in compliance with this deadline or, if requested, may quash subpoenas that have not been issued in compliance with this deadline.
- h. Assessment of Jury Costs.** Whenever a civil action scheduled for a jury trial is settled or otherwise disposed of in advance of the actual trial, the Court may assess all jurors' costs (including Marshal's fees, mileage reimbursement, and *per diem* fees) equally against the parties or otherwise may determine appropriate assessments, unless the Clerk's office is notified at least one (1) full business day prior to the date on which the action is scheduled for trial or the parties establish good cause why the Court should not assess jury costs against them. When any civil trial is settled at trial in advance of a verdict, the Court likewise may make the same assessments unless the parties establish good cause why the Court should not do so.

IT IS SO ORDERED.

Signed: _____

Signature Line

Title of Signing Officer
United States District Court



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DOCKET NO. X:XX-CV-XXX-W

XXXXXX,

Plaintiff,

vs.

XXXXXX,

Defendant.

**CASE MANAGEMENT
ORDER
(BENCH TRIAL)**

THIS MATTER, upon assignment to the Honorable Frank D. Whitney, and following conference of counsel pursuant to Local Civil Rule 16.1(A), shall be governed by the following Case Management Order entered pursuant to Rule 16(b) of the Federal Rules of Civil Procedure. This Order is intended to supplement, not supplant, the Court’s previously entered Initial Scheduling Order.

DEADLINES AT A GLANCE

Initial Disclosures:	_____
Expert Reports:	
Plaintiffs’	_____
Defendants’	_____
Rebuttal	_____
Discovery Completion:	_____
ADR:	_____
Dispositive Motions (filed):	_____
Dispositive Motions (hearing):	_____
Pretrial Submissions:	_____
Final Pretrial Conference:	_____
Trial Setting:	_____

1. DISCOVERY

- a. Track Assignment.** This case is assigned to the _____ case management track.
- b. Deadline for Completion of All Discovery; Extensions.** All discovery shall be commenced or served in time to be completed by _____. Pursuant to Rule 29, the Court preauthorizes the parties to stipulate to the taking of discovery beyond the discovery completion deadline provided that any such extension expires not later than fourteen (14) calendar days prior to the scheduled trial term and a joint stipulation memorializing the extension is filed on the record.¹ Otherwise, discovery requests that seek responses or schedule depositions after the discovery completion deadline are not enforceable except by Order of the Court for good cause shown. If a party moves for an extension of time to respond to discovery requests or to extend the discovery deadline, the result of consultation with opposing counsel must be stated in the motion.
- c. Discovery Guidelines.** Each party may propound no more than __ interrogatories to any other party; each party may serve no more than __ requests for production on any other party; each party may submit no more than __ requests for admission to any other party; and each party may conduct more than ____ hours of oral deposition.²

¹ Stipulated extensions of the deadline for completion of all discovery will not alter the dates and deadlines for filing, briefing, and hearing dispositive motions, nor do they provide grounds for a continuance of a trial setting.

² This provision does not supersede the requirements of Rule 30(d)(2) (limiting oral deposition of any given witness to one day of seven hours) but only provides a mechanism for capping the total amount of depositions a party may take. Only time on the record shall be counted against this limit, and time will be assessed against the party whose counsel is questioning the witness, irrespective of which party noticed the

Parties may, by agreement, increase the numbers set forth above or, if unable to agree, may seek Court intervention where good cause exists.

- d. Disclosures and Supplementation.** Initial pretrial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) were exchanged on _____ [shall be exchanged no later than _____]. Supplementation of disclosures under Rule 26(e) shall be served at such times and under such circumstances as required by that rule. Counsel should bear in mind that seldom should anything be included in the final Rule 26(a)(3) pretrial disclosures that has not previously appeared in the initial Rule 26(a)(1) disclosures or a Rule 26(e) supplement made sufficiently in advance of the discovery deadline to put opposing counsel in a realistic position to make strategic judgments about whether to pursue follow-up discovery concerning the witness or exhibit disclosed. A party that fails to comply in good faith with this requirement may be subject to appropriate sanctions pursuant to Fed. R. Civ. P. 37(c)(1).
- e. Expert Reports.** Reports from retained experts under Rule 26(a)(2) shall be due from the Plaintiff(s) no later than _____ and from the Defendant(s) no later than _____. [Supplementation of expert reports under Rule 26(e) shall be due by _____.]
- f. Responses to Interrogatories and Requests for Admission.** Every response to an interrogatory or request for admission, and every objection thereto, shall be preceded by the original number and complete text of the corresponding interrogatory or request for admission.

deposition.

- g. The Maintenance of Discovery Materials.** Discovery materials are not to be filed unless used to support or oppose a motion. All counsel are advised to consult (Proposed) Local Civil Rule 26.2, which provides that while depositions, interrogatories, and requests for admission, and responses thereto, must still be served on all parties, they are no longer to be filed except upon Order of the Court. The parties are solely responsible for the preservation of any and all discovery materials they may generate.
- h. Protective Orders; Filings Under Seal.** In order to avoid unnecessary delay in responding to discovery requests, the Court has adopted a standing protective order that is applicable to each case before the undersigned, subject to supplementation, modification, or vacatur, as the need may arise, upon motion of a party. See Standing Protective Order for Civil Cases Before the Honorable Frank D. Whitney, Miscellaneous No. 3:07-MC-47 (Doc. No. 3). Even with a protective order governing confidential documents in place, however, Court filings may be kept under seal only upon written motion of a party satisfying the requirements of Stone v. University of Maryland Medical System Corp., 855 F.2d 178, 180-81 (4th Cir. 1988) and (Proposed) Local Civil Rule 6.1. Specifically, any motion to seal shall set forth: (i) a non-confidential description of the material sought to be sealed; (ii) a statement of reasons sufficient to overcome the public's presumptive right of access; (iii) a statement as to why sealing is necessary (*i.e.*, why there are no adequate alternatives to filing under seal); (iv) a statement as to the period of time the party seeks to have the material maintained under seal and as to how the matter is to be handled upon

unsealing; and (v) supporting statutes, case law, or other authority.

- i. Motions to Compel.** Consistent with the spirit, purpose, and explicit directives of the Federal Rules of Civil Procedure and this District's Local Rules, the Court expects all parties (and counsel) to attempt in good faith to resolve discovery disputes without the necessity of court intervention. Failing this, the parties are required, within fourteen (14) calendar days after a discovery dispute arises,³ to schedule and submit to an informal telephonic conference before the referral magistrate judge (or the presiding district judge, if the magistrate judge is unavailable prior to the expiration of the 14 days). The judicial officer presiding over such a teleconference shall have jurisdiction to: (i) mediate the parties' own resolution of the dispute; (ii) make a summary legal determination on the merits of the dispute, if appropriate; (iii) require the aggrieved party to file a written motion to compel and/or set an abbreviated briefing schedule, if appropriate; and (iv) award appropriate sanctions pursuant to Rule 37.

2. ALTERNATIVE DISPUTE RESOLUTION

- a. Method of ADR.** The method of ADR required to be utilized in this case is _____.
- b. ADR Deadline.** The deadline for completing ADR and filing a report on the results is _____.
- c. Settlement Procedures.** If at any time a settlement is reached it shall be reported

³ This time limitation may only be extended with leave of Court for good cause shown, and failure to timely submit to this procedure will result in the objection being deemed waived.

immediately to the Court, in writing, together with a realistic target date by which the parties can have a formal stipulation of dismissal filed. Upon notification of settlement, the Court will enter an Order nominally dismissing the case without prejudice to the right of any party to reopen it should the settlement not be consummated as contemplated.

3. MOTIONS

- a. **Motions Deadlines.** Any motion for leave to join additional parties or otherwise to amend the pleadings shall be filed by _____.⁴ All dispositive and other pretrial motions except for motions to continue and motions *in limine* shall be filed no later than _____. Parties may not extend these deadlines by agreement and stipulated extensions of the deadline for completion of all discovery will not alter the motions deadline.
- b. **Proposed Form of Order.** All pretrial motions other than motions made pursuant to Rules 12(b), 12(c), 23, 56, or 65(a) of the Federal Rules of Civil Procedure shall be accompanied at the time of filing with a proposed form of order stating the requested relief. Proposed orders shall be submitted to Chambers electronically, in WordPerfect (WPD) or Rich Text (RTF) format, utilizing the CyberClerk feature of CM/ECF.
- c. **Memoranda of Law; Requirements and Deadlines.** All relevant portions of the Court's Initial Scheduling Order remain in full force and effect (including the

⁴ A motion to amend the pleadings made after this deadline is, in effect, a motion to amend this scheduling order, and party seeking to do so will have the burden of satisfying not only Rule 15's "justice so requires" standard but also Rule 16(b)'s "good cause" standard.

provisions regarding content of memoranda of law, attorney certifications, briefing schedules, computation of time, extensions, and objections to or reconsideration of a magistrate judge's decision), except that the Court sets the following new word limits:

- i. Unless prior permission has been granted, memoranda of law in support of or in opposition to any discovery or evidentiary motion shall not exceed 3,000 words, and reply memoranda will not be permitted in discovery or evidentiary disputes.
 - ii. Unless prior permission has been granted, memoranda of law in support of or in opposition to any dispositive motion shall not exceed _____ words, and reply memoranda shall not exceed _____ words.
- d. Exhibits.** A copy of all exhibits upon which a party relies in support of or in opposition to a motion shall be included as an "Appendix" or "Attachment" thereto and filed with the Court. If a party's exhibits aggregate to 25 or more pages, a courtesy copy of the exhibits (bound, indexed, and tabbed for ease of reference) shall be mailed or hand delivered to Chambers as soon as practicable after filing.⁵ The Chambers address is: 195 Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202.
- e. Hearings.**
- i. Scheduling. Counsel should expect that the calendaring of dispositive

⁵ Exhibits that are under seal should be included in the exhibit notebook but should be clearly distinguishable from the non-sealed exhibits (*e.g.*, reproduced onto colored paper).

motions for hearing will be the general rule, not the exception, as an accommodation for the Court's strict page limits. In this case, oral arguments on dispositive motions will be held during the week of _____, unless, upon reviewing the briefs, the Court in its discretion deems oral argument unnecessary. Deputy Clerk Candace Cochran (Tel: 704.350.7402) will assist the Court and counsel in setting a specific time and date during the designated week and should be counsel's point of contact for that purpose.

- ii. Procedure. Oral arguments shall be limited to fifteen (15) minutes per side, but may be extended at the discretion of the presiding district judge. After arguments are heard and before a ruling is issued, the parties will be provided an opportunity to discuss settlement. Accordingly, counsel are directed to have their clients or representatives with settlement authority either present in the courtroom or readily available by telephone at the time of hearing. Counsel are advised that the Court may elect to issue an immediate decision on the record in open court in lieu of a written order, and/or request the prevailing party to prepare a written draft order memorializing the Court's decision.

4. **PRETRIAL AND TRIAL PROCEDURES**

- a. **Trial**. This case shall be tried **with** a jury. Counsel should be prepared to proceed to trial at the first available mixed term of court commencing on or after _____. Trial is anticipated to last __ days.

- b. Final Pretrial Conference.** A final pretrial conference shall set during the week _____ at a date and time to be noticed by the Court. On or before the date of the final pretrial conference, counsel shall seriously revisit the possibility of settlement and be prepared at conference to inform the Court of the parties' efforts.
- c. Pretrial Submissions.** The Court requires the following pretrial submissions to be jointly drafted and submitted to Chambers at least seven (7) calendar days prior to the final pretrial conference:
- i. Proposed Pretrial Order. This document shall contain:
- (1) A joint statement of the case.
 - (2) Stipulations as to all issues of law or fact to which the parties can agree for purposes of streamlining trial. If a party fails to stipulate to a fact (*e.g.*, the authenticity of a document) without articulating a good faith basis for disputing it, the Court shall assess against that party the opposing party's costs (including the cost of subpoena service, witness travel costs and fees, and reasonable attorney's fees) incurred in proving the fact at trial. See Fed. R. Civ. P. 37(c)(2).
 - (3) A brief synopsis (no argument) of the legal or factual contentions about which the parties have been unable to stipulate. Any advocacy should be reserved for a trial brief which may be submitted as provided in Paragraph 4(d) below.
 - (4) A list of exhibits that each party may offer at trial (except those offered solely for impeachment or cross-examination), numbered

sequentially; a brief description of the exhibit; any stipulations as to authenticity or admissibility; and the basis for any objections. This information shall be entered into a table in substantially the following format (the last two columns should be left blank to be completed by the courtroom clerk at trial):

Exh. No.	Description	Stipulation – Authenticity	Stipulation – Admissibility	Objections	Identified By	Admitted
1	Police Report	Yes	No	Hearsay		
2	Draft of Contract	No	No	Foundation, Relevance, Parol Evidence		

- (5) Designations by volume, page and line of all portions of pleadings and discovery materials, including depositions, interrogatories, and requests for admission, that each party may offer at trial (except those offered solely for impeachment or cross-examination); cross-designations; a brief description of the substance of the designation; and the basis for any objections. This information should be entered into a similar table format as the exhibit list.
- (6) A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.
- (7) A statement of the qualifications of any expert witness a party may offer at trial, unless the parties have stipulated to the qualifications of the expert witness as provided above.

- ii. Exhibit Notebooks. Copies of all proffered documentary exhibits (including designated portions of discovery materials), properly bound, indexed, and tabbed.⁶ In addition, if counsel proposes to publish exhibits electronically through the multimedia technology available in the courtroom, counsel shall submit to Chambers a CD-ROM containing the pertinent files (in JPEG or PDF format for documents and images and MPEG format for audio/video), named according to the corresponding exhibit number assigned to the exhibit in the proposed pretrial order. These exhibit notebooks and CD-ROMs are to be courtesy copies for the Court's personal use at trial. Counsel should be aware that each party will bear sole responsibility for maintaining the actual exhibits offered by that party and admitted at trial.

All working drafts of documents (*e.g.*, the proposed pretrial order) shall be submitted to Chambers electronically, in either WordPerfect (WPD) or Rich Text (RTF) format, utilizing the CyberClerk feature of CM/ECF. Submissions required to be made in a tangible medium (*e.g.*, hard copies of papers and exhibits) must be sent so as ensure their receipt in Chambers by the deadlines set forth herein.

- d. **Trial Briefs and Motions *in limine*.** To the extent that contested issues of law can be anticipated in advance of trial, trial briefs and/or motions *in limine*,⁷ if

⁶ The Court requests three complete exhibit notebooks – one for the Judge, one for the Clerk, and one for the Witness stand.

⁷ Due to the more informal nature of a bench trial, a motion *in limine* should not be filed if the objection is susceptible to resolution in the course of trial.

appropriate, shall be filed on the Monday prior to the first day of the trial term during which the case has been calendared. Written responses shall be due on the Thursday prior to the first day of the trial term. Word limits for motions *in limine* shall be governed by Paragraph 3(c)(i) and word limits for trial briefs shall be governed by Paragraph 3(c)(ii).

- e. **Proposed Findings of Fact and Conclusions of Law.** If requested by the Court, proposed findings of fact and conclusions of law shall be due to be filed at a time designated at the final pretrial conference.
- f. ***De Bene Esse* Depositions.** *De bene esse* trial depositions may not be taken outside of the discovery period without consent of all parties or leave of court upon a showing: (i) that the deponent will be unavailable at trial for one of the reasons set forth in Rule 32(a)(3) and, if the reason for unavailability is that the witness resides outside of the Court's subpoena power, that the party desiring the testimony has first made a good faith effort to obtain the voluntary attendance of the witness at trial; (ii) that the witness had not previously been deposed in a discovery deposition, or that exigent facts exist which would justify reopening the deposition; (iii) that the deposition can be scheduled at least fourteen (14) calendar days before the first day of the trial term during which the case has been calendared; and (iv) that no substantial and irremediable prejudice will result to an adverse party on account of the taking of the deposition.
- g. **Trial Subpoenas.** Counsel must subpoena all witnesses at least fourteen (14) calendar days before the first day of the trial term during which the case has been

calendared. The Court may elect not to enforce subpoenas that have not been issued in compliance with this deadline or, if requested, may quash subpoenas that have not been issued in compliance with this deadline.

IT IS SO ORDERED.

Signed: _____

Signature Line

Title of Signing Officer
United States District Court

