

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. :**

_____ ,)	
)	
Plaintiff(s),)	
)	
v.)	<u>PRETRIAL ORDER AND</u>
)	<u>CASE MANAGEMENT PLAN</u>
)	<u>FOR CIVIL CASES</u>
)	
_____ ,)	
)	
Defendant(s).)	
_____)	

This Pretrial Order & Case Management Plan (hereinafter, the “Order”) shall govern this case from the date of filing through discovery; the filing of all motions, mediation or other alternative dispute resolution; and trial. The parties may be relieved from the mandates and/or deadlines imposed by this Order only with leave of court, granted pursuant to a motion filed in accordance with the Federal Rules of Civil Procedure, the local rules, and this Order.

I. DISCOVERY

- A. DISCOVERY GUIDELINES.** Discovery in this case is limited as follows: Each party may propound no more than twenty (20) interrogatories, including subparts; no more than twenty (20) requests for admission, and take no more than six (6) depositions of non-expert witnesses. Requests for additional interrogatories, requests for admission, and depositions will be considered on a case-by-case basis.

- B. PROPORTIONALITY.** Proportionality is a consideration in discovery. *See* Fed. R. Civ. P. 26(b)(1). The Court may shift the costs of production of discovery to the party requesting it if the Court determines that the request is not proportionate.

- C. RULE 26 DISCLOSURES.** The parties shall comply with the requirements of Rule 26(a) in a thorough and timely manner.

- D. 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.

- E. THE MAINTENANCE OF DISCOVERY MATERIALS.** Discovery materials are to be served on all parties but are **NOT** to be filed with the Court. *See* L.Cv.R. 26.2. The parties are responsible for the preservation of any and all discovery materials they may generate. L.Cv.R. 26.2.
- F. 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 waived.
- G. PROTECTIVE ORDERS.** Any objections made to discovery requests shall be accompanied by a draft proposed protective order if such order is, or will be, requested. When counsel submit proposed protective orders, they shall include a provision leaving the ultimate disposition of protected materials subject to a final order of the Court on the completion of litigation.
- H. DISCOVERY COMPLETION.** All discovery shall be complete no later than _____ . Counsel are directed to initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery completion deadline so as to comply with this Order. Discovery requests that seek responses or schedule depositions after the discovery completion deadline are not enforceable except by order of the Court and for good cause shown. The parties may consent to extensions of the discovery completion deadline so long as any such extension expires not later than ten (10) days prior to scheduled trial time.
- I. EXPERT WITNESSES.** The Plaintiff shall provide reports from its expert witnesses pursuant to Rule 26(a)(2) by _____. Defendant shall provide reports from its expert witnesses by _____. Supplementations per Rule 26(e) shall be due by within thirty (30) days after obtaining applicable information.
- J. CLAW-BACK AGREEMENTS.** The parties shall consider entering into agreements regarding the assertion of claims of privilege and/or protection of trial-preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502.

II. MOTIONS

- A. **GOVERNED BY LOCAL RULES.** Unless expressly stated otherwise, the Court's pretrial motions practice is governed by L.Cv.R. 7.1.
- B. **MOTIONS DEADLINE.** All motions, except motions *in limine* and motions to continue, shall be filed no later than _____. Parties may not extend this deadline by agreement. Stipulated extensions of the discovery period do not extend the Motions Deadline.
- C. **DISCOVERY DISPUTES.** Consistent with the spirit, purpose, and explicit directives of the Federal Rules of Civil Procedure and the Local Rules of the Western District of North Carolina, the Court expects all parties (and counsel) to attempt in good faith to resolve discovery disputes without the necessity of court intervention. Failure to do so may result in appropriate sanctions. In accordance with Rule 16(b)(1)(B), a party shall, before filing a disputed motion for an order relating to discovery, request a conference with the magistrate judge. Only when that request is denied or an impasse is reached at the conference may the party file a disputed motion for an order relating to discovery. Such conferences may be conducted in chambers or by conference call and need not be recorded, all in the discretion of the magistrate judge.
- D. **MOTIONS IN LIMINE.**
1. **General.** With respect to motions *in limine*, parties are asked to identify on the face of the motion whether or not the movant requests that the motion be heard prior to *voir dire* and/or opening statements. In the absence of such a request by the movant, the Court may elect to resolve any given motion *in limine* when the issue arises at trial. Absent specific direction by the undersigned judge, issues raised in motions *in limine* may not be referenced or mentioned in any way during either *voir dire* or opening statements.
 2. **Timing.** All motions *in limine* shall be filed **on or before** twenty (20) calendar days before the date of trial. Responses shall be filed **on or before** ten (10) calendar days before the date of trial.
- E. **MOTIONS FOR SUMMARY JUDGMENT.** With respect to motions for summary judgment, the Court directs the moving and non-moving parties as follows:
1. **General.** Motions for summary judgment shall be filed in accordance with the applicable provisions of the Federal Rules of Civil Procedure and the local rules. *See* Fed. R. Civ. P. 56; L.Cv.R. 7.1.

- 2. Form of Motion.** A movant for summary judgment shall file, concurrently with the motion and brief, a separate, concise, numbered statement of the material facts to which the movant contends there is no genuine issue to be tried.
- (a) Each material fact must be numbered separately and supported by a citation to record evidence proving such fact. If the movant seeks to submit an exhibit in support of the motion, the movant must specifically identify the exhibit in a numbered paragraph, represent that the exhibit is a “true and accurate” copy of the document represented by the exhibit, and attach the exhibit to the movant’s statement of undisputed material facts.
 - (b) Affidavits and the introductory portions of briefs **do not** constitute a statement of material facts.
 - (c) Failure to submit a statement required by this subsection may constitute grounds for denial of the motion.
 - (d) The Court **will not consider**:
 - (1) *Any fact not supported by a citation to record evidence (including page or paragraph number);*
 - (2) *Any exhibit not identified in the statement of undisputed material facts in accordance with this Order and not attached thereto;*
 - (3) *Any fact supported only by a citation to a pleading rather than to record evidence, unless the citation is to a pleading allegation that has been specifically admitted by an appropriate responsive pleading;*
 - (4) *Any fact stated as an issue or legal conclusion; or*
 - (5) *Any fact or exhibit set out or identified only in the brief and not in the movant’s statement of undisputed facts.*
- 3. Form of Response.** A respondent to a summary judgment motion shall include, by separate and concurrent filing, the following documents with the responsive brief:
- (a) A response to the movant’s statement of undisputed facts.

- (1) This response shall contain individually numbered, concise, non-argumentative responses corresponding to each of the movant's numbered undisputed material facts.
 - (2) This Court will deem each of the movant's facts as admitted or identified exhibits as admissible **unless** the respondent: (i) directly refutes the movant's fact with concise, non-argumentative responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact and/or exhibit; or (iii) points out that the movant's citation does not support the movant's fact, that the movant's fact or exhibit is not material, or that the movant has otherwise failed to comply with the provisions set out in Section II.E.2, supra. All material facts or exhibits contained in the movant's statement of undisputed material facts that are not specifically controverted by specific citation to particular parts of the record, or otherwise controverted through compliance with this subsection, **shall be deemed to have been admitted or admissible**, unless the Court determines, at its discretion, that admission is otherwise inappropriate.
 - (3) The Court will deem the movant's citations supportive of its facts unless the respondent specifically informs the Court to the contrary in the response.
 - (4) The response that a party has insufficient knowledge to admit or deny is not an acceptable response unless the party has complied with the provisions of Rule 56(d) of the Federal Rules of Civil Procedure.
 - (5) A responding party may affirmatively admit any of the movant's facts or exhibits without explanation or further citation to the record.
- (b) A statement of additional facts which the respondent contends are material and present a genuine issue for trial. Such separate statement of material facts must meet the requirements set out in Section II.E.2, supra.

4. Movant's Response. When a respondent provides a statement of additional material facts that the respondent contends present a genuine issue for trial, then, within the time allowed for filing a reply brief, the movant shall file a response to each of the respondent's facts. The range of acceptable responses is limited to:

- (a) An objection to the admissibility of the evidence upon which the respondent relies;
- (b) An objection pointing out that the respondent's evidence does not support the respondent's fact;
- (c) An objection on the ground that the respondent's fact or evidence is not material or does not otherwise comply with the provisions set out in Section II.E.2. & 3(b), supra; or
- (d) A concession that the Court can properly consider the respondent's fact or evidence for purposes of the summary judgment motion.

The movant may reply to the non-movant's response to the statement of undisputed material facts only within the page limitations of a timely filed reply brief. To be clear, the movant may not respond to the non-movant's response to the statement of undisputed material facts by way of a document that is separate from the movant's reply brief.

5. **Citation Required.** All documents and other record materials and/or evidence relied upon by a party moving for or opposing a motion for summary judgment shall be clearly identified for the Court. Where possible, dates, specific page numbers, and line numbers shall be given. Failure to comply with this requirement may result in the Court failing to consider any such material and/or evidence.
6. **Materials Cited Must Comport With Rule 56(c).** Each statement by either the movant or respondent made pursuant to any provision of Section II.E.2., supra, including each statement controverting any statement of material fact, must be followed by citation to evidence which would be admissible or capable of being reduced to admissible form at trial, as required by Rule 56(c) of the Federal Rules of Civil Procedure.
7. **Administrative Review.** Section II.E.2. of this Order shall not apply to cases in which judicial review is based solely on the administrative record. In such cases, motions for summary judgment and oppositions thereto shall include a statement of facts with references to the administrative record. However, each statement of fact must be accompanied by a direct citation to the administrative record or other record evidence in order to ensure consideration by the Court.
8. **Notice to *Pro Se* Litigant Who Opposes Summary Judgment.** Any represented party moving for summary judgment against a party proceeding *pro se* shall serve and file, as a separate document, together with the papers in support of the motion, the following "Notice To *Pro Se* Litigant Who Opposes a Motion For Summary

Judgment” with the full texts of Fed. R. Civ. P. 56 and this Court’s Standing Order attached. Where the *pro se* party is not the plaintiff, the movant shall amend the form notice as necessary to reflect that fact. The Notice is attached as **Exhibit A** to the Court’s Standing Order. Attaching Exhibit A, along with counsel’s separate certificate of service, is conclusive proof of compliance of with this rule.

III. ALTERNATIVE DISPUTE RESOLUTION

- A. METHOD OF ADR.** The method of ADR required to be utilized in this case is mediation.
- B. ADR DEADLINE.** The deadline for completing ADR and filing a report on the results shall be completed no later than thirty (30) days following the close of discovery, or by _____.
- C. SETTLEMENT PROCEDURES.** If at any time a settlement is reached, it shall be reported immediately to the Court, in writing, together with a realistic target date by which the parties can file a formal Stipulation of Dismissal. Upon written notification of a global settlement, any remaining pretrial deadlines will be suspended, future appearances excused, and the case will be removed from the trial calendar.

IV. TRIAL

- A. TRIAL READY DATE.** The “Ready Date” for trial is _____ at 9:30 A.M. The parties estimate that the total time needed for trial will be approximately _____. A “Ready Date” is not necessarily the date this action will be tried, but is the date by which the parties must be ready to go to trial. The Clerk of Court will place this matter on the next available trial calendar on or after the “Ready Date.” Unless peremptorily set by the Court, for purposes of calculating trial deadlines, the day on which the Clerk of Court has set the case for trial is deemed to be the date of Calendar Call
- B. TRIAL SUBPOENAS:** Counsel must subpoena all witnesses at least fourteen (14) days before the day on which the Clerk of Court has set the case for trial. 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.
- C. COUNSEL'S DUTIES PRIOR TO TRIAL:** At least two full weeks before the day on which the Clerk of Court has set the case for trial, counsel for all parties shall:
1. Discuss the possibility of settlement;
 2. Exchange copies of exhibits or permit inspection if copying is impractical. This Order does not modify counsel’s obligations under Rule 26(a)(3);
 3. Submit copies of all exhibits to the courtroom deputy in a format compatible with JERS (*See* Section IV.I, *infra*);

4. Agree upon the issues to be ultimately determined by the jury and file a Proposed Verdict Form with the Court. If counsel cannot agree on one or more issues, areas of disagreement are to be noted for the Court and submitted along with the parties' respective proposals; and
5. Agree upon stipulations of fact and file such stipulations with the Court. The parties are encouraged to stipulate to as many facts as possible to facilitate the trial of the case.

D. COUNSEL'S FILINGS ONE WEEK BEFORE TRIAL: At least one full week before the day on which the Clerk of Court has set the case for trial, counsel for each party shall file:

1. A trial brief addressing all questions of law and any anticipated evidentiary issues;
2. In all non-jury cases, proposed Findings of Fact and Conclusions of Law;
3. Proposed Jury Instructions, as described below; and
4. A Joint Submission of Outstanding Issues relating to deposition designations, as described below.

E. PROPOSED JURY INSTRUCTIONS: If a jury trial has been requested, all counsel shall submit proposed jury instructions on all substantive legal issues no later than one week before the day on which the Clerk of Court has set the case for trial. Additional proposed instructions may be submitted during the trial as circumstances may require. Counsel should number each proposed instruction and submit each instruction on a separate page. Each proposed instruction must contain a supporting citation(s) as a footnote. A proposed instruction submitted without adequate supporting legal authority may not be considered by the Court. Counsel need not submit boilerplate introductory or preliminary instructions.

F. DEPOSITION DESIGNATIONS.

1. **General.** If counsel intend to use depositions at trial, counsel are directed to resolve any objections prior to trial.
2. **Timing.** Deposition designations shall be filed on or before six weeks before the date of trial. The designations shall specifically identify exhibits to be offered through the deposition testimony. Any objections to an opposing party's designations and the accompanying exhibits, and any counter-designations and accompanying exhibits, shall be filed on or before four weeks before the date of trial. Any objections to the counter-designations and exhibits, and any counter-designations to an opposing party's counter-designations, shall be filed on or before two weeks before the date of trial. No additional testimony may be

designated after two weeks before the date of trial absent leave of Court. The parties shall meet and confer no later than ten (10) days before the date of trial to resolve objections to testimony and exhibits and to resolve any proposed redactions to exhibits.

3. **Joint Submission.** Any outstanding issues shall be identified in a Joint Submission to the Court filed one week prior to trial. The Joint Submission shall be accompanied by a list of potential trial witnesses whose testimony may be impacted, including the day the potential witness is likely to be called to testify, as well as copies of the relevant deposition excerpts and a brief discussion of the parties' respective legal arguments.

G. JURY VOIR DIRE: It is this Court's practice to let counsel engage in *voir dire*, subject to the Court's supervision. It is the Court's practice to seat between six and twelve jurors, all of whom will deliberate.

H. COUNSEL'S FILINGS ON THE FIRST DAY OF TRIAL: No later than the morning of the first day of trial, counsel for each party shall file the following:

1. A witness list containing the name of every proposed witness;
2. A statement of the education, experience, and qualifications of each expert witness, unless the parties have stipulated to the qualifications of each expert witness;
3. A final concise statement of all facts to which the parties have stipulated;
4. Stipulations concerning the authenticity of as many proposed exhibits as possible; and
5. An exhibit list.

I. PRESENTATION OF EXHIBITS.

1. The parties are expected to use presentation technology available in the courtroom to display evidence to the jury. Training on the equipment should be arranged well in advance of trial with the courtroom deputy. (See "Courtroom Technology" link on the district website at www.ncwd.uscourts.gov).
2. Counsel shall provide, in electronic format, any exhibits of documents, photographs, videos, and any other evidence that may be reduced to an electronic file, for the use of Court personnel and the Court's Jury Evidence Recording System ("JERS") during trial. Documents and photographs shall be in .pdf, .jpg, .bmp, .tif, or .gif format. Video and audio recordings shall be in .avi, .wmv, .mpg, .mp3, .wma, or .wav format. Each electronic exhibit shall be saved as a separate,

independent file, and provided to the Court on a storage device, such as a CD, DVD, or flash drive. Exhibit files shall be named consistent with their order and name on the exhibit list. For example:

- Exhibit 1 - photograph of ...
- Exhibit 2 - contract
- Exhibit 3 - video deposition of ...

3. If counsel for any party intends to tender more than fifteen (15) documentary exhibits, counsel for that party shall prepare one (1) exhibit notebook, or set of notebooks, for the Court's reference in chambers. Each exhibit notebook, shall contain an index listing all of the exhibits and a copy of each exhibit. Counsel shall tab each exhibit and shall numerically arrange each exhibit notebook, or set of exhibit notebooks.

- J. **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 as otherwise appropriate, 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 demonstrate good cause as to why the Court should not assess jury costs against the parties. When any civil jury trial is settled at trial in advance of the verdict, the Court likewise may make the same assessments, unless the parties demonstrate good cause as to why the Court should not do so.

V. SANCTIONS

- A. **FAILURE TO COMPLY WITH THE PRETRIAL ORDER:** Failure to comply with any of the provisions of this Order, which causes added delay or expense to the Court, may result in the imposition of sanctions, as provided by the Federal Rules of Civil Procedure.

SO ORDERED.

EXHIBIT A

Notice To *Pro Se* Litigant Who Opposes a Motion For Summary Judgment

The defendant in this case has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This means that the defendant has asked the Court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION ON TIME** by filing sworn affidavits and/or other documents as required by Rule 56(c) of the Federal Rules of Civil Procedure and in accordance with Section II.E. of the Court's Standing Order. The full text of Rule 56 of the Federal Rules of Civil Procedure and the Court's Standing Order is attached.

In short, Rule 56 provides that you may NOT oppose summary judgment simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising specific facts that support your claim. If you have proof of your claim, now is the time to submit it. Any witness statements must be in the form of affidavits or declaration. An affidavit is a sworn statement of fact based on personal knowledge stating facts that would be admissible in evidence at trial. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to defendant's motion for summary judgment.

If you do not respond to the motion for summary judgment on time with affidavits and/or documents contradicting the material facts asserted by the defendant, the Court may accept defendant's facts as true. Your case may be dismissed and judgment may be entered in defendant's favor without a trial.

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
- (4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.