

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**IN THE MATTER OF CASES REFERRED TO
UNITED STATES MAGISTRATE JUDGE KAREN L. LITKOVITZ**

STANDING ORDER ON CIVIL PROCEDURES

Pursuant to Fed. R. Civ. P. 83(b) and S.D. Ohio Civ. R. 1.1(f), the following procedures apply in all civil matters referred to Magistrate Judge Karen L. Litkovitz under 28 U.S.C. § 636 and shall be followed by all litigants in those cases.

I. PRETRIAL PROCEDURES

A. DISCOVERY CONFERENCE, JOINT DISCOVERY PLAN AND MANDATORY DISCLOSURE¹

1. Discovery Conference

As soon as all counsel are identified, they shall agree on a date for the discovery conference required by Fed. R. Civ. P. 26(f).

2. Joint Discovery Plan²

Following the discovery conference, the parties shall file the discovery plan required by Fed. R. Civ. P. 26(f). They shall use the required Joint Discovery Plan form found at www.ohsd.uscourts.gov.³

¹Under Fed. R. Civ. P. 26(a)(1)(E), the following categories of cases are exempt from the requirements for a discovery conference, a discovery plan, and mandatory disclosure: (i) an action for review on an administrative record (e.g. Social Security benefits and certain ERISA cases), (ii) a petition for habeas corpus, (iii) a *pro se* prisoner action, (iv) an action to enforce or quash an administrative subpoena, (v) an action by the United States to recover benefit payments, (vi) a government student loan case, (vii) a proceeding ancillary to actions in other courts, and (viii) an action to enforce an arbitration award.

²Attorneys and parties may access all pretrial procedures and forms on the Court's website at www.ohsd.uscourts.gov. Attorneys and parties lacking internet access can contact the Court's Courtroom Deputy, Arthur Hill.

³ The parties and attorneys should use the Joint Discovery Plan form for the District Judge assigned to the case.

3. Mandatory Disclosure

Unless otherwise agreed in the discovery plan, the parties shall make the disclosures required by Fed. R. Civ. P. 26(a)(1) within fourteen (14) days after the discovery conference.

B. PRELIMINARY PRETRIAL CONFERENCE

The Court will schedule a preliminary pretrial conference to occur within 60 days of the date when all counsel are identified. Generally, this conference will be conducted by telephone, unless otherwise noted in the pretrial notice. The conference will deal with the following matters, wherever applicable:

1. What are the essential facts and legal claims at issue from each party's perspective?

2. What will discovery involve and how much time will it require?

A discovery cut-off date will be established. This Court's general rule is to permit six months of discovery.

3. Will there be expert witnesses, and, if so, what dates should be established for the disclosure of expert witnesses? The Court's usual practice is to require the disclosure of plaintiff's experts and their reports 30 to 45 days before the defendant is required to disclose experts. (See Fed. R. Civ. P. 26(a)(2)(B) and (C)).

4. How many days will it take to try the case?

5. Have there been any settlement discussions?

C. COUNSEL NOT ADMITTED IN THE SOUTHERN DISTRICT

Counsel admitted to practice before the highest court of any state may move to be admitted in the Southern District of Ohio for purposes of appearance in a specific case. Counsel must attach to the motion for admission *pro hac vice* a Certificate of Good Standing issued by the highest court of any state and the appropriate filing fees. See S.D. Ohio Civ. R. 83.3. Permission will be conditional only and may be withdrawn at any time. See *Leis v. Flynt*, 439 U.S. 438 (1979).

Counsel admitted *pro hac vice* shall obtain local counsel who is familiar with the procedures in the Southern District of Ohio. Counsel admitted *pro hac vice* are also expected to familiarize themselves with, and to follow, the Southern District of Ohio Civil Rules, as well as all standing orders of

this Court.

The order granting admission *pro hac vice* is conditioned upon counsel's registration and participation in the court's electronic filing system.

D. DISCOVERY

1. In General: The deadline for discovery will be set in the Calendar Order. Discovery requests must be made at such time that responses thereto are due before the discovery deadline. For example, if the time for response to a discovery request under the appropriate rule is 30 days, the discovery request must be made at least 30 days before the discovery deadline.

Counsel may, by agreement, continue discovery beyond the deadline. In this case, no supervision of or intervention in the continued discovery will be made by the Court unless there is a showing of extreme prejudice. No trial setting will be vacated as a result of information acquired during continued discovery.

2. Motions Relating to Discovery: With the exception of cases involving an incarcerated pro se litigant, **this Court does not permit discovery motions**, i.e. motions to compel or motions for protective order regarding discovery disputes, **unless and until** counsel/pro se parties use the following procedure: Counsel/pro se parties must first attempt to resolve the discovery dispute by extrajudicial means. See Fed. R. Civ. P. 37(a)(1); S.D. Ohio Civ. R. 37.1. This Court defines "extrajudicial means" as requiring counsel/pro se parties to try to resolve the matter **both in writing and telephonically**. If counsel/pro se parties are unable to resolve the dispute between themselves, then they must contact the Courtroom Deputy, Arthur Hill, by telephone (513-564-7690), to schedule an informal discovery conference with the Court.

3. Informal Discovery Conferences: Before the conference, counsel/pro se parties should prepare and deliver to chambers a brief, **no more than 2 pages in length**, setting forth arguments for or against the requested discovery. The Court will listen to oral arguments and, as a general rule, will respond with a written Order no later than 5:00 p.m. the following business day. The Court's Order may incorporate the written briefs of the parties in lieu of requiring the presence of a court reporter at the conference.

THE FILING OF A DISPOSITIVE MOTION DOES NOT TOLL THE RUNNING OF THE DISCOVERY DEADLINE. DISCOVERY WILL NOT BE STAYED DURING THE

PENDENCY OF A DISPOSITIVE MOTION UNLESS THERE ARE EXCEPTIONAL CIRCUMSTANCES.

E. PROPOSED PROTECTIVE ORDERS

If the parties deem that a protective order is necessary, they must submit a joint proposed protective order to the Court. The proposed protective order must be in compliance with *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219 (6th Cir. 1996), and must indicate that the Court, not the parties, determines which documents may be filed under seal.⁴

F. MOTIONS

Other than motions required by law to be set for a hearing with notice given to all counsel and motions upon which a specific request for a hearing has been made and granted by the Court, all motions shall be submitted without oral argument on the memoranda filed with the Clerk in accordance with the schedule set forth in S.D. Ohio Civ. R. 7.2.

G. LIMITATIONS ON BRIEFS AND MEMORANDA

Briefs and/or memoranda in support of or in opposition to any motion in this court shall not exceed twenty pages unless a party first obtains leave of court.

A motion for leave must set forth the reasons excess pages are required and the number of pages sought.

If leave of Court is granted, counsel must include: (1) a table of contents indicating the main sections of the memorandum, the arguments made in each section, and the pages on which each section and subsection may be found; and (2) a succinct, clear, and accurate summary not to exceed five pages of the principal arguments made and citations to the primary authorities relied upon in the memorandum. All briefs and memoranda shall comply with the formal requirements of S.D. Ohio Civ. R. 7.2.

⁴The following language is acceptable:

This Protective Order does not authorize filing protected materials under seal. No document may be filed with the Court under seal without prior permission as to each such filing, upon motion and for good cause shown, including the legal basis for filing under seal. See *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219 (6th Cir. 1996). Unless the Court orders otherwise, all sealed documents shall be filed according to S. D. Ohio Civ. R. 5.2.1.

In the spirit of compliance with the rules, all briefs and memoranda shall comport with the following:

1. One-inch margins top, bottom, left and right.
2. Main body of text in at least 12-point font and footnotes in 10-point font.
3. Citations to be in main body of text and not in footnotes.

H. SETTLEMENT CONFERENCES

1. Settlement Authority

In an effort to encourage settlements, the Court may schedule a settlement conference at any time. Counsel also may request that a conference be scheduled at any time when it appears such a conference would be fruitful. **ATTORNEYS ATTENDING SETTLEMENT CONFERENCES MUST BRING THE PARTY, PRINCIPAL, OR AGENT WITH FULL SETTLEMENT AUTHORITY.**

By full settlement authority, the Court means the person or persons attending must have the authority independently to make necessary financial and settlement decisions.

2. *Ex Parte* Settlement Letters

Each counsel must prepare and submit a detailed *ex parte* letter no longer than five (5) pages to the Court five (5) business days prior to the conference with a synopsis of the case and the status of any settlement negotiations to date. These letters may be delivered to Chambers or emailed to litkovitz_chambers@ohsd.uscourts.gov. These letters will be held in confidence by the Court, should not be filed with the Clerk's Office, and may be, but need not be, exchanged with opposing counsel.

I. FINAL PRETRIAL CONFERENCE

Approximately thirty (30) days prior to the trial date, a Final Pretrial Conference will be held.

Prior to the Final Pretrial Conference, counsel for each of the parties will assemble all exhibits to be used at the trial and make available to opposing counsel either the original exhibits or copies thereof. At least five (5) business days prior to the Final Pretrial Conference, counsel shall submit the jointly prepared Final Pretrial Order by email to litkovitz_chambers@ohsd.uscourts.gov. This statement should not be

filed with the Clerk's office. The required form is appended hereto as Appendix A.

Additionally, counsel shall submit a joint statement of the case to be read by Magistrate Judge Litkovitz to the jury at Voir Dire. Counsel shall email the statement to Chambers at litkovitz_chambers@ohsd.uscourts.gov three (3) days before trial.

All trial counsel must be present at the Final Pretrial Conference.

J. WITNESSES

1. Lay Witnesses

Each party shall disclose to opposing counsel the names of all lay witnesses thirty (30) days before the discovery deadline set forth in the Court's Preliminary Pretrial Order.

2. Expert Witnesses

a. Disclosure

Each party shall disclose to opposing counsel, pursuant to Fed. R. Civ. P. 26(a)(2), the identity of all expert witnesses on the dates set forth in the Court's Calendar Order.

b. Use at Trial

The Court generally permits the parties to briefly qualify their experts at trial. Opposing counsel may *voir dire* any such witness if there are questions as to his or her expertise.

K. DEADLINES

All deadlines set forth in the Calendar Order, the Final Pretrial Order, and any other Order issued by this Court are firm deadlines. The parties **SHALL** file all required documents by the dates set forth in these Orders unless prior approval of the Court for filing on a later date has been obtained. The Court can and will impose sanctions, including monetary sanctions, for failure to meet these deadlines.

If a motion for an extension of time is filed, such motion shall state whether or not the opposing party consents to the extension in accordance with S.D. Ohio Civ. R. 7.3.

L. ATTORNEY FEES

The parties may stipulate the amount of attorney fees due to counsel. In the absence of a stipulation, counsel shall submit his/her motion and affidavit reflecting the reasonable attorney fees and expenses in the matter. Each activity to be reimbursed should be listed, together with the date, the number of hours or portion thereof and the nature of the activity. Pursuant to S.D. Ohio Civ. R. 54.2, counsel shall have forty-five (45) days from the date of judgment to submit his/her fee application.

II. TRIAL PRACTICE

The following instructions will govern the conduct of counsel during all Court appearances:

A. COUNSEL TABLES

The parties will occupy the counsel table designated by the Court's Courtroom Deputy before the opening of the first session of the trial.

B. COURT SESSIONS

Trial hours are generally 9:00 a.m. to 12:30 and 2:00 p.m. to 5:00 p.m. with a 15-minute break in the morning and the afternoon.

The parties and all counsel shall be present at counsel tables at all sessions before the jury is brought into the courtroom and will remain at counsel tables until after the jury leaves the courtroom at the end of all sessions. The parties and counsel will stand upon the entrance and exit of the jury.

Counsel and the parties shall be present in the courtroom one half (½) hour before Court convenes every day. The purpose of this requirement is to resolve any problems that may arise during the course of the trial. If counsel need to bring anything to the Court's attention, they should contact the Court's Courtroom Deputy or Law Clerk before 8:30 a.m. so that the Court can resolve the matter before the jury is brought into the courtroom. Counsel should also be readily available for conferences during recesses. Please keep the Courtroom Deputy informed as to where you may be located in case the Court needs to find you quickly.

C. ADDRESSING THE COURT

Counsel will address the Court and the jury in the following manner:

1. *Voir dire* examination, opening statements, and closing arguments will be conducted from the lectern facing the jury.

2. Counsel shall stand when addressing the Court for any reason.

D. DECORUM

Colloquy or argument between counsel shall not be permitted. All remarks shall be addressed to the Court.

Appearance, mannerisms, or habits that are designed to arouse the sympathy or prejudice of the jury are an impediment to an impartial trial and will not be permitted.

During a trial, counsel shall not exhibit familiarity with witnesses, jurors or opposing counsel and shall avoid the use of first names.

During opening statements and final arguments, all persons at counsel table shall remain seated and be respectful so as not to divert the attention of the Court or the jury.

Do not ask the court reporter to mark testimony. All requests for re-reading of questions or answers shall be addressed to the Court.

E. VOIR DIRE EXAMINATION

The whole panel of prospective jurors (*i.e.*, those in the jury box and those seated in the rear of the courtroom) will be examined in one continuous examination.

Counsel will be provided with a list of the prospective jurors prior to the commencement of trial. Counsel can contact the Jury Commissioner in the Clerk's Office to obtain the juror questionnaire forms.

Additionally, each prospective juror will be assigned a seat number and given a corresponding index card. During jury selection, counsel shall refer to prospective jurors by that seat number and not by name. In most cases, eight (8) prospective jurors will be seated in the jury box. Pursuant to Fed. R. Civ. P. 48, unless the parties stipulate otherwise, the verdict shall be unanimous and by a jury of at least six (6) members. The Court generally will assign four (4) peremptory challenges to each side.

The Court will conduct a preliminary *voir dire* examination and counsel may supplement the Court's examination, but they may not repeat a

question in the same or any other form already put to the panel by the Court.⁵

Counsel must address their questions to the whole panel in general and may not question an individual juror unless the question develops from one put to the whole panel and the answer of a specific juror justifies further inquiry.

Background information is contained in juror questionnaire forms which are on file in the Clerk's Office. Counsel should examine these questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the juror questionnaire or regarding information contained in the juror questionnaire.

F. CHALLENGES FOR CAUSE

The entire panel (*i.e.*, jurors seated in the jury box and in the rear of the courtroom) will be subject to challenge for cause. Challenges for cause will be exercised outside of the presence of the jury.

G. PEREMPTORY CHALLENGES

Unless otherwise ordered, the Court uses a simultaneous or "blind" strike method for exercising peremptory challenges. All counsel will simultaneously exercise all four of their peremptory challenges, in writing, during a recess of the proceedings. The Courtroom Deputy will receive and combine the written peremptory challenges and seat the jury as ultimately selected. Counsel will ordinarily be permitted fifteen (15) minutes for this process.

H. JURY INSTRUCTIONS & VERDICT FORM

Counsel are required to provide jury instructions to the Court only on the issues of law applicable to the claims made and on damages. Counsel also shall provide proposed juror interrogatories. Boilerplate instructions on issues such as burden of proof, etc. need not be submitted.

Seven (7) business days before trial, counsel shall electronically file proposed instructions and interrogatories and email the instructions in either WordPerfect or Word to litkovitz_chambers@ohsd.uscourts.gov.

Supplemental requests for instructions during the course of the trial or at

⁵The Court's voir dire questions are contained in Appendix B.

the conclusion of the evidence will be granted solely as to those matters that could not have been reasonably anticipated at the time of presentation of the initial set of instructions. However, agreed instructions may be filed at any time.

Whether agreed or not agreed, each instruction should be on a separate page identified as “Plaintiff’s (Defendant’s or Joint) Requested Instruction No. ____” and include citations of authority (including the page number for the specific legal proposition for which you are citing the case) at the bottom of each instruction. Counsel must submit an index of their proposed instructions.

In diversity and other cases where Ohio law provides the rules of decision, use of Ohio Jury Instructions (“OJI”) for all issues of substantive law is generally preferred. Counsel should ensure that each substantive instruction from OJI comports with current Ohio law. To the extent that the case is governed by the law of a state other than Ohio, parties may use an analogous state law treatise and provide the Court with copies of the relevant portions therefrom.

As to all matters governed by federal law, counsel should use:

1. Supreme Court case law;
2. Sixth Circuit case law; or
3. Any pattern jury instructions published by a federal court. (Counsel must insure that substantive instructions on federal questions conform to Sixth Circuit case law.)

I. EXAMINATION OF WITNESSES

Counsel shall generally conduct their examination from the lectern.

Counsel should expect to proceed only with direct examination, cross-examination, and re-direct examination.

When a party has more than one attorney, only one attorney may conduct the direct or cross-examination of a given witness.

Counsel shall not approach a witness without asking the permission of the Court. When permission is granted for the purpose of working with an exhibit, counsel should resume the examination from the lectern when finished with the exhibit. In most cases, the courtroom deputy will place exhibits before the witness.

The judiciary’s privacy policy restricts the publication of certain personal

data in documents filed with the Court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy by following the procedures set forth in the Judicial Conference policy on electronic availability of transcripts of court proceedings, or the court may do so on its own motion. The policy is located at www.ohsd.uscourts.gov (Forms–Electronic Availability of Transcripts).

J. DOCTORS AND OTHER PROFESSIONAL WITNESSES

It is the Court’s position that treating physicians are not expert witnesses to the extent that they are called as fact witnesses. If, however, a treating physician gives a prognosis, then he will be deemed an expert.

The Court will attempt to cooperate with doctors and other professional witnesses and will, to the extent practicable, accommodate their schedules by permitting them to testify out of order. Counsel should try to anticipate any such difficulty and reach an agreement, wherever possible, to achieve a minimum of disruption to both the trial and the witnesses’ schedules.

Counsel shall bring irreconcilable conflicts to the attention of the Court as soon as counsel become aware of the problem.

K. OBJECTIONS

Counsel shall stand when making an objection and shall make the objection directly and only to the Court.

When objecting, state only that you are objecting and if requested by the Court, state the grounds. Objections shall not be used for the purpose of making speeches, repeating testimony, or attempting to guide a witness or influence the jury.

Argument upon an objection will not be heard unless permission is given or argument is requested by the Court. Either counsel may request a sidebar conference.

L. EXHIBITS

COUNSEL ARE REQUIRED TO LIST ALL EXHIBITS IN THE FINAL PRETRIAL ORDER.

Counsel will assemble, mark, and place in binders all exhibits. Four sets of bound and tabbed exhibits are required: one to be used during trial, one for the Court, one for opposing counsel, and one for the law clerk assigned to the case. Counsel are to deliver three (3) copies of the exhibits to the Courtroom Deputy **THREE (3) DAYS** prior to the commencement of trial. Joint exhibits will bear Roman numerals, plaintiff's exhibits will bear Arabic numbers, and defendant's exhibits will be identified with letters. Third-party exhibits may be numbered with Arabic numbers preceded with the party's initial.

When defendant's exhibits exceed fifty-two (52) in number, defendant shall promptly advise opposing counsel. In such event, both sides will identify exhibits with Arabic numbers and the letter prefix "P" for plaintiff's and "D" for defendant's. Counsel are to supply the Court Reporter, Courtroom Deputy, and opposing counsel with a list of exhibits. The parties shall confer so that any given exhibit shall be designated and numbered only once (e.g., "Smith-1" and "Jones-1001" should not be the same document). Joint exhibits are encouraged.

It is not necessary to bring exhibits to the final pretrial conference. Counsel are required, however, to list all exhibits in the Joint Proposed Final Pretrial Statement. Counsel must confer in advance of trial and attempt to agree to admissibility of exhibits and to resolve objections to any exhibits.

The following procedure will be followed: a) All exhibits will be assembled in 3-ring binders, marked as listed in the Joint Proposed Final Pretrial Statement, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g., as applied by a BATES numbering machine).

Joint exhibits will be designated JX ___ on white exhibit labels; plaintiff exhibits will be designated PX ___ on yellow exhibit labels; and defendant exhibits will be designated DX ___ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

Any exhibits produced for the first time during trial shall be properly marked and shown to opposing counsel **BEFORE** counsel poses a question to a witness. Exhibits which are produced for the first time during trial, as in the case of exhibits used for impeachment, shall be tendered to the Court's Courtroom Deputy for marking and then copies should be provided to opposing counsel, the Court and the Court's Law Clerk.

Each party should offer its exhibits into evidence when the party seeks to use them at trial. An exhibit to be examined or displayed to the jury must be offered and admitted prior to examination or display. The admissibility of all exhibits referred to during trial and offered by the parties will be ruled upon by the Court at the time that they are identified. Either side may offer any marked exhibit regardless of which party marked it.

M. DEPOSITIONS

Deposition transcripts shall be filed electronically if a party reasonably anticipates use of such transcripts at trial. See S.D. Ohio Civ. R. 5.4(a).

Counsel shall submit their deposition designations to each other at least ten (10) business days before trial. Counsel shall confer and attempt to resolve objections by agreement. If any objections remain, counsel shall jointly prepare a list of objections identifying the page number and line(s) of the deposition where the objection will be found and stating in one sentence the grounds for the objection. This procedure applies to both written and videotape depositions. Videotape or DVD depositions which contain objections must be accompanied by a full or, if agreed, partial transcript. The jointly prepared list of objections to deposition designations and grounds for these objections must be delivered to the Court no later than five (5) business days prior to the commencement of trial.

Counsel are responsible for editing any videotape or DVD testimony consistent with the Court's ruling on any objections.

N. DEMONSTRATIVE EVIDENCE

If any sketches, models, diagrams or other demonstrative evidence of any

kind will be used during trial, they must be exhibited to opposing counsel **FIVE (5) DAYS PRIOR** to the commencement of trial. Objections to such evidence must be submitted to the Court prior to trial. Demonstrative evidence prepared solely for the purpose of final argument shall be displayed to opposing counsel at the earliest possible time, but no later than **TWENTY-FOUR (24) HOURS** prior to the commencement of arguments.

O. TRIAL BRIEFS

Trial briefs are optional. If you decide to file a trial brief, it may be filed anytime before trial. All briefs shall comply with S.D. Ohio Civ. R. 5.1, with citations and references conforming to S.D. Ohio Civ. R. 7.2(b). Counsel should use their trial briefs to instruct the Court in advance of trial in any area of law upon which counsel will rely at trial. Therefore, the briefs should contain arguments, with citations to legal authority in support of any evidentiary or other legal questions which may reasonably be anticipated to arise at trial.

P. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a trial to the Court, the parties shall file Proposed Findings of Fact and Conclusions of Law which the parties believe are necessary to support a judgment in their favor within fourteen (14) days after the conclusion of trial to the Court unless otherwise ordered.

Q. TRIAL MOTIONS AND MOTIONS *IN LIMINE*

Motions *in limine* must be filed and served not later than ten (10) business days before trial. Responses to the motion(s) shall be filed not less than five (5) business days before trial.

Any motions *in limine* addressed to the admissibility of expert testimony under *Daubert*, if not included in a previously filed motion for summary judgment, shall be filed at least forty-two (42) days prior to the Final Pretrial Conference. Responses to such motions shall be filed not later than thirty-five (35) days prior to the Final Pretrial Conference. No replies shall be filed unless otherwise ordered by the Court.

R. STIPULATIONS

Stipulations shall be set forth in a document captioned "Stipulations" and must be signed by all counsel. Stipulations can be filed at any time prior to or during trial.

S. SUMMARY OF DEADLINES

1. Proposed Findings of Fact and Conclusions of Law (Bench Trial): fourteen (14) days after trial
2. Jury Instructions/Interrogatories/Verdict Forms: seven (7) business days before trial
3. Joint Deposition Designations and Objections: five (5) business days before trial
4. Motions in Limine: ten (10) business days before trial
5. Responses to Motions in Limine: five (5) business days before trial
6. Exhibits: three (3) business days before trial

Date: 10/18/2016

s/Karen L. Litkovitz
Karen L. Litkovitz, Magistrate Judge
United States District Court

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

_____	:	Case No. _____
	:	
Plaintiff(s)	:	Magistrate Judge Karen L. Litkovitz
	:	
v.	:	
	:	
_____	:	JOINT FINAL PRETRIAL ORDER
	:	(REQUIRED FORM)
	:	
Defendant(s)	:	

This action came before the Court at a final pretrial conference held on _____, 20____, at ___ a.m./p.m., pursuant to Fed. R. Civ. P. 16.

I. **APPEARANCES:**

For Plaintiff:

For Defendant:

II. **NATURE OF ACTION AND JURISDICTION:**

- A. This is an action for _____.
- B. The jurisdiction of the Court is invoked under Title _____, United States Code, Section _____.
- C. The jurisdiction of the Court (is/is not) disputed.

III. **TRIAL INFORMATION:**

- A. The estimated length of trial is _____ days.
- B. Trial to (the Court/a jury) has been set for _____, 20____, pursuant to the General Order on Trial Assignment.

Or:

A trial assignment will be made by the Court at a future date.

- C. Three sets of each party's exhibits shall be delivered to Chambers at least three (3) days prior to the start of trial; this includes one original and two copies.

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties

1. Plaintiff's Claims:

Set out brief summary without detail; an itemized statement of special damages should be included.

2. Defendant's Claims:

Set out brief summary without detail.

3. All other parties' claims:

Same type of statement where third parties are involved.

B. Pending Motions/Motions in Limine:

1. The following Motions, if any, are pending:

Briefly list motions pending and identify which motions must be decided prior to trial.

2. Plaintiff anticipates/does not anticipate filing Motions in Limine.

If filing Motions in Limine, briefly list the motions that are expected to be filed.

3. Defendant anticipates/does not anticipate filing Motions in Limine.

If filing Motions in Limine, briefly list the motions that are expected to be filed.

Motions in Limine must be filed at least ten (10) business days prior to the commencement of trial.

C. Uncontroverted Facts

Suggested language:

The following facts are established by admissions in the pleadings or by stipulations of counsel:

Set out uncontroverted or uncontested facts.

The parties request and/or anticipate that the following stipulated facts be read by Judge Litkovitz to the jury:

Set out stipulated facts to be read to the jury.

D. Contested Issues of Fact and Law

Suggested language:

1. Contested Issues of Fact: The contested issues of fact remaining for decision are:

Set out a brief statement of the remaining contested issues of fact.

2. Contested Issues of Law: The contested issues of law are:

Set out a brief statement of the remaining contested issues of law.

Or:

There are no special issues of law reserved other than those implicit in the foregoing issues of fact.

E. Witnesses

Suggested language:

1. In the absence of reasonable notice to opposing counsel to the contrary, plaintiff will call, or will have available at the trial:

Provide a brief individualized synopsis of each witness' testimony.

2. In the absence of reasonable notice to opposing counsel to the contrary, defendant will call, or will have available at the trial:

Provide a brief individualized synopsis of each witness' testimony.

3. In the absence of reasonable notice to opposing counsel to the contrary, _____ will call:

Provide a brief individualized synopsis of each witness' testimony. (Use for third parties, if any).

4. There is reserved to each of the parties the right to call such rebuttal witnesses as may be necessary, without prior notice thereof to the other party.

Note: Only witnesses listed in the Pretrial Order or identified in accordance with paragraph 4 above will be permitted to testify at the trial, except witnesses called solely for the purpose of impeachment or for good cause shown.

F. Expert Witnesses

Suggested language:

Parties are limited to the following expert witnesses whose names have been disclosed to the other side.

Plaintiff:

List all expert witnesses plaintiff intends to call at trial.

Defendant:

List all expert witnesses defendant intends to call at trial.

Counsel have attached a resume of each expert's qualifications as Appendix A herein.

G. Exhibits

The exhibit list should be prepared prior to the final pretrial conference and set forth in the pretrial order. Plaintiff's exhibits shall be marked as "PX__" and Defendant's exhibits shall be marked as "DX__". Exhibit markers should be attached to all exhibits at the time they are shown to opposing counsel during the preparation of the pretrial order. A supply of marking tags for exhibits may be obtained from the Clerk's Office. They should be attached to the lower right-hand corner whenever possible.

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the pretrial order, with the exception of exhibits to be used solely for the purpose of impeachment.

Exhibit lists shall be in the form set forth in the attached example.

Exhibit lists should be attached as appendices to the pretrial order as follows:

Appendix B Joint Exhibits

Appendix C Plaintiff Exhibits

Appendix D Defendant Exhibits

Appendix E Third-Party Exhibits

H. Depositions

Suggested language:

Testimony of the following witnesses will be offered by deposition/ videotape:

List all witnesses whose testimony will be offered by deposition or videotape. If none, so state.

Please list any anticipated objections to the above witnesses to be offered by deposition/videotape.

List any anticipated objections to the above witnesses to be offered by deposition/videotape. If none, so state.

I. Completion of Discovery

Except for good cause, all discovery shall be completed before the Final Pretrial Order is signed by the Court. If discovery has not been completed, the proposed pretrial order shall state what discovery is yet to be completed by each side, when it is scheduled, when it will be completed, and whether any problems, such as objections or motions, are likely with respect to the uncompleted discovery.

Suggested language:

Discovery has been completed.

Or:

Discovery is to be completed by _____, 20__.

Or:

Further discovery is limited to_____.

Or:

The following provisions have been made for discovery:

Specify all such provisions.

J. Miscellaneous Orders

Set forth any orders not properly includable elsewhere.

V. MODIFICATION

This Final Pretrial Order may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

VI. JURY INSTRUCTIONS AND STATEMENT

Jury instructions, including interrogatories, special verdict forms, and an index of the jury instructions shall be submitted by email to litkovitz_chambers@ohsd.uscourts.gov at least seven (7) business days prior to the commencement of trial. In addition, all of the above shall be electronically filed in the Clerk's Office at least seven (7) business days prior to the commencement of trial. There is reserved to counsel the right to submit supplemental requests for instructions during trial, or at the conclusion of the evidence, but only on matters that cannot be reasonably anticipated.

Each instruction should be on a separate page identified as "Plaintiff's (Defendant's) Requested Instruction No.____." All instructions must contain a citation of authority (including the page number for the specific legal proposition for which you are citing the case) upon which counsel relies. A request for special instructions must be filed with the Clerk of Court's Office prior to presentation to the Court.

VII. SETTLEMENT EFFORTS

Set forth circumstances surrounding the parties' efforts to negotiate a settlement.

VIII. TRIAL TO THE COURT

Proposed Findings of Fact & Conclusions of Law: Upon conclusion of trial to the Court, counsel shall file their Proposed Findings of Fact and Conclusions of Law that counsel believe the Court should make.

IX. JURY TRIAL

Do the parties anticipate the need for trial briefs on particular legal issues? If so, please state the particular legal issues.

X. INSTRUCTIONS

This proposed Final Pretrial Order shall be emailed to Chambers at litkovitz_chambers@ohsd.uscourts.gov at least five (5) business days prior to the Final Pretrial Conference. It should not be filed with the Clerk's office.

IT IS SO ORDERED.

Karen L. Litkovitz
United States Magistrate Judge

Counsel for Plaintiff

Counsel for Defendant

APPENDIX B

VOIR DIRE QUESTIONS BY COURT

Civil Jury Trial

The Court will first conduct a comprehensive examination of the jury panel. After the Court has finished its examination of the jury panel, counsel may elect to supplement the Court's examination with questions that do not repeat in substance any question already put to the panel by the Court.

The Court's examination will include questions such as the following:

A. Knowledge of the Parties, Counsel, and Witnesses

1. The Plaintiff(s) is/are seated at counsel table. _____, will you please stand? Are any of you or is any member of your immediate family personally acquainted with the Plaintiff(s), related to him/her/them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with the Plaintiff(s)?

2. The Plaintiff(s) is/are represented by _____, who is/are seated at counsel table. _____, will you please stand? _____ is/are with the law firm of _____. Are any of you or is any member of your immediate family personally acquainted with the _____, or any of the other attorneys from his/her/their law firm, _____? Are any of you related to them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with them?

3. The Defendant(s) is/are seated at counsel table. _____, will you please stand? Are any of you or is any member of your immediate family personally acquainted with the Defendant(s), related to him/her/them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with the Defendant(s)?

4. The Defendant(s) is/are represented by _____, who is/are seated at counsel table. _____, will you please stand? _____ is/are with the law firm of _____. Are any of you or is any member of your immediate family personally acquainted with the _____, or any of the other attorneys from his/her/their law firm, _____? Are any of you related to them by blood or marriage, or do any of you or does any member of your immediate family have any connection of any kind with them?

5. I am going to read a list of witnesses who may be called during this trial. Please respond if you know any of these persons:

The parties may call the following persons as witnesses:

[list witnesses from Final Pretrial Order, including expert witnesses]

Is any panel member related by family or marriage to any of the individuals that I have just named?

Are you personally acquainted with these persons, or do you have any knowledge of them, directly or indirectly, through your social, business or professional lives?

B. Knowledge of the Case

6. Have any of you read or heard anything about this case from any source, and I am not indicating from this question that there has been any publicity concerning it?

C. Previous Jury Duty

7. Have any of you served as jurors in either criminal or civil cases, or as members of a grand jury, either in the state or federal courts?

- a. Civil
- b. Criminal
- c. Grand Jury

Would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?

D. Business Dealings with the Parties

8. Have you or any member of your immediate family had business dealings with the Plaintiff(s) or the Defendant(s)?

E. Previous Litigation of Prospective Jurors

9. Have any of you or has any member of your immediate family ever participated in a lawsuit of any kind, as a party or in any other capacity?

F. Ability to Sit as Fair and Impartial Jurors

10. Does any panel member have any feeling--thought--inclination--premonition --prejudice--religious belief or persuasion--or bias--which might influence or interfere with your full and impartial consideration and which might influence you either in favor of or against either the Plaintiff(s) or the Defendant(s)?

11. You must understand that it is most important for you to keep open minds until you have heard all the evidence and received the Court's instruction concerning the law. Is there anyone here who would not be able to keep an open mind until all of

the evidence is produced and the Court's instructions are received?

12. Will you take the law as the Court instructs you, without any reservation whatsoever, and apply the facts to the Court's instructions on the law? If you cannot do this, please hold up your hand.

13. Do you recognize and accept the proposition that jurors are the sole judge of the facts and the Court is the sole judge of the law? If you do not recognize this or cannot accept this, please hold up your hand.

14. Is there anyone here who would not be able or willing to render a verdict solely on the evidence presented at the trial and the law as I give it to you in my instructions, disregarding any other ideas, notions, or beliefs about the law that you may have?

E. Personal Inconvenience

15. Does any person here have any medical disability or problem -- such as difficulty in seeing or hearing -- or any illness that might cause a problem in serving as a juror in this case?

16. This trial may last _____. The exact period of time is impossible, of course, to know today. Does any prospective juror have any immediate personal or family situation that would limit his or her ability to serve as a juror in this case for the period of time?

17. Finally, can any of you think of any matter that you should call to the Court's attention that may have some bearing on your qualifications as a juror, or that -- even to the slightest degree -- may prevent your rendering a fair and impartial verdict based solely upon the evidence and my instructions as to the law?