

**STANDING ORDER FOR FINAL  
PRETRIAL CONFERENCE PREPARATION**

Pursuant to Fed. R. Civ. Procedure 16 and Local rule 16.1, in preparing the Proposed Final Pretrial Order for submission at the Final Pretrial Conference (FPT Conference), IT IS ORDERED that the following requirements prevail and apply. These requirements are intended to serve a just, speedy and inexpensive determination of the issues. If these requirements do not appear calculated to achieve these ends in this case, counsel should seek an immediate conference with the judge and opposing counsel to voice his concerns and suggested changes so that alternative possibilities may be discussed to better facilitate these objectives.

1. Counsel shall confer and shall jointly prepare a single joint Proposed Final Pretrial Order (Final Pretrial Order) in the form prescribed in Local Rule 16.1(F), as modified by this Order, which must be filed with the Clerk of Court at least Fourteen (14) calendar days before the FPT Conference. "Joint preparation" entails that counsel affirmatively and in good faith attempt to reach agreement on each of the matters required by this Order to be addressed in the Final Pretrial Order. Matters of good-faith disagreement should be so noted in the Final Pretrial Order and should be accompanied by a statement as to whether any specific rulings by the Court on those matters might facilitate the conduct of the trial or ongoing settlement negotiations.
2. Participation at the FPT Conference is mandatory. At least one attorney of record for each party (or, in the case of a pro se party, the party himself or herself) must be physically present at the conference, unless alternative arrangements are made and approved by the Court in advance. Additional counsel may attend but are not required to do so unless otherwise ordered in a particular case.
3. Counsel and the parties are directed to undertake a good faith effort to reach a settlement that includes a thorough exploration of the prospects of settlement before undertaking the extensive labor of preparing the Final Pretrial Order. Representatives of the parties with authority to bind them in settlement discussion be present or available by telephone during any settlement conference. Merely making a single settlement demand or offer, with no further discussions between the parties, is not sufficient. At the

FPT Conference, counsel must be prepared to discuss with the Court the status of those settlement negotiations, and whether any method of Alternative Dispute Resolution may be beneficial to resolving the action before trial.

4. The Court will set the date for the FPT Conference. During the period between notice and at least 28 days prior to the FPT Conference, counsel for all parties are directed to meet in order to (1) reach agreement on any possible stipulations narrowing the issues of law and fact; (2) deal with non-stipulated issues in the manner stated in this paragraph, and (3) exchange copies of documents, properly identified as to nature and source, that will be offered in evidence at the trial. Counsel shall meet in person (face to face). It shall be the duty of counsel for Plaintiff to initiate that meeting and the duty of other counsel to respond to Plaintiff's counsel and to offer their full cooperation and assistance to fulfill both the substance and spirit of this Order. If, after reasonable effort, any party cannot obtain the reasonable cooperation of the other counsel, it shall be his or her duty to advise the Court of the fact by appropriate means.

In addition to the format of the sample form of final pretrial order referenced in Local Rule 16.1(E), the Final Pretrial Order shall contain each of the following:

- A. Jurisdiction and Parties. A statement as to (1) the Court's jurisdiction over the subject matter and parties, (2) the proper identities of the parties, including correctness of legal entities (*e.g.*, partnership, corporation, or individual d/b/a trade name), and (3) the necessity of appointment of guardian ad litem or other representative, and validity of appointment if already made.
- B. Statement of the Case. The parties shall prepare a brief and non-argumentative statement of the case providing a broad overview of the basic facts and nature of the dispute. The Court will read this statement to the venire during jury selection to qualify prospective jurors as to the events giving rise to the lawsuit; therefore, it should be written to be understandable by a typical juror.
- C. Triable Claims and Affirmative Defenses. For each claim or affirmative defense asserted, identified separately: (1) a listing of the legal elements required to prove it as derived from the pattern jury instructions or applicable and controlling case law; (2) a statement of the agreed facts specifically related to that claim or defense; and (3) a statement of the disputed

facts specifically related to the claim or defense.<sup>1</sup> Parties should not submit a legal memorandum, but should instead present a simple statement of the legal elements, with citations to supporting authority, including pattern jury instructions, where available. Appended to this Order is a form (Schedule A), which provides the format for information requested in this paragraph.

- D. Trial Time. An estimate of the number of trial days required, and a statement of the number of witnesses reasonably expected to testify on behalf of each party in its case in chief.
- E. Type of Trial. A statement indicating whether the action is a jury or non-jury action. If a jury action, the parties should indicate whether the jury trial is applicable to all aspects of the dispute or only to certain issues, which shall be specified.
1. Jury Size. In view of Fed.R.Civ.P. 48, which allows not fewer than six (6) and not more than twelve (12) jurors, the parties shall include a statement of their position with regard to the number of jurors they request be selected. If the parties are unable to agree, the Court will cause a jury of eight (8) to be selected.
  2. Voir Dire Questions. Proposed voir dire questions and objections to questions shall be included in the Final Pre-trial Order, separately set forth as an exhibit appended to the Final Pre-Trial Order. Each party shall be limited to Ten (10) succinctly phrased questions (compound and disjunctive questions are disfavored). In preparing their lists, counsel may find it helpful to review this District Court's form juror questionnaire (which is available from the Clerk's Office upon request), so as not to ask questions that are redundant of those posed in that questionnaire. Also, counsel need not include questions concerning whether prospective jurors know any of the parties, witnesses or lawyers in the case, or know anything about the case, as those questions will be asked by the Court during voir dire as a matter of course. After

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<sup>1</sup> It is not necessary for the parties to set forth every possible variation or minutiae of every factual dispute involved in the case for fear that they may waive the presentation of some evidence at trial. The Court is interested in a concise statement of the facts that are disputed and undisputed, specifically related to the legal claims and defenses that are to be litigated.

completion of the Court's voir dire, a 10-minute lawyer voir dire will be permitted using court-approved questions from the lists submitted, or as otherwise allowed by the Court for good reason.

3. Jury Instructions and Special Verdict Forms. No later than Fourteen (14) calendar days prior to the FPT Conference, the parties shall provide to chambers a set of agreed jury instructions. Where available, and absent good cause for objection, pattern jury instructions will be used. This document should include a single, comprehensive, organized, jointly approved set of jury instructions, rather than multiple variations of the same charge to which neither side objects. For any instructions as to which the parties have been unable in good faith to agree, the parties may file separate instructions designated accordingly (*e.g.*, "Plaintiffs proposed jury instruction number\_"). It is anticipated that the incidence of instructions as to which the parties are unable to agree in good faith will be infrequent in most cases. If the parties desire to submit special interrogatories to the jury, a jointly prepared proposed verdict form must be provided to chambers contemporaneously with the proposed jury instructions. If the parties cannot agree on the need for or form of the special verdict form, the parties may file separate proposed jury interrogatories designated accordingly.
- F. Motions. Once the Court has considered and decided a full complement of Daubert-related motions, additional *Daubert* motions will be disfavored and require good cause.
  - (1) A list and description of any motions {other than Daubert-related motions} contemplated. It is not sufficient for a party simply to state that it plans to file unspecified motions. The Court will set deadlines for filing and briefing motions at the Final Pretrial Conference. Because of the tight time frames involved, it is expected that counsel will identify their motions and research and drafted them in substantially final form by the time of the conference.
- G. Depositions. Each party will submit list designating by witness, page and line those relevant portions of depositions which any party wishes to be read at trial, excluding excerpts whose sole purpose is impeachment. All objections to any such

testimony shall be made in writing and submitted with the Final Pretrial Order. **Failure to either designate portions of depositions to be read, or to object to the portions so designated, shall constitute a waiver of the right to present the testimony by deposition, or a waiver of any such objection.**

H. Witnesses.

(1) Non-Expert. A list of the names and addresses of all witnesses for each party expected to testify at the trial, and a summary of the substance of each witness' proposed testimony. The number of witnesses shall be kept to a reasonable minimum. Additional witnesses may be added only in accordance with Fed.R.Civ.P. 16(e). Any objections to the designation of a witness shall be submitted with the Final Pretrial Order. **Failure to comply shall constitute a waiver of any such objection.**

(2) Expert.

(i) A list of the names and addresses of all expert witnesses for each party who will testify at trial. The parties shall attach to the Final Pretrial Order a curriculum vitae<sup>2</sup> of each expert witnesses and a brief statement of the opinion(s) which counsel expects to elicit from such expert together with the grounds and bases of such opinion(s). Any objections to the designation of an expert witness shall be submitted with the Final Pretrial Order. **Failure to comply shall constitute a waiver of any such objection.**

(ii) Each party shall mark for the opposition the parts of the opposing expert's opinion/report with which they agree and disagree, as well as indicating critical issues that the opposing expert has not addressed.

(iii) The Final Pretrial Order shall state clearly and specifically the issues of expert scientific evidence to be tried in this lawsuit; it should include preclusion barring expert evidence not previously disclosed; and should make provision for trial procedures appropriate for the case that will enhance juror comprehension and expedite the trial.

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<sup>2</sup> In lieu of the curriculum vitae, the party may substitute a stipulation or statement setting forth the qualifications of each expert witness in such form that the statement can be read to the jury at the time the expert witness takes the stand.

(iv) Summarize the facts and evidence each expert will testify to and the basis and reasons for any opinions, as well as the facts or data considered by the witness in forming them as previously disclosed pursuant to Fed. R. Civ. P. 26. Any testimony or evidence which poses a potential conflict with the rulings on any motion in limine shall be noted.

- I. Damages. A list describing the amount and type of damages sought, which is consistent with any applicable pattern jury instructions regarding potentially allowable damages. Whenever possible, the parties shall stipulate to the amount and type of damages which a prevailing party shall be entitled to recover. If the parties are unable to agree, then the plaintiff shall state with specificity the amount and category of damages (e.g., doctor and hospital bills \$\_; lost wages \$\_; pain and suffering \$\_; etc.). It is not sufficient simply to state that the plaintiff seeks compensatory damages in an amount to be determined at trial. The listing of stipulated damages shall not constitute an agreement as to the recoverability of same unless so stated. Permission of the Court is required before presenting any testimony or evidence concerning punitive damages and will only be allowed if there is sufficient basis in the record for a reasonable jury to find such damages warranted by the evidence.
- J. Exhibits. Per Local Rule 16.1, no later than 14 days before the Final Pretrial Conference, a list of all exhibits which are to be offered in evidence shall be marked for identification and noted in the form illustrated in Schedule B, modified as necessary to state the nature of any objection, or a substantially similar form. Additional exhibits may be added only in accordance with Fed.R. Civ.P. 16(F) Each party shall provide every other party, no later than 7 days before the Final Pretrial Conference, one set of all marked exhibits, charts, schedules, summaries and diagrams and other similar documentary materials to be used at the trial, together with a complete list of all such exhibits. The Court requires one original version of exhibits (as described above) for the Clerk and two copies (one for the Bench and one for the witness stand), and a copy for each juror. All such versions of the exhibits, including the originals,

should be indexed and tabbed into a binder for easy and quick reference by all parties. The first page of each binder should have a copy of the exhibit list (see Schedule B appended to this Order), appropriately completed with each exhibit description and its designated number.

- (1) Objections. Objections to exhibits shall be noted on a like list, setting forth the:
  - (a) indexed/tabbed number of the exhibit and
  - (b) the nature and grounds of the objection. The parties are encouraged to resolve all objections (other than objections such as hearsay and relevancy), including those on grounds of foundation, identification, and authenticity without involvement of the Court except where necessary in order to comply with the timeline for submission of the Final Pretrial Order. **All exhibits to which there is no objection shall be deemed admitted.**
- (2) Exhibits. Markers obtained from the Clerk or otherwise shall be attached to all exhibits, and such exhibits shall be delivered to the Clerk immediately prior to the commencement of trial.

5. Counsel is reminded that **the action is to be ready for trial at the time of the Final Pretrial Conference**. Submission of the Final Pretrial Order should mark the conclusion, not the commencement, of the parties' trial preparations. Once adopted by the Court, the Final Pretrial Order shall constitute the final statement of the claims, affirmative defenses and relief at issue; shall govern the conduct of the trial; and shall constitute the basis for any relief afforded by the Court. The Final Pretrial Order may be amended at any time by the Court or on motion of a party only in accordance with Fed.R.Civ.P. 16(F).

6. Failure to comply with the provisions of this Order or to attend the Final Pretrial Conference may result in the following sanctions pursuant to Fed.R.Civ.P. 16(F): (a) dismissal of the action for failure to prosecute, if such failure occurs on the part of the plaintiff; (b) entry of default judgment if such failure occurs on the part of the defendant, or (c) any other action as deemed appropriate by the Court.

**DONE** and **ORDERED** this 15th day of February, 2023.

Joe B. McDade  
UNITED STATES DISTRICT JUDGE

## SCHEDULE A

### TRIABLE CLAIMS AND AFFIRMATIVE DEFENSES

1. (Statement of first legal claim to be tried, *e.g.*, Title VII, Jones Act, negligence, breach of contract, etc.)
  - a. LEGAL ELEMENTS Paragraph 4.C.1. of Standing Order).
  - b. AGREED FACTS (as to this legal claim) Paragraph 4.C.2. of Standing Order).
  - c. DISPUTED FACTS (as to this legal claim) Paragraph 4.C.3. of Standing Order).
2. (Statement of second legal claim to be tried)
  1. LEGAL ELEMENTS.
  2. AGREED FACTS.
  3. DISPUTED FACTS.
3. (Statement of first affirmative defense to be tried, *e.g.*, contributory negligence, statute of limitations, etc.)
  1. LEGAL ELEMENTS.
  2. AGREED FACTS.
  3. DISPUTED FACTS.



