

Sample Form 38

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

\_\_\_\_\_

Plaintiff,

vs.

No. CIV

\_\_\_\_\_

Defendant.

**PRETRIAL ORDER**

This matter is before the Court pursuant to Fed.R.Civ.P. 16. The parties conferred and submit the following Pretrial Order.

**I. APPEARANCES**

Attorneys who will try the action:

For Plaintiff(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Defendant(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For other parties

\_\_\_\_\_  
\_\_\_\_\_

**II. JURISDICTION AND RELIEF SOUGHT**

**A. Subject Matter Jurisdiction.**

**1. Was this action removed or transferred from another forum?** \_\_\_ Yes \_\_\_ No. If

yes, was the action removed or transferred?

\_\_\_ Removed \_\_\_ Transferred \_\_\_\_\_ Original forum

**2. Is subject matter jurisdiction of this Court contested?**

\_\_\_ Uncontested \_\_\_ Contested \_\_\_\_\_ Party contesting

**3. Asserted basis for jurisdiction.**

\_\_\_ Federal Question \_\_\_ Diversity \_\_\_ Other

Statutory Provision(s) Invoked: \_\_\_\_\_

**B. Personal Jurisdiction and Venue.**

**1. Is personal jurisdiction contested?**

\_\_\_ Uncontested \_\_\_ Contested

Identify the party contesting personal jurisdiction and basis for objection:

\_\_\_\_\_

**2. Is venue contested?**

\_\_\_ Uncontested \_\_\_ Contested \_\_\_\_\_ Party contesting

**C. Are the proper parties before the Court?**

\_\_\_ Uncontested \_\_\_ Contested

If contested, identify each missing party or improper party and the basis for the contention:

\_\_\_\_\_

**D. Identify the affirmative relief sought in this action.**

1. Plaintiff seeks:
2. Defendant seeks:
3. Other party seeks:

**III. BRIEF DESCRIPTION OF NATURE OF CLAIMS/DEFENSES.**

**A. Plaintiff's claims:**

**B. Defendant's defenses:** *(A defendant claiming entitlement to qualified immunity must set forth with specificity the basis of the defense.)*

**C. Claims or defenses of other party(s):**

*(Where counterclaims or cross-claims exist, also give brief description.)*

**IV. FACTUAL CONTENTIONS UNDERLYING CLAIMS/DEFENSES**

**A. Stipulated Factual Contentions.**

The parties agree to the following facts listed separately below:

**B. Contested Material Facts.**

1. Plaintiff's Contentions:
2. Defendant's Contentions:
3. Contentions of Other Party(s):

**V. APPLICABLE LAW**

**A. Do the parties agree which law controls the action?**

\_\_\_\_\_ Yes    \_\_\_\_\_ No

If yes, identify the applicable law. \_\_\_\_\_

If no, identify the dispute and set forth each party's position regarding the applicable law.

1. Plaintiff
2. Defendant
3. Other party

#### **VI. CONTESTED ISSUES OF LAW**

Identify the specific issues of law which are contested.

1. Plaintiff
2. Defendant
3. Other Party

#### **VII. MOTIONS**

**A. Pending Motions (indicate the date filed):**

1. Plaintiff
2. Defendant
3. Other party

**B. Motions which may be filed:**

1. Plaintiff
2. Defendant
3. Other party

The briefing package must be complete and filed with the Court by \_\_\_\_\_.

#### **VIII. DISCOVERY**

A. Has discovery been completed? \_\_\_\_\_ Yes \_\_\_\_\_ No

If no, discovery terminates on \_\_\_\_\_.

B. Are there any discovery matters of which the Court should be aware?

### IX. ANTICIPATED WITNESSES

*Each party is under a continuing duty to supplement this list and the description of anticipated testimony. This does not, however, apply to a rebuttal witness. Indicate if the witness will testify in person or by deposition and include a brief description of the anticipated testimony. If the testimony is by deposition, identify the deposition by page number and line number. A witness who has not been identified and whose testimony has not been disclosed may not testify at trial unless good cause is shown.*

#### **A. Plaintiff's Witnesses:**

1. Plaintiff will call or have available at trial the following witnesses:
2. Plaintiff may call the following witnesses:

#### **B. Defendant's Witnesses:**

1. Defendant will call or have available at trial the following witnesses:
2. Defendant may call the following witnesses:

### X. TRIAL PREPARATION

#### **A. Exhibits.**

The parties must confer over all trial exhibits. This does not apply to rebuttal exhibits that cannot be anticipated before trial. The parties must file an original plus three (3) copies of the parties' " consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible" and a "consolidated exhibit list identifying all exhibits the parties have stipulated to be

authentic, but to which there are other objections" no later than \_\_\_\_\_ calendar days before trial.

For those exhibits on which a stipulation could not be reached, the offering party must file a separate "contested exhibit list" no later than \_\_\_\_\_ calendar days before trial. An original plus three (3) copies of each party's contested exhibit list must be filed on the date identified in the preceding paragraph. In addition, two courtesy copies of the contested and uncontested exhibit list must be delivered to the judge's chambers.

All exhibits must be marked before trial. Exhibits must be marked numerically and identify the party offering the exhibit. The identification number or letter will remain the same whether the exhibit is admitted or not.

**B. Witness Lists.**

An original and three (3) copies of a party's witness list must be filed with the Clerk and served on all parties by \_\_\_\_\_. Indicate whether the witness is testifying by deposition or in person. Objections to use of deposition testimony are due within fourteen (14) calendar days of service of the witness list. The objecting party must highlight those portions of the requested deposition testimony to which the party objects. Plaintiff must use a yellow highlighter and defendant must use a blue highlighter. The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing at least \_\_\_\_\_ calendar days before trial.

**C. Voir Dire.**

1. If allowed, do the parties wish to participate in *voir dire*?

Plaintiff      \_\_\_\_\_ Yes      \_\_\_\_\_ No

Defendant      \_\_\_\_\_ Yes      \_\_\_\_\_ No

Other Party \_\_\_\_\_ Yes \_\_\_\_\_ No

2. Each party wishing to participate in *voir dire* must serve on all parties and file with the Clerk, a pleading entitled "Proposed Voir Dire Questions." The pleading must identify the specific areas about which the party wishes to inquire and must set forth proposed *voir dire* questions. This request must be filed at least \_\_\_\_\_ calendar days prior to jury selection.

#### **D. Jury Instructions and Verdict.**

1. **In General.** The parties must confer about proposed jury instructions. The Court will prepare and provide the parties with a Court-proposed set of general "stock" instructions that will be given. The stock instructions are available from the Clerk. The instructions that the parties must submit to the Court will be those which set forth the elements and definitions of the claims or charges, and the elements and any definitions of any defenses.

2. **Sources for Instructions.** If pattern instructions are followed by the judge, the judge will indicate at the pretrial conference his or her preference for the source of instruction.

3. **Submission of Proposed Instructions.** The parties must submit one mutually approved set of jury instructions no later than \_\_\_\_\_ calendar days before trial. For those instructions the parties were unable to agree upon, each party must submit its own proposed instructions at the same time as submission of the mutually agreed instructions.

#### **4. Form of Instructions.**

a. Submit sets of double-spaced instructions as follows:

\_\_\_\_ set(s) of originals without citations and headed "Instruction No. \_\_\_\_"; and

\_\_\_\_ set(s) with citations and numbered accordingly, one of which will be filed.

b. If requested, also submit all instructions in a format compatible with Word

Perfect. Please refer to the procedures, available on our website, for electronically submitting proposed text.

- c. Submit no more than one instruction to a page.
- d. All deviations from pattern instructions must be identified as "modified" in the citation and the modification must be highlighted in the body of the instruction.
- e. Submit a cover sheet on all sets of instructions.

**5. Deadlines for Submitting Instructions.**

- a. Instructions shall be filed \_\_\_\_\_ calendar days before trial.
- b. Supplemental unanticipated jury instructions may be submitted at trial.

**E. Statement of Case.**

The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection. The statement must be submitted to the Court \_\_\_\_\_ days before jury selection.

**F. Submissions for Bench Trials.**

- 1. The parties must submit one mutually approved set of proposed findings of fact and conclusions of law no later than \_\_\_\_\_ calendar days before trial. For those findings of fact and conclusions of law the parties were unable to agree upon, each party must submit its own proposed findings of fact and conclusions of law at the same time as submission of the mutually approved set.
- 2. If requested, submit the findings of fact and conclusions of law in a format compatible with WordPerfect. Please refer to the procedures, available on our website, for electronically submitting proposed text.



**XI. OTHER MATTERS**

**A. Settlement Possibilities.**

1. The possibility of settlement in this case is considered:

\_\_\_\_\_ Poor    \_\_\_\_\_ Fair    \_\_\_\_\_ Good    \_\_\_\_\_ Excellent    \_\_\_\_\_ Unknown

2. Do the parties have a settlement conference set with the assigned Magistrate Judge?

\_\_\_\_\_ Yes    \_\_\_\_\_ No    If yes, when? \_\_\_\_\_

If a settlement conference has already been held, indicate approximate date.

\_\_\_\_\_

Would a follow-up settlement conference be beneficial? \_\_\_\_\_ Yes    \_\_\_\_\_ No

3. Does either party wish to explore any alternatives for dispute resolution such as mediation

or a summary jury trial? If yes, please identify. \_\_\_\_\_ If no,

explain why not. \_\_\_\_\_

**B. Length of Trial and Trial Setting.**

1. This action is a \_\_\_\_\_ Bench trial    \_\_\_\_\_ Jury Trial    \_\_\_\_\_ Both

2. The case is set for trial on \_\_\_\_\_. If there is no setting, the

parties estimate they will be ready for trial by \_\_\_\_\_.

3. The estimated length of trial is \_\_\_\_\_ day(s).

**XII. EXCEPTIONS**

**XIII. MODIFICATIONS-INTERPRETATION**

The Pretrial Order when entered will control the course of trial and may only be amended *sua sponte* by the Court or by consent of the parties and Court approval. The pleadings will be

deemed merged herein.

The foregoing proposed Pretrial Order (prior to execution by the Court) is hereby approved  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Attorney for Plaintiff*  
Address: \_\_\_\_\_

\_\_\_\_\_  
*Attorney for Defendant*  
Address: \_\_\_\_\_

\_\_\_\_\_  
*Attorney for other parties (if any)*  
Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE