

APPENDIX A

Sample Forms

The sample forms included in this appendix were obtained from the courts or their Web sites. Forms and orders are the copy in use by the court or the judge whose name is on the form or order, as of this writing. This manual was prepared for publication shortly after the December 1, 2000, amendments to the Federal Rules of Civil Procedure came into effect. Although some forms and orders may not yet reflect the rule amendments, in some particulars, they were included because of their overall value.

These forms and orders illustrate multiple aspects of civil procedure and case management. Citation to a form to illustrate a particular point does not suggest the form is useful for only that point. A review of the forms generally may provide helpful ideas and language on a variety of matters.

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Sample Form 1

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s)	)		C	-	
	)				-MJJ
)				
-v-	)				INITIAL CASE MANAGEMENT
	)				SCHEDULING ORDER
	)				Civil L.R. 16-2
Defendant(s))				
)				

IT IS HEREBY ORDERED that this action is assigned to the Honorable Martin J. Jenkins. When serving the complaint or notice of removal, the plaintiff or removing defendant shall serve on all other parties a copy of this order, the handbook entitled “Dispute Resolution Procedures in the Northern District of California” and all other documents specified in Civil Local Rule 4-3. Counsel shall comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the handbook entitled “Dispute Resolution Procedures in the Northern District of California.”

CASE SCHEDULE [ADR MULTI-OPTION PROGRAM]

Date	Event	Governing Rule
11/06/2000	Complaint filed	
12/21/2000	Last day to file proof(s) or waiver(s) of service	Civil L.R. 4-2
02/05/2001	Last day to meet and confer re case management	Civil L.R. 16-4
02/05/2001	Last day to file Joint ADR Certification w/ Stipulation to ADR process or Notice of Need for ADR phone conference	ADR L.R. 3-5(b)
02/14/2001	Last day to complete initial disclosures	Civil L.R. 16-5
02/26/2001	Last day to file/serve Case Management Statement	Civil L.R. 16-12 & 16-13
03/06/2001	Case Management Conference in Ctrm. 11, 19th Fl. SF at 2:00 PM	Civil L.R. 16-13

Sample Form 2

Revised as of 12/1/00

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

)	
)	
Plaintiff,)	
)	
vs.	)	Civil No.:
)	
)	
Defendant.)	

ORDER FOR RULE 26(f) PLANNING MEETING
AND
RULE 16(b) SCHEDULING CONFERENCE

IT IS ORDERED:

The court shall hold a Rule 16(b) initial pretrial scheduling/discovery conference on _____. The conference will be held in the Magistrate Judge's Chambers, Room 440, U.S. Courthouse, 655 First Avenue North, Fargo, North Dakota, if all counsel are from Fargo-Moorhead. Otherwise, the conference will be held by telephone conference call to be initiated by plaintiff's counsel.

In preparation for the conference, counsel are directed to confer on or before **(21 days before first date)** in accordance with Rule 26(f) of the Federal Rules of Civil Procedure. The court strongly encourages counsel to meet face to face, but should that prove impossible, counsel shall meet by telephone conference. Communicating by

writing, including fax or e-mail, will not be sufficient without an actual meeting. Counsel are jointly responsible for arranging and attending the meeting.

On or before **(14 days following conference)**, counsel shall submit to the magistrate judge a joint written report detailing their Rule 26(f) meeting, together with a joint proposed scheduling/discovery plan that includes at least those items listed in the form attached to this order.

During the Rule 26(f) meeting, counsel shall discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, make or arrange for the disclosures required by Rule 26(a)(1), and develop their joint proposed scheduling/discovery plan. These are only the minimum requirements for the meeting. Counsel are encouraged to have a comprehensive discussion and are required to approach the meeting cooperatively and in good faith. The discussion of claims and defenses shall be a substantive, meaningful discussion. In addressing settlement or early resolution of the case, counsel are reminded that the court strongly encourages (although it does not mandate) participation in an early alternative dispute resolution effort. Counsel are required to explore the feasibility of ADR not only between themselves but with their clients as well. The specific reason(s) for any decision not to participate in a form of early ADR shall be delineated in the Rule 26(f) report. If the parties elect not to participate in an early ADR effort, the court may nonetheless require a settlement conference shortly before trial.

In addressing the Rule 26(a)(1) disclosures, counsel shall discuss the appropriate timing, form, scope or requirement of the initial disclosures, keeping in mind that Rule 26(a)(1) contemplates the disclosures being made by the date of the Rule 16(b) initial scheduling conference and including at least the four categories of information listed in the rule. Rule 26 affords the parties flexibility in the scope, form and timing of

disclosures under both Rule 26(a)(1) (initial disclosures) and Rule 26(a)(2) (expert witness disclosures), but the parties' agreement on disclosures is subject to approval by the court. In their discussion of disclosures, counsel shall address issues of relevance in detail, with each party identifying what it needs and why. The discussion shall include as well the sequence and timing of follow-up discovery, including whether that discovery should be conducted informally or formally and whether it should be conducted in phases to prepare for filing of particular motions or for settlement discussions.

The deadlines in the scheduling/discovery plan shall be mutually agreeable, with a view to achieving resolution of the case with a minimum of expense and delay. At the Rule 16(b) conference, the court will review the plan with counsel and set a firm trial date. Counsel are informed that the court intends to try all civil cases within 18 months of filing of the complaint. Consequently, all deadlines in the schedule, including the dispositive motion deadline, must be met within 14 months of filing of the complaint in order to afford adequate time for briefing and ruling prior to the final pretrial conference and trial dates.

Each party shall be represented at the Rule 26(f) meeting and in preparation of the report and scheduling/discovery plan, as well as at the Rule 16(b) conference, by counsel authorized to bind the party on all matters to be covered.

Dated: _____.

Karen K. Klein
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
_____ DIVISION

Caption of Case)
)
) Civil No. _____
)
)

REPORT OF RULE 26(f) MEETING

In accordance with Rule 26(f), Federal Rules of Civil Procedure, counsel for the parties conferred (in person/by telephone) on (date) and submit the following report of their meeting for the court's approval:

1. Discussion of Claims, Defenses and Relevant Issues

(Summarize discussion of primary issues, threshold issues, etc., and indicate on which issues the parties will need to conduct discovery. Identify what information each party needs in discovery as well as when and why. Also indicate likely motions and their timing.)

2. Informal Disclosures

(Indicate agreement on timing, form and scope of informal disclosures. Specifically identify not only the information listed in Rule 26(a)(1), but any additional information the parties agree to disclose informally. Justify with particularized reasons any proposal that would require less disclosure informally than required by Rule 26(a)(1).)

3. Formal Discovery

(Indicate nature, sequence and timing of formal discovery, as well as any need to conduct discovery in phases to prepare for the filing of motions or for settlement discussions. Specifically delineate what discovery will be conducted formally.)

4. Expert Witness Disclosures

(Indicate agreement on timing and sequence of disclosure of the identity and anticipated testimony of expert witnesses, including whether depositions of experts will be needed.)

5. Early Settlement or Resolution

(Recite the parties' discussion about early resolution through ADR, motion or otherwise. Explain any decision not to seek early resolution.)

6. Other Matters

(Indicate discussion and any agreement on matters not addressed above.)

(Attorney Signature)

(Attorney Signature)

ORDER

The above Rule 26(f) Report is approved with the following additions/
modifications:

Dated: _____

Karen K. Klein
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
_____ DIVISION

Caption of Case

)
)
)
)
)

Civil No. _____

SCHEDULING/DISCOVERY PLAN

An initial pretrial/discovery conference is to be held in this case on _____ . Pursuant to Rule 26(f), the parties have discussed the nature and basis of their claims and defenses, the possibilities for a prompt settlement or resolution of the case, and developed a proposed discovery plan. After conferring, in person or by telephone on (date), counsel for the parties agree to the following:

1. The parties have made (or shall make by _____) Rule 26(a)(1) disclosures as follows: (Include here a summary of the parties' agreement on subject matter, timing and form of Rule 26(a)(1) disclosures, but do not submit the disclosures themselves to the court)
2. The issues on which the parties need to conduct discovery are: (list discovery issues)
3. The parties shall have until _____ to complete fact discovery and to file discovery motions.
4. Plaintiff(s) shall have until _____ and defendant(s) shall have until _____ to identify the subject matter/discipline of expert witnesses to be used at trial. (Reverse parties for experts on

counterclaims.) (Identification to be served on other parties, but not filed with the court.)

5. The parties shall have until _____ to provide the names of expert witnesses and complete reports under Rule 26(a)(2). (Treating physicians need not prepare reports, only qualifications, unless they will express opinions not reflected in the medical records.) (Reports to be served on other parties, but not filed with the court.) The parties shall have until _____ to complete discovery depositions of expert witnesses.
6. The parties shall have until _____ to move to join additional parties.
7. The parties shall have until _____ to move to amend pleadings to add claims or defenses.
8. The parties shall have until _____ to file other nondispositive motions (e.g., consolidation, bifurcation)
9. The parties shall have until _____ to file threshold motions (e.g., jurisdiction, qualified immunity, statute of limitations). Discovery (shall/shall not) be stayed during the pendency of such motions.
10. The parties shall have until _____ to file other dispositive motions (summary judgment as to all or part of the case).
11. Each party shall serve no more than ____ interrogatories, including subparts. No broad contention interrogatories (i.e., “List all facts supporting your claim that . . .”) shall be used. (Show good cause for more than the 25 interrogatories allowed by Rule 33.)
12. Each side shall take no more than ____ discovery depositions. (Show good

cause for more than the 10 depositions allowed by Rule 30.)

13. Depositions taken for presentation at trial shall be completed ____ days before trial.

14. Counsel have discussed between themselves and explored with their clients early involvement in alternative dispute resolution. The following option(s) would be appropriate in this case:

_____ arbitration

_____ mediation (choose one):

_____ private mediator

_____ court-hosted early settlement conference—should the conference be held before a judge who will not be the trial judge?

_____ yes

_____ doesn't matter

_____ early neutral evaluation before (choose one):

_____ judge other than trial judge

_____ neutral technical expert

_____ neutral attorney

_____ other (specify) _____

_____ none (explain reasons) _____.

The parties shall be ready to evaluate the case for settlement purposes by _____. (If an ADR option other than a court-hosted settlement conference is chosen, counsel shall designate one of themselves to report back to the magistrate judge that the ADR effort was completed and whether or not it was successful). The court reminds the parties that early involvement in ADR is voluntary, not mandatory. Participation in ADR is

encouraged by the court but is not required except for a settlement conference shortly before trial.

15. A mid-discovery status conference (would/would not) be helpful in this case. An appropriate time for the conference would be (list month).
16. The parties (will/will not) voluntarily waive their rights to proceed before a district judge and consent to have a magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.
17. Trial of this case will be (jury/nonjury).
18. The estimated length of trial is _____ days.

(Attorney Signatures)

ORDER

The above scheduling/discovery plan is approved with the following additions/modifications:

Dated: _____

Karen K. Klein
United States Magistrate Judge

Sample Form 3

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

Plaintiff,

vs.

Civ. No.

Defendant.

INITIAL SCHEDULING ORDER

This cause is assigned to me for scheduling, case management, discovery, and other non-dispositive motions. The Federal Rules of Civil Procedure as amended in 1993, as well as the local rules of the Court shall apply to this law suit. Civility and professionalism will be required of counsel. Counsel should read “A Lawyer’s Creed of Professionalism of the State Bar of New Mexico”.

The parties, appearing through counsel or pro se, shall “meet and confer” no later than _____ to formulate a provisional discovery plan. Fed. R. Civ. P. 26(f). The time for discovery, generally 120 to 150 days, will run from the Rule 16 initial scheduling conference. The provisional discovery plan shall be filed with the Court no later than _____.

The parties will cooperate in preparing an Initial Pre-Trial Report (IPTR) which will follow the sample IPTR form obtainable from the Court Clerk.¹ The blanks for dates should not

¹ Please contact the Clerk’s Office to obtain a copy of the new standardized Initial Pre-Trial Report form adopted by Administrative Order dated May 11, 1995, and amended by the Court in May 1997. See Attachment “A” which contains the amended language concerning pretrial motions.

be filled in. Plaintiff, or Defendant in removed cases, is responsible for submitting the IPTR to my office by _____. Good cause must be shown and Court approval obtained for any modification of the IPTR schedules.

Initial disclosures under Fed. R. Civ. P. 26(a)(1) shall be made within ten days of the meet and confer session.

A Rule 16 scheduling conference will be held in my chambers on _____ at _____.² At the Rule 16 scheduling conference Counsel shall be prepared to discuss discovery needs and scheduling, all claims and defenses, the use of scientific evidence and whether a Daubert³ hearing is needed, initial disclosures, and the timing of expert disclosure and reports under Fed. R. Civ. P. 26(a)(2). We shall also discuss settlement prospects and alternative dispute resolution possibilities. Client attendance is not required. Out-of-town counsel may appear by telephone if prior arrangements are made with opposing counsel and the Court.

Pre-trial practice in this cause shall be in accordance with the foregoing.

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

² For daily calendar updates, please call the Court Calendaring Service at 248-8112, extension 38.

³ Daubert v. Merrell Dow Pharmaceuticals, 113 S. Ct. 2786 (1993).

NOTICE TO FEDERAL PRACTITIONERS

The standard Initial Pre-trial Report Form has been revised under the paragraph entitled “Other Pretrial Motions” as follows:

Motion “packages” containing the original and one copy of all papers relating to a motion (i.e., the motion, response and reply, with any accompanying memoranda or exhibits) as required by D.N.M. LR-Civ. 7.3(5) must be filed with the Court no later than _____. Any pretrial motion “package” filed after the above date shall be considered untimely in the discretion of the Court.

The revised form is available on the Internet at the Federal District Court web site or on disk and hard copy format at the Clerk’s Office.

ATTACHMENT “A”

Sample Form 4

(Cite as: 117 F.R.D. 273)

Federal Rules Decisions
1987

GUIDELINES FOR DISCOVERY, MOTION PRACTICE AND TRIAL

William W Schwarzer
U.S. District Judge
Northern District of California

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GUIDELINES

These guidelines are furnished for the convenience of counsel and the Court to promote the just, speedy and economical disposition of cases. They should be accepted in that spirit.

GENERAL MATTERS

Attorneys appearing in the District Court in civil litigation must observe three sets of rules:

- The Federal Rules of Civil Procedure,
- The District Court's Local Rules, and
- The rules and practices of the particular judge to whom the case is assigned.

You can become familiar with the rules and practices of the judge assigned to your case in two ways:

- (i) By obtaining from that judge's courtroom deputy copies of the standing orders used by that judge; and
- (ii) By inquiring of the deputy (not the law clerks) how that judge wants things done.

The following matters require particular attention:

1. *Removal From the State Court.* Before filing a petition to remove from state to federal court, consider the jurisdictional facts carefully in light of 28 U.S.C. § 1441 and other applicable law. Do not attempt to remove unless you are satisfied that good grounds exist.

Note that (1) the existence of a federal law defense does not normally create federal jurisdiction and (2) the presence of fictitious defendants may destroy diversity of citizenship.

2. *Related Cases* (L.R. 205-2). If you have a case that you believe may be related to another case on file in the court (whether closed or not), you must promptly file a notice of related case. The judge with the lower numbered case will decide whether to relate the cases, depending on whether assignment to a single judge will be conducive to economy or efficiency.

3. *Status Conferences* (L.R. 235-3; Fed.R.Civ.P. 16). Judges generally hold a status conference in a case within three months of filing of the complaint. The purpose of this conference is to formulate and narrow the issues; to schedule a discovery cutoff, pretrial conference and trial date and to explore the possibility of settlement. The conference should be attended by an attorney who is thoroughly familiar with the case and is authorized and prepared to speak on these matters. Use the conference to inform the judge about your case and to propose a practical litigation program for it. A brief, informative and non-argumentative statement filed at least seven days in advance is helpful to the judge. Some judges will hear status conferences by conference telephone call if requested. Consult the assigned judge's status conference order for details.

4. *Settlement*. Over ninety percent of all civil cases settle before trial. You can expect the judge to inquire about prospects for settlement at every opportunity. Always be prepared with a reasonable negotiating position and a credible and persuasive explanation for it. At the request of any party the Court will arrange a settlement conference before another judge or magistrate. Brief settlement conference statements should be submitted to the settlement judge in advance of the conference but not filed.

5. *Rule 11 Sanctions*. As amended in 1983, Rule 11 now provides that an attorney who signs a pleading or other paper filed with the Court certifies that, after having made a reasonable inquiry, the attorney believes it to be well-grounded in fact and warranted by existing law or a good faith argument for modification or extension of existing law and that it is not interposed for an improper purpose such as to harass, delay or unnecessarily increase expense. Thus, Rule 11 requires a lawyer to make a reasonable prefiling inquiry and not to misuse the litigation process by frivolous litigation or harassment of an opponent. See also 28 U.S.C. § 1927.

Lawyers can expect the pleadings, motions and other papers they file to be scrutinized by the judge in light of this rule, regardless of whether a motion to impose sanctions is filed. When a paper is filed that does not appear to conform to Rule 11, the lawyer will be called on to explain; in the absence of a satisfactory explanation, sanctions such as the resulting costs and fees incurred by the opponent may be assessed.

Rule 11 should not be permitted to generate satellite litigation. Do not file a Rule 11 motion unless you are certain it is well-founded. It is advisable to take up the matter with the Court before filing. Generally, discovery will not be permitted in Rule 11 proceedings.

DISCOVERY

1. General Principles of Discovery. Counsel should be guided by courtesy, candor and common sense, and conform to the Federal Rules of Civil Procedure, the Local Rules, and any applicable orders. In particular, counsel should have in mind the restrictions on the scope of discovery stated in Rule 26(b)(1) and the good faith obligations implicit in Rule 26(g). Direct and informal communication between counsel is encouraged to facilitate discovery and resolve disputes.

2. Timeliness. The time limits specified in the rules and applicable orders must be observed. If additional time is needed, a continuance must be sought in advance by stipulation and order.

3. Discovery Cut-Off. Discovery cut-off dates in orders are the last date for filing discovery responses, unless otherwise specified. To be timely, therefore, discovery requests must be filed sufficiently in advance of the deadline for responses to be made. The Court will normally set cut-off dates only after consultation with counsel. Once they are set, however, they will be changed only for good cause shown.

4. Supplementing Discovery Responses. Rule 26(e) requires that an earlier discovery response be supplemented if it was incorrect or is no longer true or to the extent it relates to potential expert or other witnesses. Failure to comply may result in exclusion of evidence or witnesses at trial.

5. Depositions

a. *Scheduling.* Barring extraordinary circumstances, opposing counsel should be consulted and the convenience of counsel, witnesses and parties accommodated before a deposition is noticed. Concurrent depositions are not permitted in the absence of stipulation or order. Note that it is often less expensive to bring the witness to the deposition (and for the parties to share the expense) than for the lawyers to travel.

b. *Stipulations.* When counsel enter into stipulations at the beginning of a deposition, the terms of the stipulation should be fully stated on the record of the deposition.

c. *Questioning.* Questions should be brief, clear and simple. Rarely should a question exceed ten words. Each question should deal with only a single point. Argumentative questions are out of order. The purpose of a deposition is not to harass or intimidate, but simply to make a clear and unambiguous record of what that witness's testimony would be at trial.

d. *Documents.* Normally, except in the case of impeachment, a witness should be shown a document before being questioned about it.

e. *Objections.* Under Rule 30(c), objections to the manner of taking the deposition, to the evidence or to the conduct of a party shall be noted on the record but the evidence objected to shall be taken subject to the objection. In the absence of a good faith claim of privilege, instructions not to answer are rarely justified and may lead to sanctions under Rule 37(a)(2) and (4). Speaking objections and other tactics for coaching a witness during the deposition may also be cause for sanctions. If counsel believes that a motion to terminate or limit the examination under Rule 30(d) would be warranted, counsel should promptly initiate a conference call to the Court with opposing counsel for a pre-motion conference to attempt to resolve the problem. (See ¶ 9.a. below.)

f. *Persons Attending Depositions.* In the absence of a specific order, there is no restriction on who may attend a deposition. Only one lawyer may normally conduct the particular deposition for each side.

g. *Expert Discovery.* Rule 26(b)(4) should be consulted. However, experts who are prospective witnesses are normally produced for deposition by the opposing party as a matter of course. If the expert is expected to testify at trial, a written statement of his anticipated testimony should be given to opposing counsel in advance of the deposition.

h. *Number of Depositions.* Counsel are expected to observe the limitations specified in Rule 26(b)(1), and, in particular, to avoid unnecessary depositions. Counsel should explore less expensive alternatives for obtaining the needed information.

6. Interrogatories

a. *Informal Requests.* Whenever possible, counsel should try to exchange information informally. The results of such exchanges, to the extent relevant, may then be made of record by requests for admission. (See ¶ 8, below.)

b. *Number and Scope of Interrogatories.* Although the Court has no standing limitation, it will be guided in each case by the limitations stated in Rule 26(b)(1). Counsel's signature on the interrogatories constitutes a certification of compliance with those limitations. (See Rule 26(g).) Interrogatories should be brief, simple, neutral, particularized and capable of being understood by jurors when read in conjunction with the answer. Ordinarily they should be limited to requesting objective facts, such as identification of persons or documents, dates, places, transactions and amounts. Argumentative interrogatories, attempts to cross-examine, multiple repetitive interrogatories (such as "state all facts on which an allegation or a denial is based") are objectionable. Except in certain specialized areas of practice, such as maritime personal injury cases, standard interrogatories generated by word processors should be avoided.

c. *Responses.* Rule 33(a) requires the respondent to produce whatever information is available (but only what is available), even if other information is lacking or an objection is made. When in doubt about the meaning of an interrogatory, give it a reasonable interpretation (which may be specified in the response) and answer it so as to give rather than deny information. Generally, the responding party is required to produce information only in the form in which it is maintained. If an answer is made by reference to a document, attach it or identify it and make it available for inspection. (See Rule 33(c) and ¶ 7, below.) Generalized cross-references, such as to a deposition, are not an acceptable answer.

d. *Objections.* Unless the objection is based on privilege or burdensomeness, or a motion for protective order is made, the information requested must be supplied to the extent available, even if subject to objection. Counsel's signature on the answer constitutes a certification of compliance with the requirements of Rule 26(g).

e. *Privilege.* A claim of privilege must be supported by a statement of particulars sufficient to enable the Court to assess its validity. (See L.R. 230-5.) In the case of a document, such a statement should specify the privilege relied on and include the date, title, description, subject and purpose of the document; the name and position of the author and the addresses of other recipients. In the case of a communication, the

statement should include the date, place, subject and purpose of the communication and the names and positions of all persons present.

7. Requests for Production of Inspection

a. *Informal Requests.* See ¶ 6.a. above.

b. *Number and Scope of Requests.* Requests should specify with particularity the title and description of documents or records requested. Information needed for specification can often be obtained by informal discovery, or by depositions or interrogatories if necessary. Argumentative or catch-all requests, such as “all documents which support your claim,” are objectionable. The certification requirement of Rule 26(g) applies.

c. *Responses.* Materials should be produced either with labels identifying the specific requests to which they respond or in the manner in which they are kept in the ordinary course of business. Opening a warehouse for inspection by the requesting party, burying documents, and similar procedures do not meet the good faith requirements of the rules. (See Rule 26(g).)

d. *Objections.* See ¶ 6(d) above.

e. *Privilege.* See ¶ 6(e) above.

8. Requests for Admission

a. *Use of Requests.* Requests for admission are an economical and efficient means of making a record of informal exchanges of information, stipulations, matters subject to judicial notice, and of narrowing issues.

b. *Form of Requests.* Each request should be brief, clear, simple, addressed to a single point and stated in neutral, non-argumentative words. Requests ordinarily should deal only with objective facts. They may be combined with interrogatories to ask for the factual basis of any denial.

c. *Responses.* Rule 36(a) requires that a response shall specifically deny a matter or set forth in detail the reasons why the party cannot admit or deny. A denial shall fairly meet the substance of the request and, when good faith requires, a party shall specify so much as is true and qualify or deny the remainder. The responding party has a duty to make reasonable inquiry before responding. The certification requirement of Rule 26(g) applies.

d. *Objections.* See ¶ 6(d) above.

9. Motions to Compel or for Protective Orders

a. *Pre-motion Conference.* Counsel are required to confer in good faith before bringing a discovery dispute to the Court. If they are unable to resolve it, they should arrange a telephone conference with the Court through the courtroom deputy. If the differences cannot be resolved, the Court will direct further proceedings. Motions to compel should ordinarily not be filed without a prior conference with the Court.

b. *Memoranda.* In the event memoranda are submitted, they should be brief, focus on the facts of the particular dispute, and avoid discussion of general discovery principles.

c. *Sanctions.* If sanctions are sought, include a declaration to support the amount requested.

d. *Reference to Guidelines.* The Court will be guided by these guidelines in resolving discovery disputes and imposing sanctions.

MOTION PRACTICE

1. General. Do not file a motion without first exploring with opposing counsel the possibility of resolving the dispute by stipulation. Many motions now being filed could be avoided.

2. Motion to Dismiss or for Summary Judgment. Motions to dismiss for failure to state a claim under Rule 12(b)(6) must be made solely on the pleadings. If matter outside the pleadings is referred to, the motion is treated as a motion for summary judgment. Fed.R.Civ.P. 56. Do not file a summary judgment motion unless you are satisfied that a material issue can be resolved without reference to disputable evidentiary facts. A motion devoted to arguing evidentiary facts is likely to lose. If you think your opponent has admitted the material facts, make it of record by using requests for admission.

3. Supporting Memoranda and Other Papers. Follow these guidelines:

Be helpful: State the grounds for the motion and the issues clearly at the outset, marshal the supporting facts and law and distinguish opposing authority. Check all citations, include jump citations, and verify the continuing validity of decisions relied on.

Keep it short: Rarely if ever should it be necessary to exceed the 25-page limit under L.R. 220-4. Approval for filing a brief in excess of 25 pages will only be grudgingly granted and without it the brief will not be filed. Avoid voluminous supporting documentation; the larger the motion, the less its chance for success.

Be candid: Address directly the hard issues that must be decided; do not sweep them under the rug. Cite adverse authority and explain why it does not support a ruling against you. Don't gamble on the judge not finding it. Don't mislead the Court, either as to the facts or the law; once your credibility is in question, it is difficult to restore it.

Avoid invective and vituperation: Argument advances your case far less than exposition and analysis. Adjectives and adverbs, other than those having independent legal significance, do not make a brief persuasive; avoid them.

Submit a proposed order, retaining the original.

Submit an extra copy of all papers for use by the judge's chambers.

4. Time Limits. Observe the time limits in L.R. 220-2 and 220-3. Responses must be filed not less than fourteen days before the noticed hearing date; replies not less than seven days. The judges need that time to prepare. Late filed papers may be disregarded.

5. Continuances. Motions will not be continued without a good reason once an opposition is filed. Even then a court order must be applied for not less than seven days before the hearing date. Contrary to the practice in some state courts, most judges will not take motions "off calendar." Continuances must be requested to a specified date and for good cause. (L.R. 220-9)

Reduce all stipulations extending time to writing. After the first extension, a court order is required. (L.R. 220-10)

6. Hearings. The judge may decide the motion without hearing or by holding a hearing by conference telephone call.

If a hearing is held, assume the judge is familiar with the matter. State the issue succinctly, fairly and persuasively and limit your argument to the heart of the matter. Deal with adverse authority and whatever other matters you believe may be obstacles to a

ruling in your favor. Don't overstate your case but don't give away a good point. Be prepared to answer questions.

Although the papers filed will usually determine the outcome, don't underestimate the effect of a good oral argument. It can turn a case around if it is well-prepared, brief and to the point, and presented with conviction, common sense and candor. You will not harm your case by being courteous to the Court and counsel, observing proper demeanor and making a dignified appearance.

CONDUCT OF TRIALS

1. Pretrial. Ordinarily the Court will determine at pretrial what claims and defenses will be tried, what witnesses will testify and what exhibits will be received at trial. Except for proper impeachment, trial by ambush is not acceptable. Therefore do not expect to raise new issues or offer new evidence at trial. Consult the judge's form of pretrial order for specific requirements.

2. Opening Statements. An opening statement is simply an objective summary of what counsel expects the evidence to show. No argument or discussion of the law is permissible.

3. Questioning of Witnesses

a. Conduct the examination from the lectern. Ask permission to approach the witness when necessary and return to the lectern as soon as practicable. Treat witnesses with courtesy and respect; do not become familiar.

b. Ask brief, direct and simply stated questions. Cover one point at a time. Do not ask a witness "do you recall . . ." unless the fact of his recollection is material. Use leading questions for background material. Write out the examination or have at least a complete outline.

c. Cross-examination similarly should consist of brief, simple and clearly stated questions. It is helpful to write out questions in advance but do not read them. Cross-examination should not be a restatement of the direct examination nor should it be used for discovery or to argue with the witness.

d. Only one lawyer for each party may examine any one witness.

4. Using Depositions

a. The deposition of an adverse party may be used for any purpose. It is unnecessary to ask a witness if he "recalls" it or otherwise to lay a foundation. Simply identify the deposition and page and line numbers and read the relevant portion. Opposing counsel may then immediately ask to read such additional testimony as is necessary to complete the context.

b. The deposition of a witness not a party may be used for impeachment or if the witness has been shown to be unavailable. For impeachment, allow the witness to read to himself the designated portion first, ask simply if he gave that testimony, and then read it. Opposing counsel may immediately read additional testimony necessary to complete the context.

c. A deposition may be used to refresh a witness's recollection by showing it to him, or, just as any other document, as a basis for relevant questions.

d. In bench trials, do not offer depositions wholesale. Unless all of the testimony is important, copy the relevant pages only, staple the extracts from each deposition, and offer each as an exhibit.

e. Note: It is the responsibility of counsel anticipating use of a deposition at trial to check in advance of trial that it has been made available to the witness for signature and that the original is filed with the clerk's office.

5. Objections

a. To make an objection, rise, say "objection" and briefly state the legal ground (e.g. "hearsay," "privilege," "irrelevant").

b. Do not make a speech or argument, or summarize evidence, or suggest the answer to the witness. If argument is desired, ask for an opportunity to argue the objection.

c. Where an evidentiary problem is anticipated, bring it to the Court's attention in advance to avoid interrupting the orderly process of a jury trial.

6. Exhibits

a. All exhibits must be marked before the trial starts, using the clerk's standard form of label. Normally plaintiff's will be numbered, defendant's lettered. Copies must be provided to opposing counsel and the Court before trial.

b. When offering an exhibit follow this procedure to the extent applicable (unless foundation has been stipulated):

Request permission to approach the witness;

Show the witness the document and say:

I show you (a letter) premarked Exhibit ____, dated ____, from A to B. Please identify that document.

Identification having been made, make your offer as follows:

I offer Exhibit ____.

Note: In some circumstances additional questions may be necessary to lay the foundation.

c. It is the responsibility of counsel to see that all exhibits counsel wants included in the record are formally offered and ruled on, and that they are in the hands of the clerk. Take nothing for granted.

d. Avoid voluminous exhibits. When possible offer only relevant extracts.

7. Interrogatories and Requests for Admission

Counsel wishing to place into the record an interrogatory answer or response to request for admission should prepare a copy of the particular interrogatory or request and accompanying response, mark it as an exhibit and offer it.

8. Use of Prepared Direct Testimony

In bench trials when the direct testimony of witnesses has previously been submitted in narrative written statement form, the proponent of the witness must have the witness available for cross-examination unless cross-examination has been waived.

The following procedure should be followed:

When the witness is called to the stand, ask the witness to identify the statement, which should be premarked as an exhibit, as his testimony and to state that it is true and correct. Then offer the exhibit.

9. Conduct of Trial

a. The Court expects counsel and the witnesses to be present and ready to proceed promptly at the appointed hour—normally starting at 9:30 a.m. A witness on the stand when a recess is taken should be back on the stand when the recess ends.

b. Bench conferences should be minimized. Raise anticipated problems at the start or the end of the trial day or during a recess.

c. Have a sufficient number of witnesses available to fill the time available. Running out of witnesses may be taken by the Court as resting your case.

d. Trials normally are conducted each day except on the day scheduled for the motion calendar (normally Friday). Do not assume that the Court will recess on any of those days unless prior arrangements have been made with the Court and counsel.

e. Counsel are expected to cooperate with each other in the scheduling and production of witnesses. Witnesses may be taken out of order where necessary. Every effort should be made to avoid calling a witness twice (as an adverse witness and later as a party's witness).

f. Counsel should be prepared each day to discuss with the Court the next day's schedule of witnesses and exhibits.

10. Jury Trial

a. When trial is to a jury, counsel should present the case so that the jury can follow it. Witnesses should be instructed to speak clearly and in plain language. When documents play an important part, an overhead projector and screen should be used to display the exhibit while a witness testifies about it.

b. Jury instructions must be submitted no later than the pretrial conference but may be supplemented during the trial. Only those dealing with the particular issues in the case need be presented—the Court's standard instructions may be obtained from the clerk. Instructions are to be drafted specifically to take into account the facts and issues of the particular case, and in plain language; do not submit copies from form books. Do not submit argumentative or formula instructions. Consult the Court's order for pretrial preparation for additional guidance.

c. Do not offer a stipulation in the presence of the jury unless agreement has previously been reached. Preferably stipulations should be in writing.

d. In final argument, do not express personal opinions or ask jurors to place themselves in the position of a party or to consider possible consequences of the litigation beyond the evidence presented.

e. Normally, the Court will instruct the jury before closing argument. Accordingly, there will be no need to explain the law in the closing argument.

11. General Decorum

a. A trial is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times, which include appropriate dress and courtroom behavior. Disruptive tactics or appeals to prejudice are not acceptable.

b. Colloquy between counsel on the record is not permitted—all remarks are to be addressed to the Court.

c. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Calling witnesses or parties by first names or the Court “Judge” on the record is not appropriate.

d. Do not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client while at counsel table should indicate approval, disapproval or other reactions to a witness’s testimony or counsel’s argument.

e. If you have a question or problem, contact the judge’s court room deputy but not the law clerks.

Sample Form 5

REVISED OCTOBER 16, 2000

INDIVIDUAL PRACTICES OF JUDGE MIRIAM GOLDMAN CEDARBAUM

Unless otherwise ordered by Judge Cedarbaum, matters before Judge Cedarbaum shall be conducted in accordance with the following practices:

1. COMMUNICATIONS WITH CHAMBERS

A. Letters. Except on emergency matters, communications with chambers shall be in writing, with a copy to opposing counsel. Letters must be delivered to opposing counsel in the same manner in which they are delivered to chambers, and must show the method of delivery (e.g., "By Hand" or "By Mail").

B. Telephone Calls. Except as provided in Paragraph 1(D) below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at (212) 805-0198.

C. Faxes. Faxes to chambers are not permitted.

D. Scheduling and Calendar Matters. For scheduling and calendar matters, call Betty Vapper at (212) 805-0095 before 10:00 a.m. or after 5:00 p.m.

E. Adjournments. Absent an emergency, a request for an adjournment shall be made by letter received by chambers at least 48 hours prior to the scheduled event, and shall indicate whether any party objects to the adjournment.

2. CONFERENCES

The lawyer who is in charge of the case and who will try it is required to appear at all conferences with the court.

3. MOTIONS

A. Pre-Motion Conferences in Civil Cases. Parties who wish to make a discovery motion (Local Civil Rule 37.2) or a motion for summary judgment should arrange for a conference before preparing any papers.

B. Courtesy Copies. Courtesy copies of all motion papers, marked as such, should be submitted to chambers.

C. Timing and Filing of Motion Papers. Motions, except those of an emergency nature, are heard on any Thursday at 9:00 a.m. Motions must be received by all parties by noon at least 22 days before the return date. Parties may not select as a return date a Thursday more than 29 days after the date of service without

permission of the court. Answering papers must be received by all parties by noon on Wednesday of the week before the return date. Reply papers, if any, must be received by all parties by noon on Tuesday of the week of the return date. Copies of all papers served should be delivered directly to chambers at the time of service.

D. Oral Argument on Motions. Oral argument will be heard on all motions except pro se matters and motions to reargue.

E. Default Judgments. Applications for default judgments must be made by notice of motion.

4. ORDERS TO SHOW CAUSE

Except when cause for ex parte relief is shown, an order to show cause will not be issued unless the party requesting such an order has notified all adversaries of the time and date the request is to be made and all adversaries have had an opportunity to appear and oppose the application. Applications for orders to show cause should be accompanied by a supporting memorandum of law.

5. PRETRIAL PROCEDURES

A. Disclosure of Trial Witnesses. All trial witnesses including experts must be disclosed by no later than 15 days before the close of discovery.

B. Joint Pretrial Orders in Civil Cases. A Joint Pretrial Order (JPTO) must be submitted on or before the date set in the Case Management Plan.

The format of the JPTO in a case to be tried before a jury must be as follows:

- 1) Best estimate of the length of the trial.
- 2) Undisputed Facts.
- 3) Plaintiff's Contentions of Fact. For each contention, there must be a citation to at least one witness or document that will establish that fact.
- 4) Plaintiff's Contentions of Law. For each contention, there must be a citation to at least one case or statute.
- 5) Defendant's Contentions of Fact. For each contention, there must be a citation to at least one witness or document that will establish that fact. The defendant's contentions should

state the defendant's version of the facts, and should not simply deny the plaintiff's contentions.

6) Defendant's Contentions of Law. For each contention, there must be a citation to at least one case or statute.

7) A list by each party of all proposed witnesses. Witnesses not listed in the JPTO will be precluded from testifying at trial.

8) A list by each party of exhibits to be offered in its case in chief with any objections by the other side on the same page immediately adjacent to the contested exhibit. Exhibits not exchanged and listed in the JPTO may not be introduced at trial.

The same format must be followed in non-jury cases, except that the parties should include "Proposed Findings of Fact" in place of "Contentions of Fact," and "Proposed Conclusions of Law" in place of "Contentions of Law."

10/16/00

Sample Form 6

The Board of Judges of the Eastern District of New York has agreed that to the extent the district and magistrate judges have a set of practices which they follow in most cases, they will employ one of the versions set forth below. Each judge's choices are set out on the Schedule and Information Sheet appended to this model. [Editor's note: In the interests of space, the individual judges' choices are not included here.]

RECOMMENDED MODEL FOR INDIVIDUAL JUDGE'S PRACTICES

Unless otherwise ordered by Judge X in a specific case, matters before Judge X shall be conducted in accordance with the following practices:

1. Communications With Chambers

A. Letters. Except as provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel.

Version 1: Copies of correspondence between counsel shall not be sent to the Court.

Version 2: Except for discovery matters, copies of correspondence between counsel shall be sent to the Court.

B. Telephone Calls.

Version 1: Except as provided in Paragraph 1(D) below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at the number listed on the attached information sheet.

Version 2: In addition to Paragraph 1(D) below, telephone calls to chambers are permitted. For non-docketing, scheduling or calendar matters, call chambers at the number listed on the attached information sheet.

C. Faxes.

Version 1: Faxes to chambers are not permitted unless prior authorization is obtained.

Version 2: Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than the number of pages listed on the attached information sheet may be faxed without prior authorization. Do not follow with hard copy. The fax number is listed on the attached information sheet.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call the contact listed on the attached information sheet during the hours specified.

E. Request for Adjournments or Extension of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling order must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance.

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rules 37.3 and 6.4. For motions other than discovery motions,

Version 1: pre-motion conferences are not required.

Version 2(a): in all cases where the parties are represented by counsel a pre-motion conference with the court is required before making a motion for summary judgment.

Version 2(b): in all cases where the parties are represented by counsel and in other than habeas corpus/prisoner petitions and Social Security and Bankruptcy appeals, a pre-motion conference with the court is required before making any dispositive motion, motion for a change of venue or to amend a pleading pursuant to Rule 15 of the Fed. R. Civ. P. where leave of court is required.

For Both Versions 2(a) and 2(b): To arrange a pre-motion conference, the moving party shall submit a letter not to exceed three (3) pages in length setting forth the basis for the anticipated motion. All parties so served must serve and file a letter response, not to exceed three (3) pages within seven (7) days from service of the notification letter. Service of the letter by the moving party within the time requirements of Rule 12 of the Fed. R. Civ. P. shall constitute timely service of a motion made pursuant to Fed. R. Civ. P. 12(b).

B. Courtesy Copies.

Version 1: Courtesy copies of motion papers should not be submitted.

Version 2(a): Courtesy copies of all motion papers, marked as such, should be submitted for chambers.

Version 2(b): In addition to motion papers, courtesy copies of pleadings, marked as such, shall be submitted to chambers, as soon as practical after filing.

C. Memoranda of Law.

Version 1: Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

Version 2: The court expects counsel to exercise their professional judgment as to the length of briefs and may impose limits if that expectation is not met.

D. Filing of Motion Papers.

Version 1: Motion papers shall be filed promptly after service.

Version 2: No motion papers shall be filed until the motion has been fully briefed. The notice of motion and all supporting papers are to be served on the other parties along with a cover letter setting forth whom the movant represents and the papers being served. A copy of the cover letter only is to be mailed to the assigned district judge and the magistrate judge at this time.

The parties are to set up their own briefing schedule. The parties may revise the schedule on consent, informing chambers by letter.

The original moving party shall be responsible for filing all motion papers. Such party is further obligated to furnish to chambers a full set of courtesy copies of the motion papers together with a cover letter specifying each document in the package. A copy of the cover letter shall be sent to the assigned magistrate judge and to opposing counsel.

E. Oral Argument on Motions.

Version 1: Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

Version 2(a): Where the parties are represented by counsel, oral argument will be held on all motions.

Version 2(b): Where the parties are represented by counsel, oral argument will be held on all motions. After the motion has been fully briefed, and after reconsultation with all parties, the moving party shall schedule oral argument on a specific [insert day of the week when the Judge normally hears oral argument on motions] at [insert time] by letter to be received by chambers and all other parties at least ten days prior to the date selected.

Version 2(c): Where the parties are represented by counsel, oral argument will be held on all motions. The notice of motion shall state that oral argument will be “on a date and at a time to be designated by the court”. The court will contact the parties to set the specific date and time for oral argument.

F. Paragraphs A and D above do NOT apply to any of the motions described in Federal Rule of Appellate Procedure 4(a)(4)(A). A pre-motion conference is not required before making such motions, which should be filed when served.¹

Paragraph D above does not apply to any of the motions described in Federal Rule of Appellate Procedure 4(a)(4)(A). Such motions should be filed when served and each party shall be responsible for filing its motion papers and furnishing chambers with courtesy copies.²

3. Pretrial Procedures

Version 1: Pretrial orders are not required unless specifically directed by the court in a particular case.

Version 2:

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 60 days from the date for the completion of discovery in a civil case, the parties shall submit to the court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.

¹ Please note that paragraph F, Section 2.Motions, was added on March 16, 2001 and pertains to the practices of Chief Judge Korman and Judges Trager, Ross, Gershon, Nickerson, Dearie, Platt, Gleeson, Block and Hurley; and Magistrate Judges Gold, Levy, Mann and Boyle.

² Please note that this version of paragraph F pertains to the practices of Judge Glasser.

v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.

vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).

vii. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.

viii. **Version 2(a):** A list by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.

Version 2(b): A list of the names and addresses of all witnesses, including possible witnesses who will be called only for impeachment or rebuttal purposes and so designated, together with a brief narrative statement of the expected testimony of each witness. Only listed witnesses will be permitted to testify except when prompt notice has been given and good cause shown.

ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

x. **Version 2(c):** A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

Version 2(d): 1) A statement of stipulated facts, if any;

2) A schedule listing exhibits to be offered in evidence and, if not admitted by stipulation, the party or parties that will be offering them. The schedule will also include possible impeachment documents and/or exhibits, as well as exhibits that will be offered only on rebuttal. The parties will list and briefly describe the basis for any objections that they have to the admissibility of any exhibits to be offered by any other party. Parties are expected to resolve before trial all issues of authenticity, chain of custody and related grounds. Meritless objections based on these grounds may result in the imposition of sanctions. Only exhibits listed will be received in evidence except for good cause shown; and

3) All exhibits must be premarked for the trial and exchanged with the other parties at least ten days before trial. Where exhibits are voluminous, they should be placed in binders with tabs.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file, 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

i. On the Thursday before trial in jury cases, requests to charge and proposed voir dire questions. Requests to charge should be limited to the elements of the claims, the damages sought and defenses. General instructions will be prepared by the court. When feasible, proposed jury charges should also be submitted on a 3.5” diskette in IBM Word Perfect format;

ii. By claim, a detailed statement regarding damages and other relief sought;

iii. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

iv. In all cases, motions addressing any evidentiary or other issues which should be resolved in limine; and

v. In any case where such party believes it would be useful, a pretrial memorandum.

Sample Form 7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STANDING ORDER

JUDGE MARTIN J. JENKINS

Courtroom 11, 19th Floor
Gwen Wozniak, Courtroom Deputy
(415) 522-2123

1. All counsel are hereby ordered to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of the Northern District of California.
2. COURT DATES: The Court will hear the following matters on the following days and times:
 - a. Civil Law and Motion Calendar is heard on Tuesday at 9:30 a.m.
 - b. Criminal Calendar is heard on Thursday at 2:00 p.m.
 - c. Case Management/Status Conferences are held on Tuesday at 2:00 p.m.
 - d. Civil Pretrial Conferences are held on Tuesday at 3:30 p.m.
3. MOTIONS: Motions shall be filed and set for hearing in accordance with Civil Local Rule 7 and this Court's Standing Order. Motions shall not be noticed for hearing on a Tuesday following an official court holiday that falls on a Monday.
4. SUMMARY JUDGMENT/ADJUDICATION: Pursuant to Civil Local Rule 56-2, in any pending motion for summary judgment or summary adjudication, the parties are ordered to meet, confer and submit, on or before ten (10) court days prior to the date of the hearing, a joint statement of undisputed facts. Only one joint statement of undisputed facts, signed by all parties, should be filed.
5. EXPEDITED MOTIONS AND EX PARTE APPLICATIONS: All expedited motions and ex parte applications are considered on the papers and may not be set for a hearing. Counsel are advised that this Court allows ex parte applications solely for extraordinary relief and that sanctions may be imposed for misuse of ex parte applications.
6. CONTINUANCES: Counsel requesting a continuance of any conference, hearing, deadline, or other procedural changes, must submit a stipulation with a detailed declaration as to the reason for the requested continuance or extension of time. Continuances will be granted only upon a showing of good cause, particularly focusing upon evidence of diligence by the party seeking delay and of prejudice that may result if the continuance is denied.
7. DISCOVERY: All discovery matters shall be referred to a United States Magistrate Judge for the specific purpose of hearing all discovery disputes, unless otherwise ordered by the court. The words DISCOVERY MATTER shall appear in the caption of all documents relating to discovery to insure proper routing. Counsel are directed to contact the clerk for the assigned Magistrate Judge to schedule matters for hearing.

The decision of the Magistrate Judge shall be final and binding, subject to modification by the District Court only where it has been shown that the Magistrate Judge's order is clearly erroneous or contrary to law.

8. **CRIMINAL PLEAS:** Prior to a plea being entered in a criminal case, an Application for Permission to Enter Plea of Guilty must be completed. A copy of the plea agreement should be delivered to chambers by 12:00 p.m. the day prior to the entry of plea.

9. **COMMUNICATION WITH CHAMBERS:** Counsel shall not attempt to make contact by telephone or any other ex parte means with the Court or its chambers staff, but may contact the Courtroom Deputy at (415) 522-2123 with appropriate inquiries. Counsel should list their facsimile transmission numbers along with their telephone numbers on their papers to facilitate communication with the Courtroom Deputy.

10. **NOTICE OF THIS ORDER:** Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is responsible for promptly serving notice of these requirements upon defendants' counsel. If this came to the Court via a noticed removal, this burden falls to the removing defendant.

IT IS SO ORDERED.

Dated: _____

MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE

INSTRUCTIONS REGARDING PRETRIAL PROCEEDINGS

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

The purpose of these instructions is to summarize information contained in the Court's local rules and to direct your attention to specific local court rules pertaining to (1) the filing of responses to mandatory disclosures; (2) the filing of a joint certificate of interested persons; (3) the scheduling of an early planning conference; (4) the conduct of discovery; (5) the scheduling of the settlement conference after discovery and the reporting of the results of that conference; (6) the submission of a joint preliminary planning report and scheduling order;¹ (7) time limits for various motions; (8) the submission of a proposed consolidated (not separate) pretrial order; and (9) the submission of requests to charge. Cases assigned to the Court's 0-months discovery tract are exempted from the LR 16 requirements regarding conferences, filing of a preliminary planning report, and filing of a consolidated pretrial order.

Counsel are jointly responsible for assuring the orderly conduct of discovery and for submitting promptly the documents requested by the Court without further notice, order, or direction. Failure on the part of any party to cooperate with others in compliance with these instructions may result in the imposition of dismissal, default judgment, or other sanctions as provided by the Federal Rules of Civil Procedure and the Local Rules of this Court.

Plaintiff's counsel is responsible for assuring delivery of a set of these pretrial instructions to defense counsel in conjunction with service of the complaint. Attached to these pretrial instructions are three (3) forms: a form for defense counsel's use in responding to the mandatory disclosures, a form for counsels' use in jointly submitting the preliminary planning report and scheduling order, and a form for presentation of the proposed consolidated pretrial order.

SUMMARY OF RELEVANT DATES

Plaintiff files Responses to Mandatory Disclosures:	simultaneously with filing of complaint. LR 26.1C. ²
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¹ Pro se litigants and opposing counsel shall be permitted to file separate preliminary planning reports.

² **LR 26.1E. In Removed Cases.** In civil actions removed to this Court from state court, all parties' responses to the mandatory disclosures must be filed with the Clerk of Court within fifteen (15) days after the filing of the first answer

Certificate of Interested Persons:	within 15 days after the first pleading is filed by a defendant. LR 3.3A
Defendant files Responses to Mandatory Disclosures:	within 15 days after the defendant files an answer to the complaint. LR 26.1D (See Footnote 2.)
Early Planning Conference:	prior to submission of preliminary planning report. LR 16.1
Preliminary Planning Report and Scheduling Order:	within 30 days after the appearance of the first defendant by answer to the complaint. LR 16.2; Appendix B, Form II.
Commencement of Limited Discovery Period:	30 days after the appearance of the first defendant by answer to the complaint. LR 26.3A
Motions not Specially Limited by Rules:	within 30 days after the preliminary planning report is filed or should have been filed. LR 7.1A(2); 16.2(7); Appendix B, Form II.
Motions to Compel:	prior to close of discovery or, if longer, within 10 days after service of the timely-filed disclosure or discovery responses. LR 7.2C; 37.1B; Appendix B, Form II.
Close of Discovery:	upon expiration of the assigned discovery track, unless the Court has either shortened the time for discovery or has for cause shown extended the time for discovery. Discovery must be initiated sufficiently early in the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period. LR 26.3A,B; Appendix B, Form II.
Settlement Conference after Discovery:	within 10 days after the close of discovery. LR 16.3.

to the complaint by a defendant or within fifteen (15) days after the filing of the petition for removal, whichever is longest. Each party is required to serve simultaneously a copy of that party's disclosures on all other parties to the action.

Summary Judgment Motions:	within 20 days after the close of discovery, unless otherwise permitted by Court order. LR 7.2D and 56.1A; Appendix B, Form II
Proposed Pretrial Order:	not later than 30 days after the close of discovery. LR 16.4A; Appendix B, Form III.
Requests to Charge:	no later than 9:30 a.m. on the calendar date or specially set date for trial of the case, unless otherwise ordered by the Court. LR 51.1A.

INSTRUCTIONS

I. Responses to Mandatory Disclosures

Local Rule 26.1. Parties to all civil actions, other than those civil actions assigned to the 0-months discovery track, are required to respond to court-formulated mandatory disclosures. The Court has prepared a form, *Responses to Mandatory Disclosures*, which counsel are required to use. A copy of the response form for defense counsel is attached to these instructions. Response forms for both plaintiffs and defendants may also be found in the local rules as Form I in Appendix B. In cases involving multiple defendants, each plaintiff and each defendant must respond to each disclosure separately unless the response to a disclosure is the same for all plaintiffs or all defendants.

Each plaintiff's *Responses to Mandatory Disclosures* shall be submitted to the Clerk of Court for filing at the time the complaint is filed. Each defendant's *Responses to Mandatory Disclosures* shall be submitted to the Clerk of Court for filing no later than fifteen (15) days after the date on which the defendant's answer to the complaint was filed. In civil actions removed to this Court, all parties' *Responses to Mandatory Disclosures* shall be submitted to the Clerk of Court for filing within 15 days after the filing of the first answer to the complaint by a defendant or within 15 days after the filing of the petition for removal, whichever is longer.

II. Certificate of Interested Persons

Local Rule 3.3. Counsel for all private (nongovernmental) parties shall be required to submit a joint Certificate of Interested Persons within fifteen (15) days after the first pleading is filed by any defendant or defendants. The certificate must include a listing of all persons, associations of persons, firms, partnerships or corporations having either a financial interest or some other interest which could be substantially affected by the outcome of this particular case. Subsidiaries, conglomerates, affiliates, parent corporations, and any other identifiable legal entity related to a party must be

listed. Lawyers serving in the proceeding must also be listed. A prescribed form for the certificate is set out in LR 3.3C.

III. Early Planning Conference

Local Rule 16.1. Prior to the filing of the preliminary planning report, lead counsel for all parties are required to confer in person in an effort to settle the case, discuss discovery, limit issues, and discuss other matters addressed in the preliminary planning report. Counsel are required to inform the parties promptly of all offers of settlement proposed at the conference. This local rule applies to all cases assigned to the 4- and 8-months discovery tracks.

IV. Discovery Limitations

A. Interrogatories. Local Rule 26.2A and 33.1. A party shall not, at any one time or cumulatively, serve more than 40 interrogatories upon any other party. Each subdivision of one numbered interrogatory shall be construed as a separate interrogatory. If counsel for a party believes that more than 40 interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional interrogatories shall file a motion with the Court showing the necessity for relief.

B. Depositions. Local Rule 26.2B and 30.1. Unless otherwise ordered by the Court, no deposition of any party or witness shall last more than six (6) hours.

C. Extensions of Time. Local Rule 26.3. There are three discovery tracks in this Court: 0-months discovery, 4-months discovery, and 8-months discovery. Each case is assigned to a discovery track when the complaint is filed. Discovery must be initiated sufficiently early within the discovery period to permit the filing of answers and responses thereto within the time limitations of the existing discovery period. LR 26.3A. A request for an extension of time for discovery must be filed with the Court prior to the expiration of the existing discovery period. Extensions of time for discovery will be granted only in exceptional cases where the circumstances on which the request is based did not exist or the attorney or attorneys could not have anticipated that such circumstances would arise at the time the preliminary planning report was filed. LR 26.3B.

D. Motions to Compel. Local Rules 7.2C; 37.1; 16.2(7) (Appendix B, Form II). Federal Rule of Civil Procedure 37(a)(2)(A)(B) requires the movant to certify that the movant has conferred or has attempted to confer in good faith with the opposing party prior to filing the motion to compel. This certification is required to be included as a part of all motions to compel. Directions regarding the form and content of a motion

to compel are contained in LR 37.1A. Motions to compel may be filed prior to the close of discovery or, if longer, any time within ten (10) days after service of the responses upon which the objection is based.

V. Preliminary Planning Report and Scheduling Order

Local Rule 16.2. The purpose of the *Preliminary Planning Report* is to promote early analysis and planning of the case by counsel and to alert the Court to any specific case management needs. The *Preliminary Planning Report* is a joint filing by counsel, except that pro se litigants and opposing counsel are permitted to file separate statements. The completed form must be filed no later than thirty (30) days after the appearance of the first defendant by answer to the complaint. The Court has prepared a standard form which counsel are required to use. A copy of the form is attached to these instructions [Editor's Note: see Sample Form 26] and may also be found in the local rules as Form II in Appendix B. If counsel cannot agree on the answers to specific items, the contentions of each party must be shown on the form. This local rule applies to all the cases assigned to the 4- and 8-months discovery tracks.

VI. Conference Following Discovery

Local Rule 16.3. Lead counsel and a person possessing settlement authority for each plaintiff and each defendant are required to meet in person within ten (10) days following the close of discovery to discuss, in good faith, settlement of the case. The results of the conference shall be reported in Item 26 of the pretrial order. This local rule applies to all cases assigned to the 4- and 8-months discovery tracks.

VII. Motions

A. Generally. All motions filed in this Court shall be made in compliance with the Federal Rules of Civil Procedure and the Local Rules of this Court. See LR 7.1. Motions that are not specially limited in time by the local or federal rules must be filed within thirty (30) days after the preliminary planning report was filed or should have been filed. Local Rules 7.1A(2); 16.2(7) (Appendix B, Form II.)

B. Motions to Compel. Local Rules 7.2C; 37.1; 16.2(7) (Appendix B, Form II.) Unless otherwise ordered by the Court, a motion to compel discovery must be filed prior to the close of discovery or, if longer, within ten (10) days after service of the timely filed discovery response upon which the motion is based.

C. Summary Judgment. Local Rules 7.2D, 56.1; 16.2(7) (Appendix B, Form II.) Motions for summary judgment shall be filed as soon as possible, but, unless

otherwise permitted by Court order, not later than twenty (20) days after the close of discovery. The Court will provide the respondent notice of his right to file materials in opposition to the motion.

VIII. Proposed Consolidated Pretrial Order

Local Rule 16.4A. The Court has prepared a form, *Pretrial Order*, which counsel shall be required to complete and file with the Court no later than thirty (30) days after the close of discovery. Use of the form *Pretrial Order*, which is contained in Appendix B of the local rules as Form III, is mandatory. A copy of the form is also attached to these instructions. No deviations from this form shall be permitted, except upon the express prior approval of the Court. The form may be retyped, provided it is not modified in any way. Additional copies of the form *Pretrial Order* may be obtained from the Public Filing Counter in each division.

It shall be the responsibility of plaintiff's counsel to contact defense counsel to arrange a date for counsel to confer on preparation of the proposed pretrial order. If there are issues upon which counsel for the parties cannot agree, the areas of disagreement must be shown in the proposed pretrial order. In those cases in which there is a pending motion for summary judgment, the Court may, in its discretion and upon request, extend the time for filing the proposed pretrial order.

If counsel desire a pretrial conference, a request must be indicated on the proposed pretrial order immediately below the civil action number. Counsel will be notified if the judge determines that a pretrial conference is necessary. A case shall be presumed ready for trial on the first calendar after the pretrial order is filed unless another time is specifically set by the Court.

IX. Requests to Charge

Local Rule 51.1A. Requests to Charge shall be filed with the courtroom deputy no later than 9:30 a.m. on the calendar date or specially set date for trial of the case, unless otherwise ordered by the Court. The requests shall be numbered sequentially with each request containing the citations to authorities supporting the request presented on a separate sheet of paper. In addition to the original, counsel must file two (2) copies of each request with the clerk and must serve one (1) copy of the requests on opposing counsel. Additional instructions regarding requests to charge are contained in Item 22 of the form *Pretrial Order*.

BY ORDER OF THE COURT.

s/LUTHER D. THOMAS
LUTHER D. THOMAS, CLERK OF COURT

B. Defendant's Responses to Initial Disclosures.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
_____ DIVISION

vs. _____ Civil Action No. _____

:
:
:
:
:
:
:
:

DEFENDANT'S RESPONSES TO INITIAL DISCLOSURES

(1) If the defendant is improperly identified, state defendant's correct identification and state whether defendant will accept service of an amended summons and complaint reflecting the information furnished in this disclosure response. _____

(2) Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention. _____

(3) Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading. _____

(4) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendant contends are applicable to this action. _____

(5) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information. (Attach witness list to Responses to Initial Disclosures as Attachment A.)

(6) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Responses to Initial Disclosures as Attachment B.)

(7) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that are relevant to disputed facts alleged with particularity in the pleadings. (Attach document list and descriptions to Responses to Initial Disclosures as Attachment C.)

(8) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying

under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Responses to Initial Disclosures as Attachment D.) _____

(9) If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability. _____

(10) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Responses to Initial Disclosures as Attachment E.)

Sample Form 9

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

APPENDIX A

STANDING PRETRIAL PROCEDURE ORDER AND FORMS

STANDING ORDER ESTABLISHING PRETRIAL PROCEDURE

(Adopted Pursuant to General Order of 26 June 1985; Amended Pursuant to General Orders of 27 November 1991 and 9 March 1995)

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1. Introduction

This pretrial procedure is intended to secure a just, speedy, and inexpensive determination of the issues. If the type of procedure described below does not appear calculated to achieve these ends in this case, counsel should seek an immediate conference with the judge and opposing counsel so that alternative possibilities may be discussed. Failure of either party to comply with the substance or the spirit of this *Standing Order* may result in dismissal of the action, default or other sanctions appropriate under Fed. R. Civ. P. 16 or 37, 28 U.S.C. §1927 or any other applicable provisions.

Parties should also be aware that there may be variances in the forms and procedures used by each of the judges in implementing these procedures. Accordingly, parties should contact the minute clerk for the assigned judge for a copy of any standing order of that judge modifying these procedures.

2. Scheduling Conference

Within 60 days after the appearance of a defendant and within 90 days after the complaint has been served on a defendant in each civil case (other than categories of cases excepted by local General Rule 5.00), the court will usually set a scheduling conference (ordinarily in the form of a status hearing) as required by Fed.R.Civ.P. 16. At the conference, counsel should be *fully prepared* and have authority to discuss any questions regarding the case, including questions raised by the pleadings, jurisdiction, venue, pending motions, motions contemplated to be filed, the contemplated joinder of

additional parties, the probable length of time needed for discovery and the possibility of settlement of the case. Counsel will have the opportunity to discuss any problems confronting them, including the need for time in which to prepare for trial.

3. Procedures for Complex or Protracted Discovery

If at any time during the scheduling conference or later status hearings it appears that complex or protracted discovery will be sought, the court may

- (a) determine that the *Manual on Complex Litigation 2d* be used as a guide for procedures to be followed in the case, or
- (b) determine that discovery should proceed by phases, or
- (c) require that the parties develop a joint written discovery plan under Fed.R.Civ.P. 26 (f).

If the court elects to proceed with phased discovery, the first phase will address information necessary to evaluate the case, lay the foundation for a motion to dismiss or transfer, and explore settlement. At the end of the first phase, the court may require the parties to develop a joint written discovery plan under Fed.R.Civ.P. 26 (f) and this *Standing Order*.

If the court requires parties to develop a discovery plan, such plan shall be as specific as possible concerning dates, time, and places discovery will be sought and as to the names of persons whose depositions will be taken. It shall also specify the parties' proposed discovery closing date. Once approved by the court, the plan may be amended only for good cause. Where the parties are unable to agree on a joint discovery plan, each shall submit a plan to the court. After reviewing the separate plans, the court may take such action as it deems appropriate to develop the plan.

Where appropriate, the court may also set deadlines for filing and a time framework for the disposition of motions.

4. Discovery Closing Date

In cases subject to this *Standing Order*, the court will, at an appropriate point, set a discovery closing date. Except to the extent specified by the court on motion of either party, discovery must be *completed* before the discovery closing date. Discovery requested before the discovery closing date, but not scheduled for completion before the discovery closing date, does not comply with this order.

5. Settlement

Counsel and the parties are directed to undertake a good faith effort to settle that includes a thorough exploration of the prospects of settlement before undertaking the extensive labor of preparing the Order provided for in the next paragraph. The court may require that representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.

If the parties wish the court to participate in a settlement conference, counsel should ask the court or the minute clerk to schedule such conference. In a case where the trial will be conducted without a jury, particularly as the case nears the date set for trial, the preferred method of having the court preside over settlement talks is for the assigned judge to arrange for another judge to preside or to refer the task to a magistrate judge. If the case has not been settled and is placed on the court's trial calendar, settlement possibilities should continue to be explored throughout the period before trial. If the case is settled, counsel shall notify the minute clerk promptly and notice up the case for final order.

6. Final Pretrial Order

The court will schedule dates for submission of a proposed final pretrial order (Order) and final pretrial conference (Conference) in accordance with Fed.R.Civ.P. 16. In the period between notice and the date for submission of the pretrial order:

(a) 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 nonstipulated issues in the manner stated in this paragraph and (3) exchange copies of documents that will be offered in evidence at the trial. The court may direct that counsel 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 standing order. If, after reasonable effort, any party cannot obtain the cooperation of other counsel, it shall be his or her duty to advise the court of this fact by appropriate means.

(b) Counsel's meeting shall be held sufficiently in advance of the date of the scheduled Conference with the court so that counsel for each party can furnish all other counsel with a statement (Statement) of the issues the party will offer evidence to support. The Statement will (1) eliminate any issues that appear in the pleadings about which there is no controversy, and (2) include all issues of law as well as ultimate issues of fact from the standpoint of each party.

(c) It is the obligation of counsel for plaintiff to prepare from the Statement a draft Order for submission to opposing counsel. Included in plaintiff's obligation for preparation of the Order is submission of it to opposing counsel in ample time for revision and timely filing. Full cooperation and assistance of all other counsel are required for proper preparation of the Order to fulfill both the substance and spirit of this Standing Order. All counsel will jointly submit the original and one copy of the final draft of the Order to the judge's chambers (or in open court, if so directed) on the date fixed for submission.

(d) All instructions and footnotes contained within the Final Pretrial Order form promulgated with this *Standing Order* must be followed. They will be binding on the parties at trial in the same manner as though repeated in the Order. If any counsel believes that any of the instructions and/or footnotes allow for any part of

the Order to be deferred until after the Order itself is filed, that counsel shall file a motion seeking leave of court for such deferral.

(e) Any pending motions requiring determination in advance of trial (including, without limitation, motions *in limine*, disputes over specific jury instructions or the admissibility of any evidence at trial upon which the parties desire to present authorities and argument to the court) shall be specifically called to the court's attention not later than the date of submission of the Order.

(f) Counsel must consider the following matters during their conference:

- (1) Jurisdiction (if any question exists in this respect, it must be identified in the Order);
- (2) Propriety of parties; correctness of identity of legal entities; necessity for appointment of guardian, administrator, executor or other fiduciary, and validity of appointment if already made; correctness of designation of party as partnership, corporation or individual d/b/a trade name; and
- (3) Questions of misjoinder or nonjoinder of parties.

7. Final Pretrial Conference

At the Conference each party shall be represented by the attorneys who will try the case (unless before the conference the court grants permission for other counsel to attend in their place). All attending attorneys will familiarize themselves with the pretrial rules and will come to the Conference with full authority to accomplish the purposes of F.R.Civ.P. 16 (including simplifying the issues, expediting the trial and saving expense to litigants). Counsel shall be prepared to discuss settlement possibilities at the Conference without the necessity of obtaining confirmatory authorization from their clients. If a party represented by counsel desires to be present at the Conference, that party's counsel must notify the adverse parties at least one week in advance of the conference. If a party is not going to be present at the Conference, that party's counsel shall use their best efforts to provide that the client can be contacted if necessary. Where counsel represents a governmental body, the court may for good cause shown authorize that counsel to attend the Conference even if unable to enter into settlement without consultation with counsel's client.

8. Extensions of Time for Final Pretrial Order or Conference

It is essential that parties adhere to the scheduled dates for the Order and Conference, for the Conference date governs the case's priority for trial. Because of the scarcity of Conference dates, courtesy to counsel in other cases also mandates no late changes in scheduling. Accordingly, *no* extensions of the Order and Conference dates will be granted without good cause, and no request for extension should be made less than 14 days before the scheduled Conference.

9. Action Following Final Pretrial Conference

At the conclusion of the Conference the court will enter an appropriate order reflecting the action taken, and the case will be added to the civil trial calendar. Although no further pretrial conference will ordinarily be held thereafter, a final conference may be requested by any of the parties or ordered by the court prior to trial. Any case ready for trial will be subject to trial as specified by the court.

10. Documents Promulgated with the *Standing Order*

Appended to this *Standing Order* are the following:

- (a) a form of final pretrial order;
- (b) a form for use as Schedule (c), the schedule of exhibits for the final pretrial order;
- (c) a form of pretrial memorandum to be attached to the completed final pretrial order in personal injury cases;
- (d) a form of pretrial memorandum to be attached to the completed final pretrial order in employment discrimination cases; and
- (e) guidelines for preparing proposed findings of fact and conclusions of law.

Each of the forms is annotated to indicate the manner in which it is to be completed.

Form LR16.1.1. Final Pretrial Order Form

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
[indicate Eastern or Western] DIVISION**

)	
Plaintiff ¹ ,)	
)	
v.	)	Civil Action No.
)	
Defendant.	)	Judge [Insert name of assigned judge]

FINAL PRETRIAL ORDER

This matter having come before the court at a pretrial conference held pursuant to Fed. R. Civ. P. (“Rule”) 16, and [insert name, address and telephone number] having appeared as counsel for plaintiff(s) and [insert name, address and telephone number] having appeared as counsel for defendant(s), the following actions were taken:

(1) This is an action for [insert nature of action, e.g., breach of contract, personal injury] and the jurisdiction of the court is invoked under [insert citation of statute on which jurisdiction based]. Jurisdiction is (not) disputed.²

(2) The following stipulations and statements were submitted and are attached to and made a part of this Order:³

(a) a comprehensive stipulation or statement of all uncontested facts, which will become a part of the evidentiary record in the case (and which, in jury trials, may be read to the jury by the court or any party);⁴

¹ Singular forms are used throughout this document. Plural forms should be used as appropriate. Where a third-party defendant is joined pursuant to Rule 14(a), the Order may be suitably modified. In such cases, the caption and the statement of parties and counsel shall be modified to reflect the joinder.

² In diversity cases or other cases requiring a jurisdictional amount in controversy, the Order shall contain either a stipulation that the required jurisdictional amount is involved or a brief written statement citing evidence supporting the claim that such sum could reasonably be awarded.

³ If it does not appear that the case will be reached for trial in the immediate future, or if active settlement discussions are in progress, the court may defer asterisked (*) requirements until shortly before the trial date. See items (i), (j), (k), and (l). On motion of any party or on the court’s own motion, any requirements of this Order (including one or more of the asterisked requirements) may be waived entirely.

- (b) an agreed statement or statements by each party of the contested issues of fact and law and a statement or statements of contested issues of fact or law not agreed to;
- (c) except for rebuttal exhibits, schedules in the form set out in the attached Schedule (c) of—
 - (1) all exhibits (all exhibits shall be marked for identification before trial), including documents, summaries, charts and other items expected to be offered in evidence and
 - (2) any demonstrative evidence and experiments to be offered during trial;⁵
- (d) a list or lists of names and addresses of the potential witnesses to be called by each party, with a statement of any objections to calling, or to the qualifications of, any witness identified on the list;⁶
- (e) stipulations or statements 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;⁷
- (f) a list of all depositions, or portions thereof, to be read into evidence and statements of any objections thereto;⁸

⁴ Counsel for plaintiff has the responsibility to prepare the initial draft of a proposed stipulation dealing with allegations in the complaint. Counsel for any counter-, cross- or third-party complainant has the same responsibility to prepare a stipulation dealing with allegations in that party's complaints. If the admissibility of any uncontested fact is challenged, the party objecting and the grounds for objection must be stated.

⁵ Items not listed will not be admitted unless good cause is shown. Cumulative documents, particularly x-rays and photos, shall be omitted. Duplicate exhibits shall not be scheduled by different parties, but may be offered as joint exhibits. All parties shall stipulate to the authenticity of exhibits whenever possible, and this Order shall identify any exhibits whose authenticity has not been stipulated to and specific reasons for the party's failure so to stipulate. As the attached Schedule (c) form indicates, non-objected-to exhibits are received in evidence by operation of this Order, without any need for further foundation testimony. Copies of exhibits shall be made available to opposing counsel and a bench book of exhibits shall be prepared and delivered to the court at the start of the trial unless excused by the court. If the trial is a jury trial and counsel desires to display exhibits to the members of the jury, sufficient copies of such exhibits must be made available so as to provide each juror with a copy, or alternatively, enlarged photographic copies or projected copies should be used.

⁶ Each party shall indicate which witnesses *will* be called in the absence of reasonable notice to opposing counsel to the contrary, and which *may* be called as a possibility only. Any witness not listed will be precluded from testifying absent good cause shown, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable) as may be necessary, without prior notice to the opposing party.

⁷ Only one expert witness on each subject for each party will be permitted to testify absent good cause shown. If more than one expert witness is listed, the subject matter of each expert's testimony shall be specified.

- (g) an itemized statement of special damages;
- (h) waivers of any claims or defenses that have been abandoned by any party;
- (i)* for a jury trial, each party shall provide the following:
 - (i) trial briefs except as otherwise ordered by the court;⁹
 - (ii) one set of marked proposed jury instructions, verdict forms and special interrogatories, if any;¹⁰ and
 - (iii) a list of the questions the party requests the court to ask prospective jurors in accordance with Fed.R.Civ.P. 47(a);
- (j)* for a non-jury trial, each party shall provide proposed *Findings of Fact and Conclusions of Law* in duplicate (see guidelines available from the court's

⁸ If any party objects to the admissibility of any portion, both the name of the party objecting and the grounds shall be stated. Additionally, the parties shall be prepared to present to the court, at such time as directed to do so, a copy of all relevant portions of the deposition transcript to assist the court in ruling *in limine* on the objection. All irrelevant and redundant material including all colloquy between counsel shall be eliminated when the deposition is read at trial. If a video deposition is proposed to be used, opposing counsel must be so advised sufficiently before trial to permit any objections to be made and ruled on by the court, to allow objectionable material to be edited out of the film before trial.

⁹ (Note: The use of the asterisk (*) is explained in Footnote 3.) No party's trial brief shall exceed 15 pages without prior approval of the court. Trial briefs are intended to provide full and complete disclosure of the parties' respective theories of the case. Accordingly, each trial brief shall include statements of—

- (a) the nature of the case,
- (b) the contested facts the party expects the evidence will establish,
- (c) the party's theory of liability or defense based on those facts and the uncontested facts,
- (d) the party's theory of damages or other relief in the event liability is established, and
- (e) the party's theory of any anticipated motion for directed verdict.

The brief shall also include citations of authorities in support of each theory stated in the brief. Any theory of liability or defense that is not expressed in a party's trial brief will be deemed waived.

¹⁰ *Agreed* instructions shall be presented by the parties whenever possible. Whether agreed or unagreed, each marked copy of an instruction shall indicate the proponent and supporting authority and shall be numbered. All objections to tendered instructions shall be in writing and include citations of authorities. Failure to object may constitute a waiver of any objection.

In diversity and other cases where Illinois law provides the rules of decision, use of Illinois Pattern Instructions ("IPI") as to all issues of substantive law is required. As to all other issues, and as to all issues of substantive law where Illinois law does not control, the following pattern jury instructions shall be used in the order listed, e.g., an instruction from (b) shall be used only if no such instruction exists in (a):

- (a) the Seventh Circuit pattern jury instructions (Currently the only such instructions are Federal Criminal Jury Instructions which have limited potential applicability to civil cases.); or,
- (b) any pattern jury instructions published by a federal court. (Care should be taken to make certain substantive instructions on federal questions conform to Seventh Circuit case law.)

At the time of trial, an unmarked original set of instructions and any special interrogatories (on 8 1/2 x 11" sheets) shall be submitted to the court; to be sent to the jury room after being read to the jury. Supplemental requests for instructions during the course of the trial or at the conclusion of the evidence will be granted solely as to those matters that cannot be reasonably anticipated at the time of presentation of the initial set of instructions.

minute clerk or secretary);¹¹ [Editor's Note: These guidelines for proposed *Findings of Fact and Conclusions of Law* also appear at the end of this form.]

(k) a statement summarizing the history and status of settlement negotiations, indicating whether further negotiations are ongoing and likely to be productive;

(l) a statement that each party has completed discovery, including the depositions of expert witnesses (unless the court has previously ordered otherwise). Absent good cause shown, no further discovery shall be permitted;¹² and

(m) subject to full compliance with all the procedural requirements of Rule 37(a)(2), all motions *in limine* should be filed on or before the time for the filing of this Order. Any briefs in support of and responses to such motions shall be filed pursuant to a briefing schedule set by the court.

(3) Trial of this case is expected to take [*insert the number of days trial expected to take*] days. It will be listed on the trial calendar, to be tried when reached.

(4) [*Indicate the type of trial by placing an X in the appropriate box*]
Jury ☐ Non-jury ☐

(5) The parties recommend that [*indicate the number of jurors recommended*]¹³ jurors be selected at the commencement of the trial.

(6) The parties [*insert "agree" or "do not agree" as appropriate*] that the issues of liability and damages [*insert "should" or "should not" as appropriate*] be bifurcated for trial. On motion of any party or on motion of the court, bifurcation may be ordered in either a jury or a non-jury trial.

(7) [*Pursuant to 28 U.S.C. § 636(c), parties may consent to the reassignment of this case to a magistrate judge who may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case. Indicate below if the parties consent to such a reassignment.*]

¹¹ These shall be separately stated in separately numbered paragraphs. Findings of Fact should contain a detailed listing of the relevant material facts the party intends to prove. They should not be in formal language, but should be in simple narrative form. Conclusions of Law should contain concise statements of the meaning or intent of the legal theories set forth by counsel.

¹² If this is a case in which (contrary to the normal requirements) discovery has not been completed, this Order shall state what discovery remains to be completed by each party.

¹³ Rule 48 specifies that a civil jury shall consist of not fewer than six nor more than twelve jurors.

— The parties consent to this case being reassigned to a magistrate judge for trial.

(8) This Order will control the course of the trial and may not be amended except by consent of the parties and the court, or by order of the court to prevent manifest injustice.

(9) Possibility of settlement of this case was considered by the parties.

United States District Judge¹⁴

Date: _____

[Attorneys are to sign the form before presenting it to the court.]

Attorney for Plaintiff

Attorney for Defendant

**Schedule (c)
Exhibits¹⁵**

1. The following exhibits were offered by plaintiff, received in evidence and marked as indicated:

[State identification number and brief description of each exhibit.]

2. The following exhibits were offered by plaintiff and marked for identification. Defendant(s) objected to their receipt in evidence on the grounds stated:¹⁶

[State identification number and brief description of each exhibit. Also state briefly the ground of objection, such as competency, relevancy or materiality, and the provision of Fed.R.Evid. relied upon. Also state briefly plaintiff's response to the objection, with appropriate reference to Fed.R.Evid.]

¹⁴ Where the case has been reassigned on consent of parties to a magistrate judge for all purposes, the magistrate judge will, of course, sign the final pretrial order.

¹⁵ As in the Final Pretrial Order form, references to “plaintiff” and “defendant” are intended to cover those instances where there are more than one of either.

¹⁶ Copies of objected-to exhibits should be delivered to the court with this Order, to permit rulings *in limine* where possible.

3. The following exhibits were offered by defendant, received in evidence and marked as indicated:

[State identification number and brief description of each exhibit.]

4. The following exhibits were offered by defendant and marked for identification. Plaintiff objected to their receipt in evidence on the grounds stated:¹⁷

[State identification number and brief description of each exhibit. Also state briefly the ground of objection, such as competency, relevancy or materiality, and the provision of Fed.R.Evid. relied upon. Also state briefly defendant's response to the objection, with appropriate reference to Fed.R.Evid.]

¹⁷ See footnote 5.

LR16.1.2. Form of Pretrial Memorandum for Use in Personal Injury Cases

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
_____ DIVISION**

v.) Civil Action No.
)
) Judge [*Insert name of assigned judge*]
)
) Plaintiff requests \$_____
)
) Defendant offers \$_____

PRETRIAL MEMORANDUM

Plaintiff's Name: _____
Age: _____
Occupation: _____
Marital status: _____

Attorney for plaintiff [*indicate name and phone number of trial attorney*]:

Attorney for defendant [*indicate name and phone number of trial attorney*]:

Summary of injuries [*note especially any permanent pathology*]:

Date, hour, and place of occurrence:

Attending physicians:

Attending physicians:

Hospitals:

Place of employment:

Part A. Compensatory Damages *[Parts A & B are to be completed by plaintiff's counsel.]*

1. Liquidated Damages:
 - (a) Medical fees \$ _____
 - (b) Hospital bills \$ _____
 - (c) Loss of income \$ _____
 - (d) Miscellaneous expenses \$ _____
- TOTAL \$ _____
2. What is the total amount of compensatory damages claimed in this action? \$ _____

Part B. Punitive Damages

- a. Does the plaintiff claim punitive damages?
Yes ☐ No ☐ If yes, how much? \$ _____

Brief Statement of Circumstances of Occurrence:

Plaintiff's view:

Defendant's view:

[At the direction of the court the parties are to attach to this memorandum any medical reports or other materials useful for discussion at the pretrial conference.]

LR16.1.3. Form of Pretrial Memorandum for Use in Employment Discrimination Cases

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
DIVISION**

v.) Civil Action No.
)
) Judge *[Insert name of assigned judge]*
)
)
)

PRETRIAL MEMORANDUM

Attorney for plaintiff [*Indicate name and phone number of trial attorney*]:

Plaintiff's brief summary of claim and statement of employment action:

Attorney for defendant *[Indicate name and phone number of trial attorney]*:

Defendant's brief summary of defenses and statement of employment action:

[Plaintiff's counsel will complete Part A, Plaintiff's Summary of Damages, and defendant's counsel will complete Part B, Defendant's Summary of Damages, Assuming Liability. As indicated in the title to Part B, defendant's counsel must complete the section using the assumption of liability, even though defendant disputes liability.]

Part A. Plaintiff's Summary of Damages

1. Lost Wages and Benefits: *[For each year for which damages are claimed, indicate (A) the total wages and benefits that would have been earned working for defendant but for the discrimination, (B) the total wages, benefits, and other income earned in substitute employment that plaintiff was able to obtain, (C) additional wages and benefits defendant maintains plaintiff could have earned, and (D) the difference between (A) and the total of [(B) + (C)].*

	A	B	C	D
	Amounts Lost Due to	Amounts Earned in Substitute	Additional Amounts Could	Difference
Year ¹⁸	Discrimination	Employment	Have Earned	(A-(B+C))
19____	_____	_____	_____	_____
19____	_____	_____	_____	_____
Total Lost Wages & Benefits:				\$ _____
2.	(a)	Attorneys Fees (to date):		\$ _____
	(b)	Costs (to date):		\$ _____
3.	Do you claim:			
	(a)	Pain, suffering, emotional injury, etc.?		
		Yes __ No __ If yes, how much?		\$ _____
	(b)	Punitive or liquidated (double) damages?		
		Yes __ No __ If yes, how much?		\$ _____
	(c)	Pre-judgment interest? ¹⁹		
		Yes __ No __ If yes, how much?		\$ _____
4.	Do you claim any other kinds of damage?			
		Yes __ No __ If yes, what kind and how much? _____		\$ _____
5.	Total Amount Claimed:			\$ _____

¹⁸ Only two years are shown. Use the appropriate number of years in completing the form.

¹⁹ The inclusion of both liquidated damages and pre-judgment interest in this form is not intended to suggest that both are or are not recoverable.

Part B. Defendant's Summary of Damages, Assuming Liability [*This portion is to be completed in good faith even though defendant disputes liability.*]

1. [*For each year for which damages are claimed, indicate (A) the total wages and benefits that would have been earned working for defendant but for the discrimination, (B) the total wages, benefits, and other income earned in substitute employment that plaintiff was able to obtain, (C) additional wages and benefits defendant maintains plaintiff could have earned, (D) other amounts received, such as disability or pension payments, and (E) the difference between (A) and the total of (B) + (C) + (D).*]

	A	B	C	D	E
	Amounts	Amounts	Additional	Other	
	Lost	Earned in	Amounts	Amounts	
	Due to	Substitute	Could Have	Received	Difference
Year ²⁰	Discrimination	Employment	Earned		(A-(B+C+D))
19____	_____	_____	_____	_____	_____
19____	_____	_____	_____	_____	_____
Total Lost Wages & Benefits:					\$_____

2. Does the defendant dispute the amount claimed for attorney's fees and costs?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____ \$_____

3. Does the defendant dispute the amount claimed for pain, suffering, emotional injury, etc.?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____ \$_____

4. Does the defendant dispute the claim for pre-judgment interest?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____ \$_____

5. Does the defendant dispute the claim for punitive damages?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

_____ \$_____

²⁰ Only two years are shown. Use the appropriate number of years in completing the form.

6. Does the defendant dispute any other claims for damages made by the plaintiff?

Yes ☐ No ☐ If yes, explain, giving estimated amount due:

\$ _____

7. Total amount owed, assuming liability: \$ _____

GUIDELINES FOR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) Plaintiff shall first serve and file proposed findings and conclusions. Each defendant shall then serve and file answering proposals.

(b) Plaintiff's proposals shall include (a) a narrative statement of *all facts* proposed to be proved and (b) a concise statement of plaintiff's legal contentions and the authorities supporting them:

(1) Plaintiff's narrative statement of facts shall set forth in simple declarative sentences all the facts relied upon in support of plaintiff's claim for relief. It shall be complete in itself and shall contain no recitation of any witness' testimony or what any defendant stated or admitted in these or other proceedings, and no references to the pleadings or other documents or schedules as such. It may contain references in parentheses to the names of witnesses, depositions, pleadings, exhibits or other documents, but no party shall be required to admit or deny the accuracy of such references. It shall, so far as possible, contain no pejoratives, labels or legal conclusions. It shall be so constructed, in consecutively numbered paragraphs (though where appropriate a paragraph may contain more than one sentence), that each of the opposing parties will be able to admit or deny each separate sentence of the statement.

(2) Plaintiff's statement of legal contentions shall set forth all such plaintiff's contentions necessary to demonstrate the liability of each defendant to such plaintiff. Such contentions shall be separately, clearly and concisely stated in separately numbered paragraphs. Each paragraph shall be followed by citations of authorities in support thereof.

(c) Each defendant's answering proposals shall correspond to plaintiff's proposals:

(1) Each defendant's factual statement shall admit or deny each separate sentence contained in the narrative statement of fact of each plaintiff, except in instances where a portion of a sentence can be admitted and a portion denied. In those instances, each defendant shall state clearly the portion admitted and the portion denied. Each separate sentence of each defendant's response shall bear the same number as the corresponding sentence in the plaintiff's narrative statement of fact. In a separate portion of each defendant's narrative statement of facts, such defendant shall set forth all affirmative matter of a factual nature relied upon by such defendant, constructed in the same manner as the plaintiff's narrative statement of facts.

(2) Each defendant's separate statement of proposed conclusions of law shall respond directly to plaintiff's separate legal contentions and shall contain such additional contentions of the defendant as may be necessary to demonstrate the

non-liability or limited liability of the defendant. Each defendant's statement of legal contentions shall be constructed in the same manner as is provided for the similar statement of each plaintiff.

Sample Form 10

Form 35 Fed.R.Civ.P.

Report of Parties Planning Meeting

[Caption and Names of Parties]

1. Pursuant to Fed.R.Civ.P. 26(f), a meeting was held on (date) at (place) and was attended by:

(name) for plaintiff(s)
(name) for defendant(s) (party name)
(name) for defendant(s) (party name)

2. Pre-Discovery Disclosures. The parties [have exchanged] [will exchange by (date)] the information required by [Fed.R.Civ.P. 26(a)(1)] [local rule ____].

3. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

Discovery will be needed on the following subjects: (brief description of subjects on which discovery will be needed)

All discovery commenced in time to be completed by (date).
[Discovery on (issue for early discovery) to be completed by (date).]

Maximum of ____ interrogatories by each party to any other party. [Responses due ____ days after service.]

Maximum of ____ requests for admission by each party to any other party. [Responses due ____ days after service.]

Maximum of ____ depositions by plaintiff(s) and ____ by defendant(s).

Each deposition [other than of ____] limited to maximum of ____ hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due:

from plaintiff(s) by (date)
from defendant(s) by (date)

Supplementations under Rule 26(e) due (time(s) or interval(s)).

4. Other Items. [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

The parties [request] [do not request] a conference with the court before entry of the scheduling order.

The parties request a pretrial conference in (month and year).

Plaintiff(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

Defendant(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

All potentially dispositive motions should be filed by (date).

Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: [_____]].

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due:

from plaintiff(s) by (date)

from defendant(s) by (date)

Parties should have ____ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

The case should be ready for trial by (date) [and at this time is expected to take approximately (length of time)].

[Other matters]

Date: _____.

/signed by all counsel

Sample Form 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),	No.	(EDL)
v.		JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER
Defendant(s).		

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

- 1. A brief description of the events underlying the action:**
- 2. The principal factual issues which the parties dispute:**
- 3. The principal legal issues which the parties dispute:**
- 4. The other factual issues [e.g., service of process, personal jurisdiction, subject matter jurisdiction or venue] which remain unresolved for the reasons stated below and how the parties propose to resolve those issues:**
- 5. The parties which have not been served and the reasons:**
- 6. The additional parties that the below-specified parties intend to join and the intended time frame for such joinder:**

CONSENT TO MAGISTRATE JUDGE FOR TRIAL

7. Parties consent to assignment of this case to a United States Magistrate Judge for [court or jury] trial: Yes _____ No _____ *[Note: Each party who declines to consent to jurisdiction of the magistrate judge must timely file the "Request for Reassignment to a United States District Judge for Trial and Disposition," as required by General Order 44.]*

ALTERNATIVE DISPUTE RESOLUTION

8. The parties have already been assigned [or the parties have agreed] to the following court ADR process [e.g., Nonbinding Arbitration, Early Neutral Evaluation, Mediation, Early Settlement Conference with a Magistrate Judge] [State the expected or scheduled date for the ADR session]:

9. The ADR process to which the parties jointly request [or a party separately requests] referral:

DISCLOSURES

10. The parties certify that they have made the following disclosures [list disclosures of persons, documents, damage computations and insurance agreements]:

DISCOVERY & MOTIONS

11. The parties agree to the following discovery plan [Describe the plan, e.g., any limitation on the number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for completing discovery]:

Discovery Limits

Depositions:	Pltf. _____	Def. _____
Interrogs.:	Pltf. _____	Def. _____
Doc. Req.:	Pltf. _____	Def. _____
Req. Adm.:	Pltf. _____	Def. _____

(According to Federal Rules of Civil Procedure and Local Rules, subject to any provisions below)

Non-Expert Discovery Cut-off _____

Designation of Experts: Pltf. _____ Def. _____

(Parties shall conform to Fed.R.Civ.P. 26(a)(2))

Expert Discovery Cut-off _____

Dispositive Motions - Last Day for Hearing: _____

(Shall be at least 90 days before pretrial conference date)

TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days:

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civil L.R. 16-12, each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolution options.

Dated: _____

Dated: _____

[Typed name and signature of each party and lead trial counsel]

[Typed name and signature of each party and lead trial counsel]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition the Court orders: *[The Court may wish to make additional orders, such as:*

- a. Referral of the parties to court or private ADR process;*
- b. Schedule a further Case Management Conference;*
- c. Schedule the time and content of supplemental disclosures;*
- d. Specially set motions;*
- e. Impose limitations on disclosure or discovery;*
- f. Set time for disclosure of identity, background and opinions of experts;*
- g. Set deadlines for completing fact and expert discovery;*
- h. Set time for parties to meet and confer regarding pretrial submissions;*
- i. Set deadline for hearing motions directed to the merits of the case;*
- j. Set deadline for submission of pretrial material;*
- k. Set date and time for pretrial conference;*
- l. Set a date and time for trial.]*

Plaintiff is ordered to serve a copy of this order on any party subsequently joined in this action.

Dated:

ELIZABETH D. LAPORTE
United States Magistrate Judge

Sample Form 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),

No. C-

PJH

v.

**ORDER SETTING CASE MANAGEMENT
CONFERENCE AND REQUIRING JOINT
CASE MANAGEMENT STATEMENT**

Defendant(s).

IT IS HEREBY ORDERED that, pursuant to Fed. R. Civ. P. 16(b) and Civil L. R. 16-14, a Case Management Conference will be held in this case before the Honorable Phyllis J. Hamilton on _____, at 2:30 p.m., in Courtroom D, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Plaintiff(s) shall serve copies of this Order immediately on all parties to this action, and on any parties subsequently joined, in accordance with Fed. R. Civ. P. 4 and 5. Following service, plaintiff(s) shall file a certificate of service with the Clerk of the Court.

Counsel shall meet and confer prior to the Case Management Conference with respect to all of the agenda items listed below. **Not less than ten (10) calendar days** before the conference, counsel shall file a joint case management statement addressing each agenda item in the order in which they are listed below. Following the conference, the court will enter its own Case Management and Pretrial Order. If any party is proceeding without counsel, separate statements may be filed by each party. Statements must be filed before each and every Case Management Conference scheduled in this case.

Each party shall appear personally or by counsel prepared to address all of the matters referred to in this Order and with authority to enter stipulations and make admissions pursuant to this Order. Any request to reschedule the date of the conference shall be made in writing, and by stipulation if possible, at least ten (10) calendar days before the date of the conference and must be based upon good cause.

AGENDA ITEMS

1. Jurisdiction: Does the court have subject matter jurisdiction over all of the plaintiff's claims and defendant's counter-claims? What is the basis of that jurisdiction? Are all the parties subject to the court's jurisdiction? Do any parties remain to be served?
2. Facts: What is the factual basis of plaintiff's claims and defendant's defenses? What is the factual basis of defendant's counter-claims and plaintiff's defenses? Provide a brief description of the events underlying the action.
3. Legal Issues: What are the legal issues genuinely in dispute?
4. Narrowing of Issues: Are there dispositive or partially dispositive issues appropriate for decision by motion or by agreement?
5. Motions: What motions are anticipated?
6. Discovery: What discovery does each party intend to pursue? Can discovery be limited in any manner?
7. Relief: What relief does plaintiff seek? What is the amount of damages sought by plaintiff's claims and by defendant's counter-claims? Explain how damages are computed.
8. ADR: Which ADR process do the parties jointly request?
9. Settlement: What are the prospects for settlement? Does any party wish to have a settlement conference with a magistrate judge?
10. Magistrate Judge Trials: Will the parties consent to have a magistrate judge conduct all further proceedings including trial?
11. Trial: Will this case be tried by jury or to the court? Is it feasible or desirable to bifurcate issues for trial? What is the anticipated length of the trial? Is it possible to reduce the length of the trial by stipulation, use of summaries or statements, or other expedited means of presenting evidence?

12. Related Cases: Are there any related cases pending in this Court?
13. Class Actions: If a class action, how and when will the class be certified?
14. Scheduling: What are the earliest reasonable dates for discovery cutoff, hearing dispositive motions, pretrial conference and trial?
15. Such other matters as any party considers conducive to the just, speedy and inexpensive resolution of this matter.

IT IS SO ORDERED.

Dated: 7/7/00

PHYLLIS J. HAMILTON
United States District Judge

Copies mailed to counsel of record

Sample Form 13

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

<p>[Name of Plf], Plaintiff(s), v. [Name of Dft], Defendant(s).</p>	<p>CASE NO. [Case No.]</p> <p>ORDER REGARDING INITIAL DISCLOSURES, JOINT STATUS REPORT, AND EARLY SETTLEMENT</p>
---	--

I. INITIAL SCHEDULING DATES

Pursuant to the December 1, 2000 revisions to the Federal Rules of Civil Procedure, the Court sets the following dates for initial disclosure and submission of the Joint Status Report and Discovery Plan:

Deadline for FRCP 26(f) Conference: _____

Initial Disclosures Pursuant to FRCP 26(a): _____

Combined Joint Status Report and Discovery
Plan as Required by FRCP 26(f)
and Local Rule CR 16: _____

II. JOINT STATUS REPORT & DISCOVERY PLAN

All counsel and any pro se parties are directed to confer and provide the Court with a combined Joint Status Report and Discovery Plan (the "Report") by _____. This conference shall be by direct and personal communication, whether that be a face-to-face meeting or a telephonic conference. The Report will be used in setting a schedule for the prompt completion of the case. It must contain the following information by corresponding paragraph numbers:

1. A statement of the nature and complexity of the case.
2. A statement of which ADR method (mediation, arbitration, or other) should be used. The alternatives are described in Local Rule CR 39.1 and in the ADR Reference Guide which is available from the clerk's office. If the parties believe there should be no ADR, the reasons for that belief should be stated.
3. Unless all parties agree that there should be no ADR, a statement of when mediation or another ADR proceeding under Local Rule CR 39.1 should take place. In most cases, the ADR proceeding should be held within four months after the Report is filed. It may be resumed, if necessary, after the first session.

4. A proposed deadline for joining additional parties.
5. A proposed discovery plan that indicates:
 - A. The date on which the FRCP 26(f) conference and FRCP 26(a) initial disclosures took place;
 - B. The subjects on which discovery may be needed and whether discovery should be conducted in phases or be limited to or focused upon particular issues;
 - C. What changes should be made in the limitations on discovery imposed under the Federal and Local Civil Rules, and what other limitations should be imposed;
 - D. A statement of how discovery will be managed so as to minimize expense (e.g., by foregoing or limiting depositions, exchanging documents informally, etc.); and
 - E. Any other orders that should be entered by the Court under FRCP 26(c) or under Local Rule CR 16(b) and (c).
6. The date by which the remainder of discovery can be completed.
7. Whether the parties agree that a full-time Magistrate Judge may conduct all proceedings, including trial and the entry of judgment, under 28 U.S.C. § 636(c) and Local Rule MJR 13. Agreement in the Report will constitute the parties' consent to referral of the case to a full-time Magistrate Judge.
8. Whether the case should be bifurcated by trying the liability issues before the damages issues, or bifurcated in any other way.
9. Whether the pretrial statements and pretrial order called for by Local Rules CR 16(e), (h), (i), and (l), and 16.1 should be dispensed with in whole or in part for the sake of economy.

10. Any other suggestions for shortening or simplifying the case.
11. The date the case will be ready for trial.
12. Whether the trial will be jury or non-jury.
13. The number of trial days required.
14. The names, addresses, and telephone numbers of all trial counsel.
15. If, on the due date of the Report, all defendant(s) or respondent(s) have not been served, counsel for the plaintiff shall advise the Court when service will be effected, why it was not made earlier, and shall provide a proposed schedule for the required FRCP 26(f) conference and FRCP 26(a) initial disclosures.
16. Whether any party wishes a scheduling conference prior to a scheduling order being entered in the case.

If the parties are unable to agree on any part of the Report, they may answer in separate paragraphs. No separate reports are to be filed.

The time for filing the Report may be extended only by court order. Any request for extension should be made by telephone to _____ at _____.

If the parties wish to have a status conference with the Court at any time during the pendency of this action, they should notify the deputy clerk, _____, by telephone at _____.

III. PLAINTIFF'S RESPONSIBILITY

This Order is issued at the outset of the case, and a copy is delivered by the clerk to counsel for plaintiff (or plaintiff, if pro se) and any defendants who have appeared. Plaintiff's counsel (or plaintiff, if pro se) is directed to serve copies of this Order on all parties who appear after this Order is filed within ten (10) days of receipt of service of

each appearance. Plaintiff's counsel (or plaintiff, if pro se) will be responsible for starting the communications needed to comply with this Order.

IV. EARLY SETTLEMENT CONSIDERATION

When civil cases are settled early -- before they become costly and time-consuming -- all parties and the court benefit. The Federal Bar Association Alternative Dispute Resolution Task Force Report for this district stated:

[T]he major ADR related problem is not the percentage of civil cases that ultimately settle, since statistics demonstrate that approximately 95% of all cases are resolved without trial. However, the timing of settlement is a major concern. Frequently, under our existing ADR system, case resolution occurs far too late, after the parties have completed discovery and incurred substantial expenditure of fees and costs.

The judges of this district have adopted a resolution “approving the Task Force’s recommendation that court-connected ADR services be provided as early, effectively, and economically as possible in every suitable case.”

The steps required by this Order are meant to help achieve that goal while preserving the rights of all parties.

If settlement is achieved, counsel shall notify _____, deputy clerk, at _____.

V. SANCTIONS

A failure by any party to comply fully with this Order may result in the imposition of sanctions.

DATED:_____.

United States District Judge

Sample Form 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

	)	CASE NO.
)	
Plaintiff,)	
	)	MAGISTRATE JUDGE
	)	NANCY A. VECCHIARELLI
)	
vs.	)	<u>REPORT OF PARTIES' PLANNING</u>
	)	<u>MEETING UNDER FED. R. CIV.</u>
	)	<u>P. 26(f) AND L.R. 16.3(b)</u>
)	
)	
Defendant(s).)	
)	

1. Pursuant to Fed. R. Civ. P. 26(f) and L.R. 16.3(b), a meeting was held on _____, 2000, and was attended by:

_____ counsel for plaintiff(s) _____

_____ counsel for plaintiff(s) _____

_____ counsel for defendant(s) _____

_____ counsel for defendant(s) _____

2. The parties:

_____ have exchanged the pre-discovery disclosures required by Rule 26(a)(1) and the Court's prior order;

_____ will exchange such disclosures by _____, 2000;

_____ have not been required to make initial disclosures.

3. The parties recommend the following track:

_____ Expedited _____ Standard _____ Complex
_____ Administrative _____ Mass Tort

4. This case is suitable for one or more of the following
Alternative Dispute Resolution ("ADR") mechanisms:

_____ Early Neutral Evaluation _____ Mediation _____ Arbitration
_____ Summary Jury Trial _____ Summary Bench Trial
_____ Case not suitable for ADR

5. The parties ____do/____do not consent to the jurisdiction
of the United States Magistrate Judge pursuant to 28 U.S.C. § 636

6. This case _____is/_____is not suitable for electronic
filing.

7. Recommended Discovery Plan:

(a) Describe the subjects on which discovery is to be
sought and the nature and extent of discovery.

(b) Discovery cut-off date: _____

8. Recommended dispositive motion date: _____

9. Recommended cut-off date for amending the pleadings and/or
adding additional parties: _____

10. Recommended date for a Status Hearing: _____

11. Other matters for the attention of the Court:

Attorney for Plaintiff

Plaintiff (please print)

Attorney for Plaintiff

Plaintiff (please print)

Attorney for Plaintiff

Plaintiff (please print)

Attorney for Defendant

Defendant (please print)

Attorney for Defendant

Defendant (please print)

Attorney for Defendant

Defendant (please print)

Sample Form 15

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Form 35

Plaintiff,) 8:CV9_____
)
vs.)
)
Defendant.)

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on (date) at (place) and was attended by: (list party/parties attending for plaintiff(s) and party/parties for defendant(s) (party name)).
2. **Pre-Discovery Disclosures.** The parties [have exchanged] [will exchange by (date)] the information required by Fed. R. Civ. P. 26(a)(1).
3. **Discovery Plan.** The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]
 - a. Discovery will be needed on the following subjects: (brief description of subjects on which discovery will be needed).
 - b. All discovery commenced in time to be completed by (date). [Discovery on (issue for early discovery) to be completed by (date)].
 - c. Maximum of (number) interrogatories by each party to any other party. [Responses due (number) days after service.]
 - d. Maximum of (number) requests for admission by each party to any other party. [Responses due (number) days after service.]
 - e. Maximum of (number) depositions by plaintiff(s) and (number) by defendant(s).
 - f. Each deposition [other than of (specify)] limited to maximum of (number) hours unless extended by agreement of parties.
 - g. Reports from retained experts under Rule 26(a)(2) due:
 1. from plaintiff(s) by (date)
 2. from defendant(s) by (date)
 - h. Supplementations under Rule 26(e) due (time(s) or interval(s)).
4. **Other Items.** [Use separate paragraphs or subparagraphs as necessary if parties disagree.]
 - a. The parties [request] [do not request] a conference with the court before entry of the scheduling order.
 - b. The parties request a pretrial conference in (month and year).
 - c. Plaintiff(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.
 - d. Defendant(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.
 - e. All potentially dispositive motions should be filed by (date).
 - f. Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: [specify]].
 - g. Final lists of witnesses and exhibits under Rule 26(a)(3) should be due:
 1. from plaintiff(s) by (date)
 2. from defendant(s) by (date)
 - h. Parties should have (number) days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).
 - i. The case should be ready for trial by (date) [and at this time is expected to take approximately (length of time)].
 - j. [Other matters (specify)].

Date: _____

TO BE SIGNED BY ALL PARTIES

Sample Form 16

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

)	
Plaintiff(s),)	
)	
vs.	)	CASE NO.
)	
	)	CJRA TRACK
)	
Defendant(s).	)	JUDGE:
)	

UNIFORM TRIAL PRACTICE AND PROCEDURES

In conformity with the Civil Justice Reform Act of 1990, and in compliance with the Civil Justice Expense and Delay Reduction Plan adopted by this Court, the following uniform procedures will apply to all civil cases filed in the Southern District of Illinois.

Scheduling Practice

Trial settings and other scheduling will vary depending on the track classification which was assigned to the case at the time of filing by the trial judge to whom the case is assigned. There are three tracks, "A," "B," and "C." "A" cases are set for trial between eight (8) and ten (10) months after the date of first appearance of a defendant or the default date; "B" cases eleven (11) to fourteen (14) months after the date of first appearance of a defendant or the default date; and "C" cases fifteen (15) to eighteen (18) months after the date of first appearance of a defendant or the default date.

Except in cases exempted under **Local Rule 16.2(a)**, the attorneys (and any unrepresented parties) must meet in accordance with **Local Rule 16.2(b)** within 21 days after the first appearance of a defendant (and at least fourteen (14) days before any scheduling conference set by the Court) to candidly discuss the issues in the case and potential discovery needs. **Fed.**

R. Civ. P. 26(f) Within seven (7) calendar days after this meeting, the participants must submit a Joint Report of the Parties and Proposed Scheduling and Discovery Order to the Magistrate Judge.

All track "B" and "C" cases will be set for a scheduling and discovery conference before a Magistrate Judge within forty (40) days after the first appearance of a defendant in cases filed, removed, or transferred to this District. The scheduling conference may be canceled at the discretion of the Court following receipt of the Joint Report of the Parties regarding their initial meeting. The Magistrate Judge may approve the parties' Joint Report of Parties and Proposed Scheduling and Discovery Order, or enter a separate scheduling order, as circumstances require.

A final pre-trial conference will be held by the trial judge at least seven (7) days prior to the first day of the presumptive trial month. The parties shall confer and jointly submit a Final Pre-Trial Order three (3) days before the date of the final pre-trial conference.

Disclosures and Discovery Practice

Except in cases exempted under **Local Rule 16.2(a)**, the parties shall comply with the initial disclosure requirements of **Local Rule 26.1(a)(1)**. The plaintiff(s) is required to serve its disclosures upon each defendant within twenty (20) days after the appearance of that defendant. Each defendant shall serve its disclosures upon every other party within twenty (20) days after defendant's appearance.

These disclosures must be supplemented by the parties, depending on the nature of the case and any limitations placed on discovery at the scheduling conference. The disclosures and supplementation are not to be filed with the Clerk of the Court.

A party may not seek discovery from another source until: (a) the party seeking discovery has made its initial disclosures as required by **Local Rule 26.1(a)(1)**; and, further, (b) the parties have met and conferred as required by **Local Rule 16.2(b)**. A party may not seek discovery from

another party before such disclosures have been made by, or are due from, such other party.

The cut-off date for all discovery, including experts and third parties, shall be not later than ninety (90) days prior to the first day of the month of the presumptive trial date. Disclosure of experts and discovery with reference to experts and other discovery dates will be set according to the Joint Report of the Parties following their initial meeting or at the scheduling and discovery conference before the Magistrate Judge.

Motion Practice

Motions for leave to amend pleadings, for extension of time, for voluntary dismissal, to compel answers to interrogatories, to compel production, and other motions customarily disposed of without briefing or argument may be submitted to the Court by mail addressed to the Clerk, accompanied by an appropriate order on a separate letter-sized sheet. The opposing party **may** file a written response within ten (10) days after service of the motion.

All other motions, specifically motions to dismiss, for judgment on the pleadings, for summary judgment, and all post-trial motions, shall be filed with the Clerk together with a supporting brief and proposed order. Briefs shall be no longer than ten (10) double-spaced typewritten pages. Any adverse party shall have ten (10) days after the service of the movant's brief in which to file and serve an answering brief and proposed order. Reply briefs, if any, shall be filed within five (5) days of the filing of an answering brief. Such briefs are not favored and should be filed only in exceptional circumstances. Under no circumstances will sur-reply briefs be accepted.

However, when all parties are represented by counsel, motions for summary judgment and for judgment on the pleadings may be filed **ONLY AFTER** the motion is fully briefed by all parties as provided in Local Rule 7.1(g). Prior to filing a motion for summary judgment or for judgment on the pleadings, the moving party shall file a "Notice of Motion" with the Clerk of Court and shall

serve (but not file) the motion, related documents, and a copy of the Notice of Motion on all record counsel. **This Notice of Motion must be filed no later than 30 days prior to the dispositive motion deadline.** Parties opposing the motion shall then timely serve (but not file) their answering brief and related documents on all record counsel. Replies, if any, shall be similarly served. The moving party shall then file a “motion packet” which shall consist of the motion, all responsive briefs and related documents, and a Motion Packet Form. The motion packet must be filed with the Clerk of the Court on or before the dispositive motion deadline set by the Court. Failure of a party opposing the motion to serve an answering brief may, in the Court’s discretion, be considered an admission of the merits of the motion as provided by Local Rule 7.1(g).

The Notice of Motion filed with the Clerk of Court shall indicate the type of motion to be filed and shall contain a certificate of service indicating the date the motion was served upon all record counsel. The Motion Packet Form shall indicate both the type of motion filed and whether the motion packet includes Responses, Replies and Exhibits. Notice of Motion and Motion Packet Forms are included in the Appendix to these Rules.

There will be no oral arguments on motions in civil cases except by specific order of the Judge to whom the motion is assigned.

FOR THE COURT

**NORBERT G. JAWORSKI
CLERK OF COURT**

ALL MOTIONS MUST BE SUBMITTED WITH A PROPOSED ORDER

Forms referenced in this document are available, free of charge, downloadable from the district court web site at www.ilsd.uscourts.gov or from the Clerk’s Office for a fee of \$3.00. Copies of the new forms are included as attachments in the January 1, 2000 revision of the Local Rules.

Sample Form 17

Jurisdictional Checklist

- 1. Jurisdiction Properly Alleged?**
- 2. Federal Question?**
 - a. “Arising under” jurisdiction (not defensive or referential use of federal law)
 - b. Private right of action
 - c. Wholly insubstantial federal claim
- 3. Diversity Jurisdiction?**
 - a. Complete diversity
 - b. Dual citizenship of corporations
 - c. Citizenship of all partners, association members, etc.
 - d. Supplemental parties joined by plaintiff disallowed
 - e. Amount in controversy (\$75,000)
 - f. Indispensable parties
- 4. Removal jurisdiction?**
 - a. Federal question; diversity or “separate and independent” to federal question claim
 - b. Non-removable claims (e.g., FELA)
 - c. Waiver by consent or agreement
 - d. Removal limited to defendants
 - e. Artful pleading/complete preemption
 - f. Special removal statutes (e.g., federal officers)
 - g. Procedural defects:
 - i. Removal within 30 days of receipt by first defendant
 - ii. Joinder by all served defendants
 - iii. Other procedural requirements (attach papers, notices, etc.)
 - iv. Resident defendant removal (diversity)
 - v. Removal more than one year after commencement (diversity)
- 5. Supplemental (Pendent) Jurisdiction**
 - a. Do state claims derive from “common nucleus of operative fact”
 - b. Is supplemental party added to action commenced before December 1, 1990 (*Finley v. U.S.*)
 - c. Does joinder of supplemental party destroy complete diversity (e.g., added by plaintiff, intervenor as plaintiff, indispensable party)
 - d. Are there reasons to decline supplemental jurisdiction (e.g., novel/complex state claims, federal claims dismissed, or other compelling reasons for dismissal/remand)
- 6. Other Limitations?**
 - a. Venue
 - b. Timely and proper service—Fed. R. Civ. P. 4(j)
 - c. Personal jurisdiction
 - d. Jurisprudential limitations (standing, abstention, mootness, ripeness, etc.)

- e. Eleventh Amendment
- f. Failure to exhaust administrative remedies (e.g., EEOC), notice requirements, etc.

Sample Form 18

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

	)	CASE NO. _____
)	
Plaintiff(s),)	
	)	JUDGE DAN AARON POLSTER
vs.)	
)	
	)	<u>ORDER CONCERNING REMOVAL</u>
)	
Defendant(s).)	

IT IS HEREBY ORDERED that all parties removing actions to this Court shall, no later than five (5) days after the date of this order, file and serve a signed statement under the case and caption that sets forth the following information (**#3 applies to the Plaintiff only**):

1. The date(s) on which defendant(s) or their representative(s) first received a copy of the summons and complaint in the state court action.
2. The date(s) on which each defendant was served with a copy of the summons and complaint, if any of those dates are different from the date(s) set forth in item number 1.
3. **The Plaintiff shall** submit a detailed monetary breakdown of how damages claimed total at least \$75,000.00.
4. In actions predicated on diversity jurisdiction, whether any defendants who have been served are citizens of the state of Ohio.
5. If removal takes place more than thirty (30) days after any defendant first received

a copy of the summons and complaint, the reasons why removal has taken place at this time and the date on which the defendant(s) first received a paper identifying the basis for such removal.

6. In actions removed on the basis on this Court's jurisdiction in which the action in state court was commenced more than one year before the date of removal, the reasons why this action should not summarily be remanded to state court.
7. Identify any defendant who had been served prior to the time of removal who did not formally join in the notice of removal and the reasons therefore.

IT IS FURTHER ORDERED that all defendants to the action who joined in the notice of removal shall file such a statement within the time period set forth herein, although the parties may file a joint statement as long as such statement is signed by counsel for each party.

IT IS FURTHER ORDERED that the removing defendant(s) shall serve a copy of this order on all parties to the action no later than the time they file and serve a copy of the statement required by this order. Any party who learns at any time that any of the information provided in the statement(s) filed pursuant to this order contains information that is not correct shall immediately notify the Court in writing thereof.

IT IS SO ORDERED.

Dan Aaron Polster
United States District Judge

Sample Form 19

The following local rule governing RICO filings is an excerpt from the *Local Rules of Practice for the United States District Court for the Southern District of California*, which became effective January 1, 2000.

Civil Rule 11.1 Civil RICO Actions Filed

- a. **Filing.** Plaintiffs shall file, within thirty (30) days of the filing (including filing upon removal or transfer) of a complaint which states a RICO cause of action, a RICO Case Statement.

This statement shall include facts upon which plaintiffs rely to initiate their RICO claims, as a result of the “reasonable inquiry” required by Fed. R. Civ. P. 11. In particular, this statement shall be in a form using the numbers and letters set forth in the form entitled “RICO Case Statement,” available for inspection and copying in the office of the clerk, and shall state in detail and with specificity the information requested in that form. [Editor’s Note: The referenced RICO Case Statement appears immediately following this local rule excerpt.] The court shall construe the RICO Case Statement as an amendment to the pleadings.

- b. **Failure to comply.** Failure to comply subjects the RICO cause of action to dismissal.
- c. **Service.** Counsel must serve a copy of the RICO Case Statement on all parties.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"><div style="background-color: yellow; height: 20px; width: 100%;"></div><div style="text-align: center; margin-top: 5px;">vs.</div><div style="background-color: yellow; height: 20px; width: 100%;"></div></div>	Plaintiff, Defendant.	<p>CASE NO. <div style="background-color: yellow; display: inline-block; width: 150px; height: 20px;"></div></p>
---	------------------------------	--

RICO CASE STATEMENT

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. 1962(a), (b), (c), and/or (d).
2. List the defendants and state the alleged misconduct and basis of liability of each defendant.
3. List alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
4. List the alleged victims and state how each victim was allegedly injured.
5. Describe in detail the pattern of racketeering activities or collection of unlawful debts alleged for each RICO claim. The description of the pattern of racketeering shall include the following information:
 - a. List the alleged predicate acts and the specific statutes that were allegedly violated;

b. Provide the date of each predicate act, the participants in each predicate act, and a description of the facts constituting each predicate act;

c. If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the “circumstances constituting fraud or mistake shall be stated with particularity.” Fed. R. Civ. P. 9(b). Identify the time, place and substance of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

d. State whether there has been a criminal conviction for violation of any predicate act;

e. State whether civil litigation has resulted in a judgment with regard to any predicate act;

f. Describe how the predicate act forms a “pattern of racketeering activity;” and

g. State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe the alleged relationship and common plan in detail.

6. Describe in detail the alleged “enterprise” for each RICO claim. A description of the enterprise shall include the following: (a) state the name of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise; (b) a description of the structure, purpose, function and course of conduct of the enterprise; (c) a statement of whether any defendants are employees, officers or directors of the alleged enterprise; (d) a statement of whether any defendants are associated with the alleged enterprise; (e) a statement of whether plaintiff is alleging that the defendants are individuals or entities separate from the alleged enterprise or that the defendants are the enterprise itself, or members of the enterprise; (f) if any defendants are alleged to be the enterprise itself, or members of the enterprise, an explanation of whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

7. State and describe in detail whether plaintiff is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual daily activities of

the enterprise, if at all.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

11. If the complaint alleges a violation of 18 U.S.C. 1962(a), provide the following: (a) state who received the income derived from the pattern of racketeering activity or through the collection of unlawful debt; and (b) describe the use or investment of such income.

12. If the complaint alleges a violation of 18 U.S.C. 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

13. If the complaint alleges a violation of 18 U.S.C. 1962(c), provide the following: (a) state who is employed by or associated with the alleged enterprise, and (b) state whether the same entity is both the liable “person” and the “enterprise” under 18 U.S.C. 1962(c).

14. If the complaint alleges a violation of 18 U.S.C. 1962(d), describe in detail the facts showing the existence of the alleged conspiracy.

15. Describe the alleged injury to business or property.

16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

17. List the damages sustained by reason of the violation of 18 U.S.C. 1962, indicating the amount for which each defendant is allegedly liable.

18. List all other federal causes of action, if any, and provide the relevant statute numbers.

19. List all pendent state claims, if any.

20. Provide any additional information that you feel would be helpful to the court in processing your RICO claims.

DATED:

Attorney for Plaintiff(s)

Sample Form 20

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

Plaintiff,

vs.

No. CIV ____-_____/JHG

Defendant.

SCHEDULING ORDER

This matter came before Joe H. Galvan, United States Magistrate Judge for scheduling conference pursuant to **Fed.R.Civ.P. 16** on _____. The attorneys are to submit this Scheduling Order directly to Joe H. Galvan, United States Magistrate Judge, 200 E. Griggs Ave., Las Cruces, NM 88001 by _____.

IT IS HEREBY ORDERED that the parties shall adhere to the following:

DISCOVERY

The termination date for discovery is _____, and discovery shall not be reopened, except by an order of the Court upon a showing of good cause. This deadline shall be construed to require that discovery be **completed** before the above date. Service of interrogatories or requests for production shall be considered timely only if the responses are due prior to the deadline. A notice to take deposition shall be considered timely only if the deposition takes place prior to the deadline. The pendency of dispositive motions shall not stay discovery.

MOTIONS ON DISCOVERY

Motions relating to discovery (including but not limited to motions to compel and motions for protective order) shall be served no later than _____. This deadline shall not be construed to extend the twenty-day time limit imposed by **D.N.M.LR-Civ. 26.6, and 37**.

DISCOVERY LIMITATIONS

A maximum of _____ interrogatories by each _____ to any other _____ are permitted.

A maximum of _____ requests for admission by each _____ to any other _____ are permitted.

A maximum of _____ requests for production by each _____ to any other _____ are permitted.

A maximum of _____ depositions by each _____ are permitted. Each deposition (other than of _____) is limited to a maximum of _____ hours, unless extended by agreement of the parties.

Supplementation under **Fed.R.Civ.P. 26(e)** is due **30 days** after the party acquires the information.

In appropriate cases, the attorneys are to submit a stipulated order providing for the independent medical examination pursuant to **Fed.R.Civ.P. 35(a)**.

EXPERT WITNESSES

Plaintiff(s) shall comply with **Fed.R.Civ.P. 26(a)(2)** no later than _____. All other parties shall comply with **Fed.R.Civ.P. 26(a)(2)** no later than _____.

Counsel are admonished that any motion pursuant to ***Daubert v. Merrell Dow Pharmaceuticals, Inc.***, 113 S.Ct. 2786 (1993) must be served by the deadline for serving Other Pretrial Motions.

JOINDER AND AMENDMENT

Plaintiff(s) shall be permitted until _____ to join additional parties and until _____ to amend the pleadings.

All other parties shall be permitted until _____ to join additional parties and until _____ to amend the pleadings.

OTHER PRETRIAL MOTIONS

Pretrial motions, other than discovery motions, shall be served on or before _____. Any pretrial motions, other than discovery motions, filed after the above date, may be subject to summary denial in the discretion of the Court.

OTHER MATTERS

By agreement of the parties the following are the issues remaining in the case:

Plaintiff: (Itemize causes of action)

Defendant: (Itemize defenses)

Plaintiff withdraws the following causes of action:

Defendant withdraws the following defenses:

This case is classified as:

_____ Standard

_____ Complex

_____ Expedited

PRETRIAL ORDER

Counsel are directed to submit a consolidated pretrial order as follows: Plaintiff(s) to all other parties on or before _____; all other parties are to submit one, consolidated, proposed pretrial order directly to Joe H. Galvan, United States Magistrate Judge, 200 E. Griggs Ave., Las Cruces, NM 88001 by _____.

PRETRIAL CONFERENCE

A tentative pretrial conference is set for _____ at _____ .m. in _____, **New Mexico** before Joe H. Galvan, United States Magistrate Judge. Any

pretrial conference set by the assigned district judge shall supersede this setting.

SETTLEMENT CONFERENCE

A tentative settlement conference is set for _____ at _____ .m in _____, **New Mexico** before Joe H. Galvan, United States Magistrate Judge.

At the request of all parties, a settlement conference may be set at an earlier date. The parties, or claims personnel with ultimate settlement authority, are required to attend any settlement conference before Joe H. Galvan, United States Magistrate Judge **in person**. There are **no exceptions** to this rule.

ESTIMATED TRIAL TIME

The parties estimate that trial will require _____ days, including jury selection.

SETTLEMENT

At this time, counsel rate the possibility of settlement in this case as:

Poor _____ Fair _____ Good _____ (check one).

SUBMITTED BY:

Counsel for Plaintiff

Counsel for Defendant

APPROVAL RECOMMENDED:

**APPROVED AND ADOPTED AS THE
ORDER OF THE COURT:**

**JOE H. GALVAN
UNITED STATES MAGISTRATE JUDGE**

UNITED STATES DISTRICT JUDGE

Sample Form 21

FORM 1 (ND/SD Miss. Dec. 2000)

UNITED STATES DISTRICT COURT
_____ **DISTRICT OF MISSISSIPPI**

Plaintiff

v.

CIVIL ACTION NO.

Defendant

CASE MANAGEMENT ORDER

This Order, including the deadlines established herein, having been established with the participation of all parties, can be modified only by order of the court upon a showing of good cause supported with affidavits, other evidentiary materials, or reference to portions of the record. IT IS HEREBY ORDERED:

**1. CASE
TRACK:**

_____ **Expedited**
_____ **Standard**
_____ **Complex**

_____ **Administrative**
_____ **Mass Tort**
_____ **Suspension Track**

2. ALTERNATIVE DISPUTE RESOLUTION [ADR].

_____ **A.** Alternative dispute resolution techniques appear helpful and will be used in this civil action as follows:

_____ **B.** At the time this Case Management Order is offered it does not appear that alternative dispute resolution techniques will be used in this civil action.

3. CONSENT TO TRIAL BY UNITED STATES MAGISTRATE JUDGE.

_____ **A.** The parties consent to trial by a United States Magistrate Judge.

_____ **B.** The parties do not consent to trial by a United States Magistrate Judge.

4. DISCLOSURE.

_____ **A.** The pre-discovery disclosure requirements of Uniform Local Rule 5.1(A) have been complied with fully.

_____ **B.** The following additional disclosure is needed and is hereby ordered:

5. MOTIONS; ISSUE BIFURCATION.

_____ **A.** The court finds and orders that early filing of the following motion(s) might significantly affect the scope of discovery or otherwise expedite the resolution of this action:

_____ **B.** The court finds and orders that staged resolution, or bifurcation of the issues for trial in accordance with FED. R. CIV. P. 42(b),

_____ **(1)** Will assist in the prompt resolution of this action.

_____ **(2)** Will not assist in the prompt resolution of this action.

Accordingly, the court orders that:

6. DISCOVERY PROVISIONS AND LIMITATIONS.

A. Interrogatories, Requests for Production, and Requests for Admissions are limited to
_____ [Expedited: 15; Standard and Complex: 30] succinct questions.

B. Depositions are limited to the parties and no more than

_____ [Expedited: 3; Standard: 5; Complex: 10] fact witness depositions per party without additional approval of the court.

C. _____ There are no further discovery provisions or limitations.

D. _____ The court orders that further discovery provisions or limitations be imposed:

- 7. Scheduling Deadlines** *The appropriate scheduling deadlines based upon the track designation shall not be included in the proposed Case Management Order. (Deadlines shall be determined at the telephonic case management conference).*

SCHEDULING DEADLINES
(To be completed by the court only)

IT IS HEREBY ORDERED AS FOLLOWS:

8. Trial.

- A.** This action is set for trial commencing on: _____
- B.** Reserved Trial Period (two-week limitation): _____
- C.** Conflicts (the court will only consider conflicts specified in this Case Management Order):

9. Pretrial. The pretrial conference is set on: _____

10. Discovery. All discovery shall be completed by: _____

11. Amendments. Motions for joinder of parties or amendments to the pleadings shall be served
by: _____

12. Experts. The parties' experts shall be designated by the following dates:

- A.** Plaintiff: _____
- B.** Defendant: _____

13. Motions. All motions other than motions *in limine* shall be filed by:

The deadline for motions *in limine* is ten days before the pretrial conference; the deadline for responses is five days before the pretrial conference.

14. Settlement Conference. A judicial officer shall conduct a settlement conference on:

ORDERED:

Date

UNITED STATES MAGISTRATE JUDGE

Sample Form 22

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Plaintiff,	:	
	:	
	:	
vs.	:	CIVIL ACTION
	:	
	:	
Defendant.	:	

RULE 16(b) SCHEDULING ORDER

After consideration of the Fed.R.Civ.P. 26(f) report (Doc. 4) and the pleadings of the parties, the following scheduling order is entered pursuant to Fed.R.Civ.P. 16(b):

1. **TRIAL**. This action is set for jury selection on _____, at 9:00 a.m., and for trial sometime during the month of _____, the specific date to be set once the total number of actions going to trial that month is determined. The parties estimate that the trial of this action will take _____ days.

This non-jury action is set for trial sometime during the civil term beginning _____, the specific date to be set once the total number of actions going to trial that month is determined. The parties estimate that the trial of this action will take _____ days.

2. **FINAL PRETRIAL CONFERENCE**. This action is set for final pretrial conference before the District Judge on _____ at _____. **This is a firm setting and the parties are expected to be ready for trial on that date.**

A COPY OF THE DISTRICT JUDGE'S STANDING ORDER GOVERNING HIS FINAL PRETRIAL CONFERENCES IS ATTACHED. NO ADDITIONAL NOTICE REGARDING THE FINAL PRETRIAL CONFERENCE WILL BE GIVEN. [Editor's Note: The referenced standing order governing pretrial conferences appears at the beginning of Sample Form 35.]

3. DISCOVERY COMPLETION DATE. All discovery is to be completed on or before _____. **Requests for extension will be viewed with great disfavor and will not be considered except upon a showing (1) that extraordinary circumstances require it and (2) that the parties have diligently pursued discovery.**

For all actions, "completed" means that all interrogatories, requests for admissions, and requests for production have been filed and responded to; physical inspections and testing concluded; physical and mental examinations concluded; experts' reports exchanged; all depositions, including experts' depositions, taken; and motions to compel filed.

4. INITIAL DISCLOSURES. The initial disclosures required by Fed.R.Civ.P. 26(a)(1) shall be/were made by the parties on _____.

5. AMENDMENTS TO PLEADINGS AND JOINDER OF PARTIES. Any motion for leave to amend the pleadings or to join other parties must be filed on or before _____.

6. EXPERT TESTIMONY. The disclosure of expert testimony as required by Fed.R.Civ.P. 26(a)(2) is to be made by Plaintiffs on or before _____, and by Defendants on or before _____.

7. SUPPLEMENTATION. Supplementation of disclosures and responses as required by Fed.R.Civ.P. 26(e) is to be accomplished "at appropriate intervals" and "seasonably."

8. PRETRIAL DISCLOSURES. The disclosure of information regarding the evidence that each party may present at trial as required by Fed.R.Civ.P. 26(a)(3) is to be made on or before _____.

9. DISCOVERY LIMITS. Discovery is limited as follows:

a. Not more than _____ interrogatories, including all discrete subparts, may be served by each party upon any other party. Responses are due within thirty (30) days of service;

b. Not more than _____ depositions may be taken by each party. Each deposition is limited to a maximum of _____ hours (Plaintiff and 30(b)(6) representative limited to _____ hours) unless extended by agreement of the parties;

c. Not more than _____ requests for admissions, including all discrete subparts, may be served by each party upon any other party. Responses are due within thirty (30) days of service;

d. Not more than _____ requests for production of documents, including all discrete subparts, may be served by each party upon any other party. Responses are due within thirty (30) days of service. Subpoenas duces tecum to a party ordering such party to produce documents or things at trial shall not be used to circumvent the limitations placed on discovery.

In applying these limits, all parties represented by the same counsel will be treated as a single party.

10. DISCOVERY MOTIONS. The following requirements pertain to discovery motions filed in this Court:

a. Conferencing by Counsel. The conferencing requirement of Fed.R.Civ.P. 26(c), 37(a)(2), and 37(d) will be strictly enforced. This requirement will also apply to a motion for physical and mental examination pursuant to Fed.R.Civ.P. 35(a) and a motion to determine sufficiency pursuant to Fed.R.Civ.P. 36(a). Any such motion not containing the required certification will be stricken.

b. Time of Filing; Form. A motion for protective order pursuant to Fed.R.Civ.P. 26(c), a motion for physical and mental examination pursuant to Fed.R.Civ.P. 35(a), a motion to determine sufficiency pursuant to Fed.R.Civ.P. 36(a), and a motion to compel pursuant to Fed.R.Civ.P. 37 shall be brought in a timely manner so as to allow sufficient time for the completion of discovery according to the schedule set by the Court. Any such motion shall quote in full (1) each interrogatory, request for admission or request for production to which the motion is addressed, or otherwise identify specifically and succinctly the discovery to which objection is taken or from which a protective order is sought, and (2) the response or the objection and grounds therefor, if any, as stated by the opposing party. Unless otherwise ordered by the Court, the complete transcripts or discovery papers are not to be filed with the Court unless the motion cannot be fairly decided without reference to the complete original.

c. Time for Response. Unless within eleven (11) days after the filing of a discovery motion the opposing party files a written response thereto, the opportunity to respond shall be deemed waived and the Court will act on the motion. Every party filing a response shall file with the response a memorandum of law, including citations of supporting authorities and any affidavits and other documents setting forth or evidencing facts on which the response is based.

d. Privilege or Protection of Trial Preparation Materials. The provisions of Fed.R.Civ.P. 26(b)(5) will be strictly enforced in those rare situations in which privilege or work product protection is invoked. Rule 26(b)(5) information shall be disclosed in a "privilege log" served with the objections to production. The "privilege log" shall, at a minimum, contain the facts suggested in paragraphs K.2.(a & b) (pages 9-10) of the Introduction to Civil Discovery Practice in the Southern District of Alabama,

Civil Practice Federal Court Committee (1998) (distributed by the Clerk with the Local Rules).

11. SUMMARY JUDGMENT. Motions for summary judgment and any other dispositive motions which require little or no discovery should be filed as soon as possible; all other motions for summary judgment should be filed as soon as possible after the discovery completion date, but not later than _____. Neither the final pretrial conference nor the trial of this action will be delayed pending a ruling on such motions.

12. SETTLEMENT. On or before _____, the parties shall confer for the purpose of discussing settlement and shall file with the Clerk of Court by that date, a joint statement setting forth the parties' positions regarding settlement of this action through any of the approved alternative dispute resolution procedures. However, the parties may contact the Court at any stage of the proceedings if they believe mediation or a settlement conference would be beneficial. Given that most actions settle, early settlement negotiations are strongly encouraged. The Court adopted an alternative dispute resolution plan on February 8, 1995, a copy of which can be obtained from the Clerk of the Court.

13. BRIEFS; LETTERS; COURTESY AND DUPLICATE COPIES; FAXING OF DOCUMENTS. **Unless prior permission of the Court is given:**

a. A brief filed in support of or in opposition to any motion shall not exceed thirty (30) pages in length and a reply brief by movant shall not exceed fifteen (15) pages in length. Attachments to the brief do not count toward the page limitations.

b. An application to the Court for an order shall be by motion, not by letter. See Fed.R.Civ.P. 7(b). Any objection or response to a motion or to any other matter is to be done in a properly-styled and captioned paper, not by letter.

c. Courtesy copies of pleadings, motions or other papers filed in the action are not to be provided to the Judge or the Judge's chambers. A copy of a pleading, motion, or other paper that has been previously filed in the action is not to be attached to a subsequently filed pleading, motion or other paper; it may be adopted by reference.

d. Papers transmitted to the Court by facsimile will not be accepted for filing. A copy of this Court's policy regarding the faxing of documents may be obtained from the Clerk of Court.

14. LOCAL RULES. All parties are reminded that the Local Rules of this district contain important requirements concerning motions to dismiss and for summary judgment, class actions, and other matters. They are reprinted in ALABAMA RULES OF COURT (West Publishing Co.) and ALABAMA RULES ANNOTATED (The

Michie Company), but are amended from time to time. A current version may be obtained from the Clerk. Local Rule 5.5(a) proscribes the filing of most discovery materials.

DONE this _____.

UNITED STATES MAGISTRATE JUDGE

Sample Form 23

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PLAINTIFF(S)

VERSUS

CIVIL ACTION NO.

DEFENDANT(S)

RULE 16.1(A) INITIAL ORDER

The above captioned cause is set for a **TELEPHONIC CASE MANAGEMENT CONFERENCE (CMC)** on _____ at _____.M. before:

Magistrate Judge Jerry A. Davis
P.O. Box 726
Aberdeen, Mississippi 39730
Telephone: (662) 369-2138

UNLESS OTHERWISE AGREED, IT SHALL BE THE RESPONSIBILITY OF COUNSEL FOR THE PLAINTIFF TO SET UP THE CONFERENCE CALL AT THE SCHEDULED TIME.

RULE 16.1(B)(1) ATTORNEY CONFERENCE

No later than twenty-one (21) days prior to the CMC, counsel shall confer, either in person or telephonically, regarding the following matters:

1. Identify the principal factual and legal issues in dispute;
2. Discuss the principal evidentiary basis for claims and defenses;
3. Determine the differentiated case management case track, days required for trial, and whether the case should be considered for Alternative Dispute Resolution (ADR);
4. Discuss when voluntary disclosure of documents or other information should be made pursuant to Rule 26.1 [no later than fourteen (14) days after the attorney conference, Local Rule 16.1(B)(7)];

5. Identify any motions whose early resolution would have significant impact on the scope of discovery or other aspects of the litigation;
6. Consistent with the case track recommendations, determine what additional discovery is required beyond the voluntary disclosures and initial depositions of the parties, with designated time limitations;
7. Discuss whether all parties consent to jurisdiction by a magistrate judge;
8. Discuss a time for the Local Rule 16.1(C) settlement conference;
9. Discuss settlement prospects fully with each other and their respective clients and represent to the Court that they have done so and communicate the costs of going through litigation and the appeal process with each other's respective clients and represent to the Court that they have done so;
10. Discuss preparation of a proposed case management order. Scheduling deadlines based on the track designation should not be included in the proposed case management order. All deadlines shall be determined at the telephonic case management conference.

PROPOSED CASE MANAGEMENT ORDER
CONFIDENTIAL SETTLEMENT MEMORANDA

Counsel are instructed to submit a proposed case management order **by mail (NO FAXES)** to the appropriate magistrate judge **no later than fourteen (14) days after the attorney conference**. By the same deadline, counsel shall also submit an original and one (1) copy of a memorandum (3 page maximum) setting forth a brief explanation of the case, and a candid appraisal of the respective positions, including possible settlement figures. Counsel will also furnish in their memorandum a good faith estimate of the expense of carrying the litigation through trial and the appellate process, if not settled, and will have discussed and will represent to the Court that they have so discussed these costs with their respective clients and will be prepared to candidly discuss them with the Court. These memoranda are **not** to be exchanged and will be viewed only by the Court. These will not become a part of the record and will be destroyed upon the resolution of the case.

CASE MANAGEMENT PLAN

At the conference, the Court and the parties shall:

1. Identify the principal factual and legal issues in dispute;
2. Identify the alternative dispute resolution procedure which counsel intend to use, or report specifically why no such procedure would assist in the resolution of the case;
3. Indicate whether all parties consent to jurisdiction by a magistrate judge;
4. Review the parties' compliance with their disclosure obligations and consider whether to order additional disclosures;
5. Determine whether to order early filing of any motions that might significantly affect the scope of discovery or other aspects of the litigation, and provide for the staged resolution, or bifurcation of issues for trial consistent with 42(b) FRCivP.;
6. Determine the plan for at least the first stage of discovery; impose limitations on each discovery tool, time periods and other appropriate matters;
7. Determine the date for the Local Rule 16.1(C) settlement conference or mediation;
8. Discuss scheduling and set appropriate scheduling deadlines including dates for settlement conference, completion of discovery, motions, final pretrial conference and trial.

CASE MANAGEMENT ORDER

A Case Management Order shall be entered by the Court within ten (10) days of the conference. A Uniform Case Management Order has been developed and is available on the Court web site at www.msnd.uscourts.gov and as Form No. 1 in the revised Uniform Local Rules, effective December 1, 2000. [Editor's Note: The Uniform Case Management Order also appears as Sample Form 21 in this Appendix.] Counsel shall use that format in discussions and preparation.

SO ORDERED this the _____ day of _____, 20__.

U.S. MAGISTRATE JUDGE

Sample Form 24

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

)	
	)	Civil Action No.
)	
Plaintiff(s))	
)	
	)	PRETRIAL SCHEDULING ORDER
)	
v.)	
)	
)	
)	
Defendant(s).)	
)	
)	

This matter having come before the Court for a scheduling conference pursuant to Civil Rule 16; good cause appearing;

IT IS on this _____ day of _____

ORDERED THAT:

I. DISCOVERY

1. Civil Rule 26(a)(1) disclosures shall be made not later than _____.
2. Interrogatories and document requests shall issue not later than _____.
3. Absent leave of Court, no party shall serve more than one set of Interrogatories on any other party.
4. Absent leave of Court, no party shall serve more than one document request (with no limit on the categories of documents requested) on any other party. This restriction shall not, however, bar the service of Rule 30(b)(6) notices by any party.

5. Discovery shall remain open through _____. No discovery is to be issued or engaged in beyond that date.

6. No objections to questions posed at depositions shall be made except as permitted by Civil Rules 30(d)(1) and 32(d)(3)(A). No instruction not to answer shall be given except as permitted by Civil Rule 30(d)(1).

7. Any discovery dispute shall be brought to the Court's attention in the first instance by letter or by telephone conference call immediately after the parties' good faith attempt to resolve the dispute has failed. Local Civil Rule 16.1(f)(1).

II. MOTION PRACTICE

8. Any motion to amend pleadings or add new parties shall comply with Local Civil Rule 7.1(d) and shall be returnable not later than _____.

9. (a) Any dispositive motion in a civil action assigned to Judges Debevoise or Hayden shall comply with Local Rule 7.1(d). Motion papers shall be filed and served not later than _____ and shall be returnable.

(b) Any dispositive motion in a civil action assigned to Judge Politan shall comply with Local Civil Rule 7.1(b) and Appendix N to the Local Civil Rules. Motion papers shall be served not later than _____. Opposition shall be served not later than _____. The entire motion papers shall be filed not later than _____.

(c) The parties are directed to Local Civil Rule 7.2, which sets limits to the length of briefs and describes the format thereof.

III. EXPERTS

10. Not later than _____ the report of any proposed affirmative expert witness shall be served, together with all other disclosures required by Civil Rule 26(a)(2)(B).

11. Not later than _____ the report of any proposed rebuttal expert witness shall be served, together with all other disclosures required by Civil Rule 26(a)(2)(B).

12. Each expert report shall conform with Civil Rule 26(a)(2)(B).

13. No expert shall testify at trial as to any opinions or base those opinions on facts not substantially disclosed in the expert's report.

IV. FINAL PRETRIAL CONFERENCE

14. A final pretrial conference shall be conducted pursuant to Civil Rule 16(d) at _____ a.m./p.m. on _____.

15. All counsel are directed to assemble at the office of counsel for plaintiff(s) not later than ten (10) days before the pretrial conference to prepare the Pretrial Order in the form and content required by the Court. Counsel for plaintiff(s) shall prepare the Pretrial Order and shall submit it to all other counsel for approval.

16. The original of the Pretrial Order shall be delivered to Chambers not later than twenty-four (24) hours before the pretrial conference. All counsel are responsible for the timely submission of the Pretrial Order.

V. MISCELLANEOUS

17. The Court may from time to time schedule conferences as may be required, either sua sponte or at the request of a party.

18. Since all dates set forth herein are established with the assistance and knowledge of counsel there shall be no extensions except for good cause shown and by leave of Court.

19. Failure to appear at subsequent conferences or to comply with the terms of this or any other Order may result in the imposition of sanctions. Civil Rule 16(f).

20. A copy of every pleading, document or written communication with the Court shall be served on all other parties to the action. Any such communication which does not recite or contain a certification of such service may be disregarded by the Court.

21. There shall be a status/settlement conference on _____.

RONALD J. HEDGES
UNITED STATES MAGISTRATE
JUDGE

Original: Clerk
cc: U.S.D.J.
File

Sample Form 25

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

vs.

CIVIL ACTION NO. _____

PRETRIAL ORDER - JURY CASE

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, it is hereby ORDERED:

1. Closure Date. Discovery in this case shall be closed as of _____ unless otherwise ordered by the Court. Said date, or such other date as the Court may subsequently specify, shall be referred to as the "Closure Date."

2. Time for Discovery. On or before the Closure Date, all interrogatories and requests for production must be served, and all depositions and other discovery must be completed. No discovery may be conducted after the Closure Date except by agreement of all counsel or by order of the Court. A motion for such an order shall identify the particular discovery sought, the reasons it is necessary, and the reasons why it was not done prior to the Closure Date. Nothing contained in this order shall excuse a party from its continuing obligation, under the Rules, to update responses to discovery or to respond to discovery requests made before the Closure Date.

3. Expert Witnesses. Any party intending to utilize the testimony of an expert witness shall, upon request, disclose the identity of such witness promptly. If the expert is retained subsequent to such request, disclosure shall be made immediately after retention and before Closure Date. Any such witness not so

disclosed may be barred from testifying unless the Court otherwise directs for good cause shown.

4. Time for Motions. All motions, including motions to amend pleadings, motions for leave to file counterclaims, cross claims or third party complaints, motions to add parties, motions for summary judgment, motions for judgment on the pleadings, and motions to dismiss, shall be filed promptly after counsel discovers, or should have discovered, the bases for such motions. No motion, other than a motion to modify this Order or a motion to compel compliance with a discovery request made prior to the Closure Date, may be filed after the Closure Date.

5. Format for Motions. Every motion and every objection to a motion shall be accompanied by a supporting memorandum bearing a title identifying the motion in support of or in opposition to which it is filed; shall contain a "Facts" section as described in Subparagraph D; and shall set forth the basis for the motion or objection together with the statute, rule or other provision of law relied upon. Photocopies of all cases and authorities cited shall be included with the memorandum as a separate appendix. In the case of dispositive motions (e.g., motions to dismiss or for summary judgment) such memorandum shall include in the following order:

- A. A table of contents page;
- B. A section entitled "Pleadings" that summarizes the pertinent allegations and contentions of both parties as set forth in their respective pleadings and cites the paragraph numbers of the pleadings in which said allegations or contentions are made;
- C. A section entitled "Description of Motion" that identifies the movant(s) and the party against whom the motion is directed and that describes

the motion and the precise nature of the order or relief sought;

- D. A section entitled "Facts" that contains a clear and concise recitation of those facts necessary to enable the reader to understand what the case is about and the basis for the motion or objection without reviewing other documents (whether those documents are appended to the motion or not);
- E. A section entitled "Issues" that contains a numerical listing of the specific issues that the Court will be required to address in ruling on the motion;
- F. A section entitled "Points and Authorities" that states and discusses, under separately labeled headings, each argument or contention advanced in support of or in opposition to the motion together with citations to any authorities relied upon;
- G. A Table of Authorities Cited that includes the page numbers on which reference is made to each authority listed; and
- H. A separate appendix consisting of photocopies of those cases, statutes and authorities cited in the memorandum.

No other memoranda, supplemental memoranda or reply memoranda shall be filed in support of or in opposition to a motion nor shall any memorandum exceed 15 pages in length without leave of Court.

In addition to the aforesaid memorandum, a motion for summary judgment also shall be accompanied by a Statement of Undisputed Facts that concisely sets forth, in separate numbered paragraphs, all material facts which the movant contends are

undisputed and that entitle the movant to judgment as a matter of law. An objection to a motion for summary judgment shall specify which, if any, of the material facts cited by the movant are genuinely disputed. The party opposing the motion also shall set forth, in separate numbered paragraphs, any additional facts that it contends preclude summary judgment.

Each stated fact and each statement that a material fact is disputed shall cite the source relied upon, including the page and line of any document to which reference is made. In either case, each paragraph shall cite the title, page and/or paragraph number of the document supporting the statement contained in that paragraph.

No memoranda or other documents relating to a motion may be filed after a hearing date has been set for the motion unless the Court otherwise orders for good cause shown. The purpose of this provision is to prevent the Court from being deluged with voluminous last minute filings that it cannot review prior to argument and to prevent the unfairness to opposing counsel of being placed in the same position. This prohibition will be strictly enforced.

Documents shall be submitted with a motion and/or memorandum only if the contents of the document are disputed and necessary to decide the motion and, then, only to the extent that references to specific portions of said documents are made in the accompanying memorandum.

Motions shall also comply with any additional requirements set forth in the Local Rules.

No motion for summary judgment may be filed until counsel proposing to file such motion has, first, conferred with the Court and other counsel for the purpose of discussing the need for and the utility of the proposed motion. The matters that counsel should be prepared to address at that conference shall include: the nature of the proposed motion; the "undisputed"

facts upon which it is based; how many of the counts and/or issues the motion would resolve; whether and to what extent the non-moving party contests the motion and the "undisputed" facts asserted and whether the matters in question can be resolved more simply, less expensively and more expeditiously through a trial. Prior to requesting such a conference, counsel for the proponent shall inform opposing counsel of the nature of the proposed motion and the "undisputed" facts upon which it is based. Counsel for the opponents shall inform counsel for the proponent whether, and to what extent, they oppose the motion and dispute the "facts" upon which the motion is based. Such discussion shall be initiated by counsel that proposes to file the motion who, by requesting a conference, will certify that he or she has complied with the provisions of this paragraph.

6. Addition of Parties. If any party is added to the case after the date of this Order, it shall be the duty of counsel responsible for adding such party to promptly serve a copy of this Order upon such party or its counsel. This Order shall be binding upon such party unless subsequently modified by the Court, at the request of such party, or otherwise.

7. Duty to Confer. Within 20 days after the Closure Date, counsel for all parties shall confer and make a diligent, good faith effort to settle the case. Such effort shall include the presentation of a demand by each claimant of the terms it would accept in satisfaction of its claim and the presentation of an offer by each party against whom a claim is made of what it is willing to tender to resolve such claim. If such effort is unsuccessful, counsel shall, at that time, make a diligent, good faith effort to:

- A. Identify those facts that are disputed;
- B. Identify those documents that they intend to offer as evidence at trial and stipulate as to

the admissibility and/or authenticity of such documents; and

- C. Take whatever action is appropriate to narrow and simplify the issues, avoid unnecessary proof, and expedite trial of the case.

It shall be the duty of plaintiff's counsel to initiate this conference, and it shall be the duty of other counsel to respond promptly. If any counsel is unable to obtain the cooperation of any other counsel, it shall be his or her duty to immediately communicate that fact, in writing, to the Court.

8. Pretrial Filings. Within 60 days after the Closure Date, each party shall file an original and one copy of a Pretrial Memorandum, together with a Certificate of Counsel and any proposed voir dire questions as described in Paragraphs 9-11.

At time of impanelment, each party shall file an original and one copy of a Supplement to the Pretrial Memorandum containing a witness list, an exhibit list and proposed jury instructions as described in paragraphs 12 and 13.

Prior to the commencement of trial each party shall submit to the Court and to opposing counsel an Exhibit Book as described in paragraph 14.

Failure to submit any pretrial filing on or before the due date may result in the imposition of sanctions and/or the exclusion of any evidence that should have been disclosed in a timely submission.

9. Pretrial Memorandum. The Pretrial Memorandum shall not exceed 25 pages in length and shall consist of the following sections:

- A. Parties - a list of all parties and their trial counsel.
- B. Facts - a concise recitation of the relevant facts that the party filing the Memorandum is relying upon and/or intends to prove at trial.

- C. Claims and Defenses - a brief statement of each claim for relief and/or defense asserted by the party filing the Memorandum. Any claim or defense not included shall be deemed waived.
- D. Damages - a brief and specific description of the nature, extent and amount of all damages claimed by the party filing the Memorandum together with a description of the manner in which such amount was calculated.
- E. Issues - a numbered list of the factual and legal issues (including any anticipated evidentiary questions) that must be resolved in order to adjudicate the case.
- F. Arguments - a concise statement of the arguments made in support of each claim and/or defense described in paragraph 9C together with citations to the authorities relied upon. Copies of any statutes, opinions, or other authorities cited shall be affixed to the Memorandum.
- G. Pending Matters - a list and description of any motions pending or contemplated, any special issues appropriate for determination in advance of trial, and any other matters that counsel believe ought to be considered by the Court prior to trial.
- H. Estimated time of trial - Counsel's precise estimate of the time required to present his or her evidence and the time required to litigate the entire case.

Any claims, defenses and/or arguments not included in the Pretrial Memorandum shall be deemed waived whether or not they are contained in the pleadings.

10. Certificate of Counsel. The Certificate of Counsel shall consist of a signed statement that counsel has fully complied with the requirements of Paragraph 7 of this Order; and it shall include a representation that counsel has made a diligent, good faith effort to settle this action but has been unsuccessful.

11. Voir Dire Questions - shall consist of a list of all questions that counsel requests the Court ask of prospective jurors during voir dire examination, and a list of specific topics that counsel wishes to question prospective jurors about, directly, together with a statement of the reasons why such inquiry is necessary and why examination by the Court would be inadequate.

12. Witness and Exhibit List. The following witness and exhibit lists shall be submitted:

- A. Witnesses List - a list of all witnesses whose testimony the party filing the list intends to present at trial (indicating whether such testimony will be live or by way of deposition) and concise statements of the subjects of their testimony.
- B. Exhibit List - A list of all exhibits that the party filing the Supplement intends to offer at trial. The list should sufficiently describe the exhibit and include the date on which it was created. In addition, 1-2 lines of space should be provided between each exhibit to permit the Court to make brief notes with respect to the exhibit. The following format is illustrative:

Identification	Full	Exhibit Number	Description of Exhibit
		1	3/22/96 letter from John Doe to Mary Smith
		2	7/10/96 purchase agreement between X Corp. and Richard Roe
		3	9/1/96 photo of 101 Elm St.

Before submitting their respective lists, counsel should confer to eliminate duplication (i.e., exhibits that appear on both lists) to the maximum extent possible.

13. Jury Instructions. Plaintiff's counsel, counsel for any other parties asserting claims (e.g., counterclaims, cross claims, third-party claims, etc.) and counsel for all parties asserting affirmative defenses shall file with the Court and serve upon counsel for all other parties proposed jury instructions relating to the substantive issues raised by such claims and/or defenses. Such proposed instructions shall include:

- A. A brief statement explaining to the jury the nature of the claims and/or defenses asserted by that party;
- B. A summary of the applicable law pertaining to each such claim and/or defense; and
- C. An enumeration of the elements that must be proven to sustain each claim and/or defense.

All proposed instructions shall include specific citations to the authority relied upon for the charge.

Each request shall be numbered and shall be set forth on a separate page in order to facilitate possible integration into the Court's charge.

After service of such proposed instructions, counsel shall confer and attempt to resolve any disagreements with respect to the proposed charge(s).

On the day before trial, counsel shall present to the Court a list of those charges proposed by other parties to which counsel objects and all counsel shall be prepared to confer with the Court regarding the charge to be given.

Any claim or defense for which no proposed charge is submitted may be deemed waived and failure to object to any proposed charge may be deemed a waiver of any objection to such proposed charge.

14. Exhibit Books. A party's Exhibit Book shall consist of copies of those documents and/or photographs that the party intends to offer at trial. Said copies shall be arranged in order in one or more three-ring binders and shall be separated by tabs bearing labels corresponding to each exhibit's designation (e.g., Ex. A, Ex. B, etc.). The exhibit designations shall correspond to those on the Exhibit List furnished to the Court and to the pre-markings on the original documents and photographs that will be offered as evidence.

Plaintiff's exhibits shall be marked numerically; and, in the case of groupings of related exhibits, they shall be marked with a number and a letter (e.g., 1A, 1B, 1C).

Defendant's exhibits shall be marked alphabetically; and groupings of related exhibits shall be marked with a letter and a number (e.g., A1, A2, A3). After the letters of the alphabet have been exhausted, Defendant's exhibits shall be marked with double letter designations (e.g., AA, BB, CC).

Failure to timely file a witness list and/or exhibit list or to include a witness or exhibit may be grounds for sanctions or excluding from evidence the witness or exhibit not disclosed.

15. Trial. This case shall be in order for trial at any time after the date fixed for filing pretrial memoranda. Once the case is placed on the Court's trial calendar, counsel should be prepared to proceed at time of impanelment or upon 24 hours notice thereafter. It is the duty of counsel to maintain contact with the calendar clerk to ascertain the status of the case from time to time.

16. Use of Recorded Testimony at Trial. Because of the difficulties and delays inherent in editing and ruling on objections in videotaped depositions, such depositions may not be used at trial unless previously authorized by the Court. See Local Rule 14(c).

Any party proposing to read or play during trial evidence that has been previously recorded (e.g., depositions, interrogatory answers, admissions, tape recordings) shall:

- A. Identify those portions of testimony that may be eliminated as irrelevant, redundant or otherwise inadmissible in order that the proceedings may be expedited by presenting only those portions that are necessary.
- B. Furnish all opposing counsel with a specification of those portions that are to be read or played no later than the time of impanelment.
- C. Confer with all opposing counsel in an effort to reach agreement as to what portions should be read or played so that unnecessary objections may be eliminated.
- D. On the date trial commences, furnish the Court with a transcript highlighting, in yellow,

the portions that the proponent proposes to offer and, in some other color or colors, the portions that other parties propose to offer.

17. Post Trial Exhibit List. At or before the conclusion of the evidence, counsel for each party shall submit a "clean" list of only those exhibits offered by such party that have been admitted into evidence. Such lists shall be in a form suitable for submission to the jury and shall set forth the following information with respect to each exhibit to the extent applicable:

- A. Exhibit Number
- B. Date
- C. A brief description of the exhibit that will enable the jurors to identify it but which does not characterize the exhibits or its contents (e.g., letter from A to B; photograph of 100 Main Street).

18. Jury Costs. In cases that are settled after a jury has been summoned, jury costs and/or attorneys' fees may be assessed against one or more of the parties and/or their counsel if the Court determines the tardiness of the settlement was due to unreasonable or vexatious conduct. Therefore, every effort should be made to settle cases before that time.

BY ORDER:

Deputy Clerk

ENTER:

Ernest C. Torres
United States District Judge
Date: _____

forms\ptojur.wpd
rev. Dec. 12, 2000