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**PREPARATION OF PROPOSED FINAL PRETRIAL ORDER AND
OTHER TRIAL PREPARATION MATERIALS IN A CIVIL TRIAL**

THE PROPOSED FINAL PRETRIAL ORDER

In advance of trial, the Court will require the parties to jointly prepare a proposed Pretrial Order. In each particular case, the Court will set the date on which the proposed final Pretrial Order is to be submitted, as well as deadlines for filing motions *in limine*, responses thereto, proposed jury instructions and proposed *voir dire* questions. The proposed final Pretrial Order (including the Court's courtesy copies) must be appropriately tabbed, and must include the following items.

1. **Jurisdiction** - A statement of the basis alleged for the Court's jurisdiction and, if jurisdiction is disputed, the nature and basis of the dispute.
2. **Trial Attorneys** – A list of the attorneys trying the case that includes their business and cell phone numbers and email addresses.
3. **Case Statement** - A concise joint statement of the case, which includes the names of the parties and the attorneys who will be representing them at trial; the nature of the case; and the claims, counterclaims and cross-claims asserted by the parties. In a jury case, this statement will be read to the jury during *voir dire*.

4. **Contested Issues** – A concise, numbered list of contested issues of fact and/or law.
5. **Stipulations** - A statement of any stipulations reached by the parties.
6. **Witness Lists** - Separate lists for plaintiff and defendant providing the names and addresses of witnesses, including experts, divided into the following three categories: (a) witnesses who **will** be called to testify at trial; (b) witnesses who **may** be called to testify at trial; and (c) witnesses whose testimony will be presented by deposition or other prior testimony (indicating whether the presentation will be by transcript or video). In a jury case, these lists will be read to the jury during *voir dire*.

For each witness, provide a concise (two or three sentence maximum) description of the witness and the witness' role in the case. For example, "Mr. X is plaintiff's nephew. Mr. X witnessed the arrest of plaintiff where defendants allegedly used excessive force." Or: "Ms. T is defendant's Human Resources Manager. Ms. T made the decision to terminate plaintiff's employment."

All expert witnesses who will or may be called must be included on the witness list. No more than one expert will be permitted to testify on a subject for any party. In the event that any party identifies more than one expert witness, a brief statement of the topic of each expert's testimony must be provided.

Any witness not listed in the Pretrial Order will be precluded from testifying absent a showing of good cause, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable as rebuttal witnesses) as may be necessary.

Objections. All objections to the calling of any witnesses, and the reasons for the objections, must be stated in the Pretrial Order. Objections not made in the Pretrial Order will be deemed waived absent a showing of good cause. If the objection is the subject of a motion *in limine* or *Daubert* motion, the Pretrial Order may simply refer to the motion and it need not repeat the grounds stated in the motion.

Depositions and Other Prior Testimony. For witnesses who will be presented by deposition or other prior testimony, the Pretrial Order must include for each such witness a chart containing the following information: (a) the testimony that each side seeks to present, by page and line; (b) a concise statement of objections to any testimony and the basis for the objection with appropriate citations to evidentiary rules or case law; and (c) a concise statement of the asserted basis of admissibility with appropriate citations to evidentiary rules or case law. The

parties must also submit with the Pretrial Order highlighted deposition transcripts for each witness who will be presented by deposition. Deposition transcripts will not be provided to the jury during deliberations.

7. **Exhibit Lists** - Lists of the trial exhibits (including demonstratives, summaries or other specially prepared exhibits), which are to be prepared as specified below. Any exhibit not listed in the Pretrial Order will be excluded from evidence absent a showing of good cause.

A list of any joint exhibits, which states: (a) the exhibit number for the document (preceded by "JX"); (b) the date of the document; and (c) a brief description of the document.

Separate lists of plaintiff's and defendant's exhibits, which each state: (a) the exhibit number for the document (preceded by "PX" for plaintiff's exhibits and "DX" for defendant's exhibits); (b) the date of the document; (c) a brief description of the document; (d) whether there is an objection to admission of the document and, if so, a concise statement of the basis for the objection; and (e) a concise statement of the asserted basis of admissibility. The parties should follow a similar format for objections and asserted bases for admissibility to that outlined above for deposition or other prior testimony designations. Objections not made in the Pretrial Order will be deemed waived absent a showing of good cause.

The Court will require the parties to prepare tabbed exhibit binders and deliver them to Chambers shortly before the trial date. If an exhibit is to be displayed to the jury, the party intending to display the exhibit must make sufficient copies for all jurors or must use an enlargement or projection of the exhibit.

8. **Estimate of Trial Time** - A statement of whether the case will be a bench trial or jury trial, and a realistic estimate – **in number of hours** – of the length of the trial.
9. **Damage Itemization** - An itemization of damages and other relief sought in the event liability is established.
10. **Trial Briefs** - Trial briefs are limited to ten (10) pages unless prior leave of Court is obtained and shall be filed unless waived by the Court. Trial briefs are intended to provide a full and complete disclosure of the parties' respective theories of the case. Accordingly, each trial brief shall set forth the party's theory of liability or defense, the party's theory of damages or other relief in the event liability is established, and the party's theory of any anticipated motion for judgment as a matter of law. The trial brief shall also include citations to authorities to support each theory stated in the brief.

11. **Settlement Status** – A statement summarizing the current status of settlement negotiations and whether the parties believe that a pretrial settlement conference would be productive.
12. **Motions In Limine** - A list of the titles of all motions *in limine* filed by each party. The actual motions *in limine* are not to be bound with the proposed final Pretrial Order, but must be electronically filed separately on the CM/ECF system in accordance with the deadlines set by the Court. If no briefing schedule has otherwise been set by the Court, motions *in limine* shall be filed no later than twenty-one (21) days before the Pretrial Order is to be filed and responses shall be filed no later than fourteen (14) days before the Pretrial Order is to be filed. Motions *in limine* and responses in opposition are limited to five (5) pages unless prior leave of Court is obtained.

The Court discourages the filing of “boilerplate” motions *in limine* or motions that address matters not in dispute. The parties are reminded that the Court’s Case Management Procedures require compliance with Local Rule 37.2 before filing any motions, including motions *in limine*. Accordingly, any motion *in limine* must be accompanied by a statement that the party has conferred with the opposing party and has determined that the matter upon which a ruling is sought is actually in dispute – that is, the opposing party actually intends to offer evidence that the movant seeks to exclude. If the meet-and-confer process results in agreement that certain matters are inadmissible, that agreement should be memorialized in a stipulation to be provided to the Court in the Pretrial Order (*see* paragraph 5 above) or at the final pretrial conference.

Please note that motions challenging the admissibility of expert testimony under *Daubert v. Merrell Lynch Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), are *not* deemed motions *in limine* and must be filed in accordance with the applicable schedule for such motions.

INSTRUCTIONS FOR COMPILING THE FINAL PRETRIAL ORDER

Plaintiff’s counsel has the responsibility to prepare the initial draft of the Pretrial Order and must provide a draft to defendant’s counsel no later than twenty-one (21) days before the date the Pretrial Order is due. Defendant’s counsel must respond in writing to plaintiff’s draft by no later than fourteen (14) days before the Pretrial Order is due, including any objections, changes, and additions to plaintiff’s draft, as well as defendant’s portions of the draft Pretrial Order (*e.g.*, defendant’s witness list, exhibit list, and objections to exhibits and deposition or other prior testimony listed by plaintiff). The parties must meet and confer by no later than seven (7) days before the Pretrial Order is due to discuss their respective drafts and to reach agreement to the extent possible. **These**

dates may be varied only by written agreement of the parties or by order of the Court.

Following the meet-and-confer process, it is the responsibility of plaintiff's counsel, with full cooperation from defendant's counsel, to assemble the Pretrial Order for submission. The Pretrial Order should be filed on the CM/ECF system with a cover page with the case caption and the title PROPOSED FINAL PRETRIAL ORDER. The cover document: (a) must recite that each of the foregoing categories of materials is included, (b) after that recitation, must state that "This Order will control the course of the trial and may not be amended except by consent of the parties, or by order of the Court to prevent manifest injustice," and (c) must include the electronic signatures of counsel for each of the parties and provide a space for the signature of the Court. The *final* Pretrial Order will not be filed on CM/ECF until it is approved and signed by the Court.

OTHER MATERIALS TO BE FILED BEFORE TRIAL

- **Proposed Findings and Conclusions of Law** - In a bench trial, proposed findings of fact and conclusions of law are not to be included in the proposed final Pretrial Order but are to be separately filed in accordance with the deadlines set by the Court.
- **Juror Questionnaire** - In a jury trial, to streamline the jury selection process, the Court will administer a written juror questionnaire to potential jurors in advance of *voir dire*. The Court's "Standard Confidential Questionnaire for Prospective Jurors in a Civil Trial" is available on the Court's website. Any objections or additions to the questionnaire shall be filed in accordance with the pretrial deadlines set by the Court.
- **Proposed Voir Dire and Jury Instructions** - In a jury trial, additional proposed *voir dire* questions and jury instructions are not to be included in the proposed final Pretrial Order, but are to be separately filed with courtesy copies delivered to chambers. The proposed *voir dire* and jury instructions are to be prepared and submitted in accordance with the deadlines set by the Court as follows:

Proposed Voir Dire - The Court's general *voir dire* questions can be obtained from the Court's website. Pursuant to the pretrial schedule set by the Court, the parties must file a joint document that includes: (a) each party's proposed additional *voir dire* questions, and (b) each party's objections, if any, to the *voir dire* questions proposed by other parties. Each side is limited to 4 additional proposed *voir dire* questions.

Proposed Jury Instructions - The parties shall employ the Federal Civil Jury Instructions of the Seventh Circuit when applicable. Absent an order of the Court

setting a different schedule, by no later than twenty-one (21) calendar days before trial, plaintiff's counsel must serve on defendant's counsel a set of proposed jury instructions. By no later than fourteen (14) calendar days before trial, defendant's counsel must serve on plaintiff's counsel a document setting forth: (a) which of plaintiff's proposed instructions are agreed, (b) which of plaintiff's proposed instructions are disputed (and the basis for any dispute), and (c) any modified or additional instructions proposed by defendant's counsel. By no later than ten (10) calendar days before trial, plaintiff's counsel and defendant's counsel must meet and confer to attempt to resolve any disagreements about instructions. By no later than seven (7) calendar days before trial, the parties must file a joint document setting forth all agreed and proposed jury instructions as follows:

- The Court uses standard preliminary instructions in all civil cases, which are available on the Court's website. The parties' joint document shall set forth any objections to the standard instructions, or any requests for different or additional preliminary instructions. The joint document must set forth all proposed preliminary instructions.
- The joint document must set forth all instructions that the parties propose to be given at the close of trial, arranged in the order that the parties propose they be given. The Court uses certain standard final instructions, which are available on the Court's website. Any objections to those standard instructions and any requests for variation to those instructions should be set forth in this portion of the submission.
- Each proposed instruction must be identified at the top of the page by number, and must indicate the proponent of the instruction and whether the instruction is agreed or disputed (e.g., "Agreed Plaintiff's Proposed Preliminary Instruction No. __"; "Defendant's Disputed Proposed Final Instruction No. __"). The bottom of each instruction must identify the legal authority supporting that instruction. If an instruction is disputed, the grounds for the objection (and any proposed modification or alternate instruction) must be concisely stated on the page immediately following the disputed instruction; on the next immediate page, the party proposing the instruction may state concisely the reasons supporting the instruction as proposed.

DAILY/EXPEDITED TRANSCRIPT AND REAL-TIME REPORTING

Any requests for daily or other expedited transcripts and real-time reporting must be made at least ten (10) business days prior to trial so that an appropriate court reporter can be assigned to the trial.

TRIAL TECHNOLOGY

It is the responsibility of the parties to learn the Court's electronic system and how to use it appropriately at trial *before* the first day of trial. The parties shall make an appointment with the AV Technology Specialist by calling (312) 435-6045 or by email request in order to learn how to use the exhibit system. The Court will control the publication of exhibits to the jury and therefore the parties must request the Court to publish an exhibit. More information regarding the Court's technology is available at:
<https://www.ilnd.uscourts.gov/Pages.aspx?page=CourtRoomTechnology>

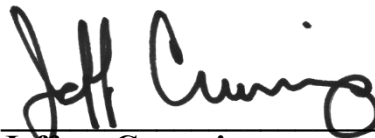
THE FINAL PRETRIAL CONFERENCE

A final pretrial conference will be held approximately two weeks before trial. At the pretrial conference, the Court will address pending motions *in limine*, objections to exhibits, and objections to designations of depositions or other prior testimony. At that time, the Court also will discuss with the parties trial procedures and scheduling. The purpose of this conference is to avoid surprises and simplify the trial. **Trial counsel, fully prepared and with authority to discuss all aspects of the case, must attend.** The Court also may require the plaintiff and defendant to attend the final pretrial conference in order to discuss settlement following the pretrial rulings.

COURTESY COPIES

Courtesy copies of trial-related materials are not required unless specifically ordered by the Court.

ENTER:



Jeffrey Cummings
United States District Court Judge

Dated: November 2, 2023