

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PLAINTIFF NAME,

Plaintiff(s),

Civil Action No.
XX-CV-XXXXX

v

HON. MARK A. GOLDSMITH

DEFENDANT NAME,

Defendant(s).

_____ /

CASE MANAGEMENT AND SCHEDULING ORDER

****ALL COURT EVENTS WILL TAKE PLACE AT
U.S. COURTHOUSE, 600 CHURCH STREET, FLINT, MICHIGAN
UNLESS OTHERWISE NOTIFIED****

<u>EVENT</u>	<u>DEADLINE</u>
Initial Disclosures under Fed. R. Civ. P. 26(a)(1)	DISCLOSURE
Lay Witness List	LAY
Exhibit List	EXHIBITS
Expert Witness List and Disclosure - Plaintiff	PL EXPERTS
Expert Witness List and Disclosure - Defendant	D EXPERT
Fact Discovery	FACT
Expert Discovery	EXPERT
Dispositive Motions & Motions to Limit/Exclude Expert Testimony	DISPOSITIVE
All Other Motions, Including Motions in Limine	ALL OTHER
Referral to Magistrate Judge	For early Settlement Conference, to be scheduled within two weeks of the close of Discovery
Settlement Conference	SETTLEMENT @ 1:30 p.m.
Joint Final Pretrial Order	
Final Pretrial Conference	FPTC @ 1:30 p.m.
Trial - Jury	TRIAL @ 8:30 a.m.
Estimated Length of Trial	

I. DISCOVERY

- A. Disclosure required by Fed. R. Civ. P. 26(a)(1)(A), (B) and (C) shall be served on opposing counsel, but not filed with the Court, on or before **DISCLOSURE**.
- B. Counsel shall serve upon opposing counsel, and file with the Court in the form required by Fed. R. Civ. P. 26(a)(3), a list of witnesses, separately identifying those whom a party expects to present at trial and those it may call if the need arises. Lay witness lists are due on or before **LAY**. Expert witness lists are due from each party on the respective due dates for expert witness disclosures.
- B1. [alternative to B]: Counsel shall serve upon opposing counsel, and file with the Court in the form required by Fed. R. Civ. P. 26(a)(3), an initial list of witnesses, separately identifying those whom a party expects to present at trial and those it may call if the need arises. Initial lay witness lists are due on or before _____. Initial expert witness lists are due on or before _____. The final lay witness lists are due on or before _____. The final expert witness lists are due on or before _____.**
- C. Counsel shall serve upon opposing counsel, and file with the Court, on or before **EXHIBITS** a list of exhibits, separately identifying those that it expects to offer at trial and those that it may offer if the need arises. By the same date, counsel shall exchange the exhibits reflected on the list.
- D. Plaintiff's counsel shall serve upon opposing counsel, but not file with the Court, on or before **PL EXPERTS**, the expert witness disclosures and any report required by Fed. R. Civ. P. 26(a)(2). Plaintiff's expert(s) must be available and prepared for deposition within 14 days after the expert witness disclosures and, report are served. Defendant's counsel shall serve upon opposing counsel, but not file with the Court, on or before **D EXPERT**, the expert witness disclosures and any report required by Fed. R. Civ. P. 26(a)(2). Defendant's expert(s) must be available and prepared for deposition within 14 days after Defendant's expert witness disclosures and report are served.
- E. Fact discovery shall be completed on or before **FACT**. Expert discovery shall be completed on or before **EXPERT**. Discovery must be served sufficiently in advance of the deadline so as to allow the opposing party sufficient time to respond under the Federal Rules of Civil Procedure prior to the discovery cutoff. The Court will not order discovery to take place after the discovery cutoff date. Discovery may be conducted after the discovery cutoff date by written stipulation only if the extension of time does not affect dates for any motion cutoff, settlement conference, submission of joint final pretrial order, final pretrial conference, or trial. If an extension of discovery would affect such dates, or if a party seeks adjournment of such dates for other reasons, then a written motion demonstrating good cause must be filed as soon as the need for an extension or adjournment becomes apparent.

- F. A proposed protective order containing provisions for the sealing of documents or other matter must contain the language set forth in paragraph 1 below; a motion to seal must comply with paragraph 2 below:
1. This order does not authorize the filing of any documents or other matter under seal. Documents or other matter may be sealed only if authorized by statute, rule, or order of the Court. A party seeking to file such items under seal shall file and serve a motion that sets forth (i) the authority for sealing; (ii) an identification and description of each item proposed for sealing; (iii) the reason that sealing each item is necessary; (iv) the reason that means other than sealing are not available or unsatisfactory to preserve the interest advanced by the movant in support of sealing; (v) a memorandum of legal authority supporting sealing. See Local Rule 5.3. A party shall not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted the motion required by this section.
 2. Whenever a motion to seal is filed, the movant shall comply with the requirements of Local Rule 5.3 set forth above and submit a proposed order which states the particular reason that sealing is required. The proposed order shall be submitted to the undersigned district judge or to the magistrate judge to whom the matter is referred, via the link located under the “Utilities” section of CM/ECF. If a motion to seal is granted, the documents to be filed under seal shall be filed electronically by the movant with an appropriate designation that the documents are to be held under seal.

II. MOTION PRACTICE

A. Due Dates

1. Dispositive motions and motions to limit or exclude expert testimony must be served and filed on or before **DISPOSITIVE**.
2. All other pretrial motions, including motions in limine and motions to purge depositions, must be served and filed on or before **ALL OTHER**, unless applicable legal authority requires that the motion be filed earlier.

B. Requirements Applicable to All Motions

1. The Court requires strict compliance with E.D. Mich. LR 7.1(a), which obligates moving parties to seek concurrence before filing any motion. A moving party must certify compliance with this obligation by setting forth in the first paragraph of every motion one of the following statements or one substantially similar:

- (a) The undersigned counsel certifies that counsel personally spoke to, or met with, opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel expressly denied concurrence.
- (b) The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief; opposing counsel thereafter expressly denied concurrence.
- (c) The undersigned counsel certifies that counsel communicated in writing with opposing counsel, explaining the nature of the relief to be sought by way of this motion and seeking concurrence in the relief, and three business days have lapsed without opposing counsel expressly agreeing to the relief, orally or in writing.
- (d) The undersigned counsel certifies that counsel made no attempt or a limited attempt to seek concurrence in the relief requested by this motion because of the following exceptional circumstances. [Set forth the exceptional circumstances with specificity.]

The above statements shall be modified appropriately where one or more parties is unrepresented. **The failure to certify compliance with this paragraph will result in the motion being struck.**

- 2. Answers to motions and supporting briefs must be filed according to the schedule set forth in E.D. Mich. LR 7.1(e). Note that Rule R5(e) of the Electronic Filing Policies and Procedures prohibits combining an answer to a motion with a counter-motion in the same filing. The Court does not issue a briefing schedule. The Court enforces the response and reply due dates set forth in E.D. Mich. LR 7.1(e) and Fed. R. Civ. P. 6, even when the motion hearing is set far in advance. **Untimely submissions may be stricken from the record and/or the right to oral argument may be forfeited, if oral argument is scheduled.**
- 3. Facts stated in the statement of facts must be supported with citations to the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits.
- 4. All materials submitted in support of, or opposing, a motion shall be contained in an appendix. The appendix shall also include the full text of any unpublished authority cited unless the source is available electronically on Westlaw. The appendix shall contain a table of contents/index. Each exhibit shall be tabbed with the relevant portion(s) highlighted. When submitting transcripts, counsel shall supply the Court

with cited page(s) together with sufficient accompanying pages to provide context. All citations must have page references.

5. **Courtesy paper copies of motions, responses, and briefs must be provided to chambers within one day of the filing of the document.**
6. The Court will issue a notice of hearing with the specific date and time. However, the Court may cancel a scheduled hearing if it appears after review of the briefs that the issues can be decided without a hearing.

C. Dispositive Motions

1. No party may file more than one motion for summary judgment without obtaining leave of Court. Challenges to several counts of a complaint shall be brought in a single motion.
2. **A brief in support of a Rule 56 motion must begin with a “Statement of Material Facts.” The Statement is to be included as the first section of the brief in support of the Rule 56 motion, but the first two pages of that section do not count against the page limits for briefs. The Statement must consist of numbered paragraphs describing the facts as to which the moving party contends there is no genuine issue and that entitle the moving party to judgment as a matter of law. Each paragraph must include specific references and citations to record evidence.**
3. **A brief in support of a response to a Rule 56 motion must begin with a “Counter-statement of Material Facts,” stating which facts are admitted and which are contested. The paragraph numbering must correspond to the moving party’s Statement of Material Facts. If any of the moving party’s proffered facts are contested, the non-moving party must explain the basis for the factual disagreement, referencing and citing record evidence. The non-moving party may raise additional material facts not implicated by the moving party’s Statement under the separate heading “Statement of Additional Material Facts.” The Statement of Additional Material Facts must consist of numbered paragraphs, and each paragraph must include specific references and citations to record evidence. The first two pages of the non-moving party’s “Counter-statement of Material Facts” and “Statement of Additional Material Facts” do not count against the page limits for briefs.**
4. If the non-moving party raises additional material facts not addressed in the moving party’s Statement, the moving party must begin its reply brief with a “Reply to Counter-statement of Material Facts,” stating which of the non-moving party’s additional facts are contested. The paragraph

numbering must correspond to the non-moving party's Statement of Additional Material Facts. If any of the non-moving party's proffered additional facts are contested, the moving party must explain the basis for the factual disagreement, referencing and citing record evidence. The pages of the moving party's "Reply to Counter-statement of Material Facts" do not count against the page limits for briefs.

5. Other than the parties' respective statements of undisputed facts, the parties are not required to set forth any additional recitation of facts but may do so if they wish. Any additional recitation of facts, such as in a typical factual background section, does count against the page limits.

III. CASE EVALUATION/FACILITATION

- A. If the parties elect to submit the case to case evaluation pursuant to E.D. Mich. LR 16.3, they must complete the Court's form order of reference to case evaluation, which is located in the "Form Orders" section of the Court's practice guidelines. The order must be submitted to chambers through the document utilities feature of CM/ECF. Case evaluation, including any accept or reject period, must be completed at least seven days prior to the Court's scheduled Final Pretrial Conference.
- B. If the parties elect to submit the case to facilitation, the parties must complete the Court's form order of reference to facilitation, which is located in the "Form Orders" section of the Court's practice guidelines. The order must be submitted to chambers through the document utilities feature of CM/ECF. Facilitation must be completed at least seven days prior to the Court's scheduled Final Pretrial Conference unless otherwise ordered by the Court.

IV. SETTLEMENT CONFERENCE

- A. The Court conducts a settlement conference in all civil jury cases. Non-jury cases will be referred to a different judicial officer for a settlement conference. The settlement conference shall take place on **SETTLEMENT at 1:30 p.m.** If the parties would like the Court to become involved in settlement discussions before this date, the parties shall jointly contact the Court's case manager and appropriate arrangements will be made to convene an earlier settlement conference.
- B. The following person(s) and entities must personally attend the settlement conference: (i) trial counsel for each party; (ii) all parties who are natural persons; (iii) any representative, with full and final settlement authority, on behalf of any party that is not a natural person; and (iv) a representative, with full and final settlement authority, on behalf of any insurance carrier that has undertaken the prosecution or defense of the case and has contractually reserved to itself the right to settle the action.

- C. The Court's mandatory personal attendance policy is not satisfied by trial counsel professing to have full and final settlement authority on behalf of his or her client or a party being available by telephone.

V. FINAL PRETRIAL CONFERENCE AND JOINT FINAL PRETRIAL ORDER

- A. The final pretrial conference shall take place on **FPTC at 1:30 p.m.** The proposed joint final pretrial order (JFPO) must be submitted to chambers in hard copy and through the document utilities feature of CM/ECF 14 days prior to the scheduled conference date.
- B. In lieu of E.D. Mich. LR 16.2(b), the Court imposes the following requirements:
1. The proposed JFPO shall not be a vehicle for adding claims or defenses.
 2. Counsel for all parties are directed to confer in person (face-to-face) sufficiently in advance of the scheduled conference date in order to reach any possible stipulations narrowing the issues of law and fact and to discuss non-stipulated issues. It shall be the duty of Plaintiff's counsel to initiate that meeting and the duty of opposing counsel to respond to Plaintiff's counsel and to offer full cooperation and assistance. If, after reasonable effort, any party cannot obtain the cooperation of opposing counsel, it shall be counsel's duty to communicate with the Court.
 3. Plaintiff's counsel is responsible for submitting the proposed JFPO to chambers after receiving proposed language from opposing counsel and reconciling the parties' respective positions.
 4. If there are any pending motions requiring determination in advance of trial, they should be called to the Court's attention not later than the date of submission of the proposed JFPO.
 5. The proposed JFPO must provide for the signature of the Court, which, when signed, will become the order of the Court.
 6. The proposed JFPO shall contain the following:
 - (a) Jurisdiction: The parties shall state the basis for Federal Court jurisdiction and whether jurisdiction is contested by any party.
 - (b) Trial: The parties shall state whether the case will be tried to a jury or to the Court and the estimated length of trial in terms of number of full days of trial.

- (c) Settlement: Counsel or a party without counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and stating the current status of negotiations and any plans for further discussions.
- (d) **Statement of Claims and Defenses: Each claim for affirmative relief (by Plaintiff or Counter-plaintiff) must be separately stated. As to each claim, the proposed JFPO must state: (i) the elements of the claim; (ii) every fact in support of the claim, both as to liability and damages, indicating whether the fact is contested or uncontested; (iii) the controlling or most appropriate legal authority in support of every element of the claim; (iv) the elements of every defense to the claim; (v) every fact in support of the defense, both as to liability and damages, indicating whether the fact is contested or uncontested; (vi) the controlling or most appropriate legal authority in support of every element of the defense; and (vii) each party's calculation of damages.**
- (e) Lay Witnesses: The parties shall set for the name, address, and telephone number of every lay witness whom each party will call or may call to testify, including rebuttal witnesses unless the rebuttal witnesses' testimony could not be reasonably anticipated before trial. Absent good cause, only those witnesses who are listed will be permitted to testify. Generic categories of witnesses are not permitted. **The subject matter of every witness' testimony shall be set forth with particularity, indicating the specific factual issues about which the witness will testify.**
- (f) Expert Witnesses: The parties shall set forth the name, address, telephone number, and area of expertise of every expert witness whom each party will call or may call to testify, including rebuttal expert witnesses unless the rebuttal witnesses' testimony could not be reasonably anticipated before trial. Absent good cause, only those witnesses who are listed will be permitted to testify. **In addition, the expert's opinions, grounds therefor, and underlying facts must be set forth with particularity. Incorporation by reference of a deposition transcript is not sufficient.**
- (g) All Witnesses: Except as permitted by the Court for good cause, a party may not list a witness unless the witness was included on a timely filed witness list required under I.B. of this Order. Only witnesses listed in the JFPO will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be

reasonably anticipated before trial, or except for good cause shown.

- (h) Depositions: All de bene esse depositions shall be listed. Any motions to purge depositions shall be filed by the deadline set forth for all other pretrial motions. Motions to purge filed after the deadline will not be considered unless the Court, for good cause, allows an untimely motion.
 - (i) Exhibits: The parties shall prepare a list of all exhibits that will or may be offered in evidence and identify those exhibits, if any, to which any objection will be made. The objecting party must set forth the specific basis for each objection. Failure to object will be deemed a waiver of the objection, unless the Court, for good cause, allows a late objection. Absent good cause, only those exhibits that have been listed in the proposed JFPO may be offered into evidence, except for rebuttal exhibits which could not be reasonably anticipated before trial. A copy of all exhibits shall be provided to the Court at least two business days before trial. Counsel are required to pre-mark all proposed exhibits using a numbering system ensuring that numbers used by one party are not used by another party. Counsel are required to keep track and maintain custody of all admitted exhibits during trial.
 - (j) Evidentiary Issues: The parties shall identify any evidentiary issues likely to arise at trial that are not the subject of a pending motion or identified in the preceding paragraph.
7. Other items to be submitted at the same time as the JFPO:
- (a) Jury Instructions/Verdict Form: Proposed jury instructions and verdict form must be jointly submitted to chambers with the proposed JFPO. The parties shall jointly prepare and submit a set of: (i) agreed upon jury instructions and (ii) disputed instructions. The parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view toward reaching agreement as to an acceptable form. The instructions shall be submitted in the following form: one instruction per page, ready for submission to the jury in paper form without any citation, electronically in Word format, so that the Court can make appropriate changes. In addition, for each disputed instruction, the parties shall submit a single, separate page containing the authority upon which each party relies.

- (b) Statement of Claims and Defenses to be Read to Jury: Counsel shall submit a statement of claims or defenses, no longer than two pages, suitable to be read to the jury during opening instructions.
 - (c) Proposed Findings of Fact and Conclusions of Law: In bench trials, each party must serve on all other parties and submit to chambers, at the time the proposed JFPO is submitted, proposed findings of fact (identifying the witnesses and exhibits in support of each finding) and conclusions of law (citing supporting authorities). Proposed findings of fact and conclusions of law shall be submitted electronically in Word format.
8. For failure to cooperate in preparing or submitting the joint final pretrial order or failure to comply strictly with the terms of the joint final pretrial order, the Court may dismiss claims, enter default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions.

VI. TRIAL

- A. Trial shall commence on **TRIAL at 8:30 a.m.**
- B. Voir dire questions must be served on all parties and submitted to chambers in hard copy at least two business days before trial.
- C. The Court will provide the customary opening instructions. Counsel are responsible for all other instructions, including those related to their specific claims or defenses in the case.
- D. Trial briefs are optional, but if furnished they must be submitted at least seven days before trial.
- E. Parties are encouraged to use electronic aids to display evidence at trial. However, a party intending to do so must disclose that intention to the Court and all other parties at or before the final pretrial conference. Parties are responsible for providing equipment for such purpose.
- F. If counsel wishes to publish an exhibit (or any portion thereof) to the jury, counsel must provide enough copies for every juror. Counsel must also submit a complete set of admitted exhibits to the Court before jury deliberations.
- G. It is the responsibility of the parties to ensure that the record is complete. At the conclusion of trial, all trial exhibits, briefs, proposed jury instructions, etc. are to be filed in accordance with Rule R18 of the Electronic Filing Policies and Procedures.

SO ORDERED.

Dated: August 20, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
UNITED STATES DISTRICT JUDGE

Revised: 8/20/13