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United States District Court
Central District of California

Keith Feder, M.D., Inc.,

 Plaintiffs,

 v.

Health Net Life Insurance Company et al.,

 Defendants,

Case: CV 23-07139-ODW(SKx)
**SCHEDULING AND CASE
MANAGEMENT ORDER
(BENCH TRIAL)**

**FOR CASES ASSIGNED TO JUDGE
OTIS D. WRIGHT, II**

This Order is to advise the parties and counsel of the schedule that will govern this case. **THE SCHEDULING CONFERENCE IS VACATED.** **SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES.** These dates and requirements are firm. The Court is unlikely to grant continuances unless the parties establish good cause through a concrete showing. Failure to complete discovery in a timely manner does not constitute good cause, nor does the fact that a settlement conference is pending. Each side is limited to five motions in limine unless the Court orders otherwise.

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1 **IT IS HEREBY ORDERED:**

2 1. To secure the just, speedy, and inexpensive determination of every action,
3 all counsel are ordered to familiarize themselves with and follow the Federal Rules of
4 Civil Procedure and the Local Rules of the Central District of California. This Court
5 follows these rules and they will govern this litigation unless otherwise provided in this
6 Order.

7 2. Because this Order in some respects modifies or adds to the Local Rules,
8 counsel are advised to read it carefully. Counsel are advised to pay particular attention
9 to the requirements of the Court with respect to the filing of motions for summary
10 judgment and documents to be submitted at the Final Pretrial Conference and Trial.

11 3. The attorney attending any proceeding before this court must be an
12 attorney who is thoroughly knowledgeable about the case, responsible for the conduct
13 of the litigation, and who has authority to enter into stipulations and to make admissions
14 regarding all matters that the participants reasonably anticipate may be discussed. Lead
15 counsel who will actually try the case must attend the Pretrial Conference. A party who
16 is not represented must attend all proceedings in person.

17 4. **Courtesy Copies:** The Court requires courtesy copies only for Motions
18 for Summary Judgment, motions necessitating a substantial evidentiary record, and
19 pretrial documents. **FOR THESE FILINGS ONLY**, the Court requires one mandatory
20 chambers copy of all related filed documents. USB flash drives should be submitted in
21 lieu of compact discs. Chambers copies shall be delivered to and placed in the Judge's
22 courtesy box, located outside of the Clerk's office on the 4th floor. Chambers copies of
23 under seal documents shall be placed together in a manilla envelope labeled "UNDER
24 SEAL." **Courtesy copies DO NOT need to be blue-backed. All courtesy copies of**
25 **pretrial documents (e.g. witness lists, exhibit lists, pretrial conference orders, jury**
26 **instructions, etc.) shall be three-hole punched and placed in a three-ring binder as**
27 **described below.**

1 5. **Discovery Cut-Off**: Percipient and expert discovery shall be completed
2 by the discovery cut-off dates specified on the last page of this Order. **THIS IS NOT**
3 **THE DATE BY WHICH DISCOVERY REQUESTS MUST BE SERVED; IT IS**
4 **THE DATE BY WHICH ALL DISCOVERY IS TO BE COMPLETED.**

5 Any motion challenging the adequacy of responses to discovery must be heard
6 sufficiently in advance of the discovery cut-off date to permit the responses to be
7 obtained before that date if the motion is granted. In an effort to provide further
8 guidance to the parties, the Court notes the following:

9 a. **Depositions**: All depositions shall be scheduled to commence
10 sufficiently in advance of the discovery cut-off date to permit their completion and to
11 permit the deposing party enough time to bring any discovery motions concerning the
12 deposition prior to the cut-off date.

13 b. **Written Discovery**: All interrogatories, requests for production of
14 documents, and requests for admissions shall be served sufficiently in advance of the
15 discovery cut-off date to permit the discovering party enough time to challenge (via
16 motion practice) responses deemed to be deficient.

17 c. **Discovery Motions**: Whenever possible, the Court expects the
18 parties to resolve discovery issues among themselves in a courteous, reasonable, and
19 professional manner. The Magistrate Judge assigned to this case will rule on discovery
20 motions. (The Magistrate Judge's initials follow the district judge's initials next to the
21 case number on the first page of this Order.) Counsel are directed to contact the
22 Magistrate Judge's courtroom deputy clerk (CRD) to schedule a hearing on any
23 discovery related matters. Counsel should **NOT** deliver courtesy copies of these
24 discovery documents to this Court.

25 d. **Expert Discovery**: If expert witnesses are to be called at trial, the
26 parties shall designate affirmative experts to be called at trial and provide reports
27 required by Federal Rule of Civil Procedure 26(a)(2)(B) **not later than eight weeks**
28 **prior** to the expert discovery cut-off date. Rebuttal expert witnesses shall be designated

1 and reports provided as required by Rule 26(a)(2)(B) **not later than five weeks prior**
2 to the expert discovery cut-off date. Failure to timely comply with deadlines may result
3 in the expert being excluded as a trial witness.

4 6. **Motions and Motion Cut-Off Date**

5 a. **General Provisions:** All law and motion matters, except for
6 motions in limine, must be set for hearing (not filing) by the motion cut-off date
7 specified on the last page of this Order. This Court hears motions in civil matters on
8 **Mondays at 1:30 p.m.** The parties must adhere to the requirements of the Local Rules.
9 *See* Local Rules 6-1 & 7-1 *et seq.* If any party does not oppose a motion, that party
10 shall submit a written statement that it does not oppose the motion in accordance with
11 Local Rule 7-9. The parties should note that failure to meet the time limits for filing an
12 opposition set forth in Local Rule 7-9 shall be deemed consent to the granting of the
13 motion. *See* Local Rule 7-12.

14 The title page of all motions must state the Pretrial Conference date and the Trial
15 date. **Counsel must comply with Local Rule 7-3**, which requires counsel to engage in
16 a pre-filing conference seven days in advance of filing any motion, “to discuss
17 thoroughly . . . the substance of the contemplated motion and any potential resolution.”
18 Counsel must comply with Local Rule 11-6, which requires counsel to include a
19 certificate that the document complies with the type-volume limitation of Local
20 Rule 11-6.1 and this Court.

21 Issues left undetermined after the passage of the motion cut-off date should be
22 listed as issues for trial in the Final Pre-Trial Conference Order. As an exception to the
23 above, motions in limine dealing with evidentiary matters may be heard pursuant to the
24 schedule specified on the last page of this Order.

25 b. **Meeting and Conferring:** The Parties are required to meet and
26 confer with opposing counsel prior to the filing of a motion or ex parte application under
27 Local Rule 7-3. The Court notes that it is the responsibility of both parties to meet and
28 confer in good faith on any disputed issues. The Court will impose sanctions, including

1 monetary sanctions and/or the summary denial of a motion, if *either* party fails to meet
2 and confer in good faith or fails to reasonably narrow the issues in dispute.

3 c. **Ex Parte Applications:** Ex parte practice is **discouraged**. See
4 *Mission Power Eng'g v Co. v. Continental Cas. Co.*, 883 F. Supp. 488 (C.D. Cal. 1995).
5 The Court will require strict adherence to proper ex parte procedures for any ex parte
6 application filed with the Court. *Id.* at 492; see also Judge Wright's Standing Order and
7 Local Rule 7-19. **Any opposition to an ex parte application must be filed within**
8 **24 hours**. Failure to submit a timely opposition constitutes consent to the granting of
9 the application. See Local Rule 7-12. No party may file a reply unless expressly
10 authorized by the Court. All ex parte applications will be decided on the papers and
11 without a hearing unless the Court orders otherwise.

12 d. **Applications and Stipulations to Extend Time:** Applications to
13 extend the time to file any required document or to continue any hearing, Pretrial
14 Conference, or Trial date must set forth the following:

- 15 (i) The existing due date or hearing date, as well as the discovery cut-
16 off date, the Pretrial Conference date, and the Trial date;
- 17 (ii) Specific, concrete reasons supporting good cause for granting the
18 extension; and
- 19 (iii) Whether there have been prior requests for extensions, and whether
20 these requests were granted or denied by the Court.

21 The parties are cautioned that the Court will not necessarily grant an extension or
22 continuance simply because all parties have stipulated to it.

23 e. **Joinder of Parties and Amendment of Pleadings:** The deadline
24 for joining parties and amending pleadings is set forth on the last page of this Order.
25 Any motions to join other parties or for leave to amend the pleadings shall be set for
26 hearing on or before this date. If any party moves to amend a pleading after this date,
27 they must address the propriety of amendment under *Johnson v. Mammoth Recreations,*
28 *Inc.*, 975 F.2d 604 (9th Cir. 1992).

1 In addition to the requirements of Local Rule 15-1, all motions to amend the
2 pleadings shall: (1) state the effect of the amendment; (2) be serially numbered to
3 differentiate the amendment from previous amendments; and (3) state the page, line
4 number(s), and wording of any proposed change or addition of material. The parties
5 shall deliver to Chambers a redlined version of the proposed amended pleading
6 indicating all additions and deletions of material. The failure to comply with the above
7 may result in denial of a motion to amend.

8 f. **Summary Judgment Motions:** Parties need not wait until the
9 motion cutoff to bring motions for summary judgment or partial summary judgment.
10 Early completion of non-expert discovery and filing of motions for summary judgment
11 may eliminate or reduce the need for expensive expert depositions that are normally
12 conducted in the last stages of discovery. **However, the Court requires that the party**
13 **moving for summary judgment will provide no less than thirty-five (35) days'**
14 **notice for such motions.** Because summary judgment motions are fact-dependent,
15 parties should prepare papers in a fashion that will assist the Court in absorbing the
16 mass of facts (e.g., generous use of tabs, tables of contents, headings, indices, etc.). **The**
17 **parties are to comply precisely with Local Rule 56-1 through 56-4.** The Court will
18 also require adherence to the following requirements:

19 (i) Statement of Uncontroverted Facts and Statement of Genuine Issues
20 of Material Fact

21 The movant's Separate Statement of Uncontroverted Facts is to be prepared in a
22 two column format. The left-hand column should set forth the allegedly undisputed
23 fact. The right-hand column should set forth the evidence that supports the factual
24 statement. The factual statements should be set forth in sequentially numbered
25 paragraphs. Each paragraph should contain a narrowly focused statement of fact. Each
26 numbered paragraph should address a single subject in as concise a manner as possible.

27 The opposing party's Statement of Genuine Issues of Material Fact must be in
28 two columns and track the movant's Separate Statement exactly as prepared. The

1 document must be in two columns; the left-hand column must restate the allegedly
2 undisputed fact, and the right-hand column must indicate either undisputed or disputed.
3 *See* Local Rule 56-2. The opposing party may dispute all or only a portion of the
4 statement, but if disputing only a portion, must clearly indicate what part is being
5 disputed. Where the opposing party is disputing the fact in whole or part, the opposing
6 party must, in the right-hand column, label and restate the moving party's evidence in
7 support of the fact, followed by the opposing party's evidence controverting the fact.
8 Where the opposing party is disputing the fact on the basis of an evidentiary objection,
9 the party must cite the evidence alleged to be objectionable and state the ground of the
10 objection and nothing more. **No argument should be set forth in this document.**

11 The opposing party may submit additional material facts that bear on or relate to
12 the issues raised by the movant, which shall follow the format described above for the
13 moving party's Separate Statement. These additional facts shall follow the movant's
14 facts, shall continue in sequentially numbered paragraphs (i.e., if movant's last
15 statement of fact was set forth in paragraph 30, then the first additional statement of fact
16 will be set forth in paragraph 31), and shall set forth in the right-hand column the
17 evidence that supports that statement.

18 The moving party, in its reply, shall respond to the additional facts in the same
19 manner and format that the opposing party is required to adhere to in responding to the
20 Statement of Uncontroverted Facts, as described above. Additional material facts left
21 unaddressed will be deemed undisputed. *See* Local Rule 56-4.

22 The Court is not obligated to look any further in the record for supporting
23 evidence other than what is actually and specifically referenced in the Statement of
24 Uncontroverted Facts, the Statement of Genuine Disputes of Material Fact, and the
25 Response to Statement of Genuine Disputes. *See* Local Rule 56-4.

26 **The following conduct in connection with a motion for summary judgment**
27 **shall be grounds for sanctions under Federal Rule of Civil Procedure 11:**
28 **(1) disputing a material fact without any reasonable basis for doing so;**

1 **(2) identifying additional facts in opposition to the motion without any reasonable**
2 **basis for believing that the additional facts will materially affect the outcome of**
3 **the motion.**

4 (ii) Supporting Evidence

5 No party should submit any evidence other than the specific items of evidence or
6 testimony necessary to support or controvert a proposed statement of undisputed fact.
7 Thus, for example, the entire transcripts of depositions and/or entire sets of
8 interrogatory responses should generally not be submitted in support of or in opposition
9 to a motion for summary judgment.

10 Evidence submitted in support of or in opposition to a motion for summary
11 judgment should be submitted either by way of stipulation or as exhibits to a declaration
12 sufficient to authenticate the proffered evidence, and should not be attached to the
13 memorandum of points and authorities. The Court will accept counsel's authentication
14 of deposition transcripts, written discovery responses, and the receipt of documents in
15 discovery if the fact that the document was in the opponent's possession is of
16 independent significance. Documentary evidence as to which there is no stipulation
17 regarding foundation must be accompanied by the testimony, either by declaration or
18 properly authenticated deposition transcript, of a witness who can establish its
19 authenticity.

20 **All evidence in support of or in opposition to a motion for summary**
21 **judgment, including declarations and exhibits to declarations, shall be separated**
22 **by a tab divider on the bottom of the page.** If evidence in support of or in opposition
23 to a motion for summary judgment exceeds twenty pages, the evidence must be in a
24 separately bound volume and include a Table of Contents. If the supporting evidence
25 exceeds fifty pages, the documents shall be placed in a Slant D-Ring binder with each
26 item of evidence separated by a tab divider on the right side. All documents contained
27 in the binder should be three-hole-punched. **Alternatively, parties may submit USB**
28 **flash drives with supporting evidence in portable document format (PDF) files.**

1 The PDF files must be named in accordance with each exhibit’s nomenclature (i.e.,
2 Ex. A, Ex. B, etc.). If a PDF file contains more than one exhibit, that PDF must include
3 a Table of Contents and each exhibit must be bookmarked with the exhibit
4 nomenclature.

5 (iii) Objections to Evidence

6 If a party disputes a fact based in whole or in part on an evidentiary objection,
7 the ground for the objection, as indicated above, should be stated in the Separate
8 Statement, but not argued in that document. **Evidentiary objections should be**
9 **addressed in a separate memorandum** to be filed with the opposition or reply brief
10 of the party. This memorandum should be organized **to track the paragraph numbers**
11 **of the Separate Statement in sequence**. It should identify the specific item of evidence
12 to which objection is made, the ground for the objection, and a very brief argument with
13 citation to authority as to why the objection is well taken. The following is an example
14 of the format contemplated by the Court:

15 Separate Statement Paragraph 1: Objection to the supporting deposition
16 transcript of Jane Smith at 60:1–10 on the grounds that the statement constitutes
17 inadmissible hearsay and no exception is applicable. To the extent it is offered to prove
18 her state of mind, it is irrelevant since her state of mind is not in issue. Fed. R. Evid. 801,
19 802.

20 **DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO**
21 **THE OPPONENT’S STATEMENTS OF UNDISPUTED FACT. THESE WILL**
22 **BE DISREGARDED AND OVERRULED.**

23 (iv) Memorandum of Points and Authorities

24 The movant’s memorandum of points and authorities should be in the usual form
25 required under Local Rule 7 and should contain a narrative statement of facts as to those
26 aspects of the case that are before the Court. All facts should be supported with citations
27 to the paragraph number in the Separate Statement that supports the factual assertion.

1 Unless the case involves some unusual twist, the motion need only contain a brief
2 statement of the Federal Rule of Civil Procedure 56 standard; the Court is familiar with
3 the Rule and with its interpretation under *Celotex* and its progeny. If at all possible, the
4 argument should be organized to focus on the pertinent elements of the claim(s) for
5 relief or defense(s) in issue, with the purpose of showing the existence or non-existence
6 of a genuine issue of material fact for trial on that element of the claim or defense.

7 Likewise, the opposition memorandum of points and authorities should be in the
8 usual form required by Local Rule 7. Where the opposition memorandum sets forth
9 facts, the memorandum should cite to paragraphs in the Separate Statement if they are
10 not in dispute, to the evidence that contravenes the fact where the fact is in dispute, or,
11 if the fact is contravened by an additional fact in the Statement of Genuine Issues of
12 Material Fact, the citation should be to such fact by paragraph number.

13 g. **Avoid Composite Motions**: Unless clearly justified under the
14 circumstances of the case, “motions to dismiss or in the alternative for summary
15 adjudication” are discouraged. These composite motions tend to blur the distinctions
16 between the two motions.

17 h. **Motions in Limine**: Before filing any motion in limine, counsel for
18 the parties shall confer pursuant to Local Rule 7-3 in a good faith effort to eliminate the
19 necessity for hearing the motion in limine or to eliminate as many of the disputes as
20 possible. It shall be the responsibility of counsel for the moving party to arrange for
21 this conference. The motion papers must include a declaration showing a good faith
22 meet and confer effort. The conference shall take place **in person** within 10 calendar
23 days of service upon opposing counsel of a letter requesting such a conference, but in
24 no event later than twenty-one days before the Pre-Trial Conference. The conference
25 may take place by video conference call of telephone **only if** both counsel are not
26 located in the same county in the Central District.

27 If counsel are unable to resolve their differences, they shall prepare a separate,
28 sequentially-numbered Motion in Limine for each issue in dispute which contains a

1 clear caption that identifies the moving party and the nature of the dispute (i.e.,
2 “Plaintiff’s Motion in Limine #1 to exclude the testimony of Defendant’s expert”).
3 **Neither party may file more than five (5) Motions in Limine absent leave of Court**
4 **upon a showing of good cause, and leave of Court will be granted sparingly.**
5 **Motions in Limine in excess of a party’s first five will be stricken.** Each Motion in
6 Limine shall contain a clear identification of the testimony, exhibits, or other specific
7 matters alleged to be inadmissible and/or prejudicial and a statement of the specific
8 prejudice that will be suffered by the moving party if the motion is not granted. The
9 identification of the matters in dispute shall be followed by the moving party’s
10 contentions and memorandum of points and authorities. The title page of the Motion
11 in Limine must state the Pretrial Conference date, hearing date for the Motions in
12 Limine, and the Trial date.

13 Motions in Limine made for the purpose of precluding the mention or display of
14 inadmissible and/or prejudicial matter in the presence of the jury shall be accompanied
15 by a declaration that includes the following: (1) a clear identification of the specific
16 matter alleged to be inadmissible and/or prejudicial; (2) a representation to the Court
17 that the subject of the motion in limine has been discussed with opposing counsel, and
18 that opposing counsel has either indicated that such matter will be mentioned or
19 displayed in the presence of the jury before it is admitted in evidence or that counsel
20 has refused to stipulate that such matter will not be mentioned or displayed in the
21 presence of the jury unless and until it is admitted in evidence; and (3) a statement of
22 the specific prejudice that will be suffered by the moving party if the motion in limine
23 is not granted.

24 **All evidence in support of or in opposition to a motion in limine, including**
25 **declarations and exhibits to declarations, shall be separated by a tab divider on**
26 **the bottom of the page.** If evidence in support of or in opposition to a motion in limine
27 exceeds twenty pages, the evidence must be in a separately bound volume and include
28 a Table of Contents. Though strongly discouraged, if by necessity the supporting

1 evidence exceeds fifty pages, the documents shall be placed in a Slant D-Ring binder
2 with each item of evidence separated by a tab divider on the right side. All documents
3 contained in the binder should be three-hole-punched. For items not conducive to paper
4 format, USC drives should be submitted in lieu of compact discs.

5 Unless otherwise ordered by the Court, motions in limine will be heard on the
6 date specified on the last page of this Order. The moving party shall file with the Court
7 and serve its Motion in Limine on the responding party on or before the date for filing
8 of motions in limine indicated in the Schedule of Trial and Pre-trial Dates. The
9 responding party shall then file with the Court and serve an opposition to the Motion in
10 Limine on the moving party on or before the date specified on the last page of this
11 Order. **Neither party's submissions with respect to a Motion in Limine shall exceed**
12 **eight (8) pages. Unless ordered otherwise, the Court will only consider the moving**
13 **papers and any opposition thereto; no replies are necessary or invited.**

14 i. **Motions for Class Certification**: All motions for class certification
15 must be filed according to Local Rule 23-3 and on or before the date specified on the
16 last page of this Order. The Court will rarely grant stipulations or applications to extend
17 that deadline. Specifically, the failure to complete class discovery before the deadline
18 does not constitute good cause to extend the deadline, unless the parties show specific
19 and concrete reasons why, despite their diligence, the failure to complete discovery was
20 **unavoidable**. The Court will consider extensions based on the ordering of issues (e.g.,
21 if the defendant seeks to file a dispositive motion before class certification) on a case-
22 by-case basis. Any stipulations or applications for relief must include a specific date
23 by which the plaintiff will move for class certification (the Court will not grant an
24 open-ended extension).

25 j. **Oral Argument**: The Court, in its discretion, may dispense with
26 oral argument on a motion. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. However, the
27 Court also encourages law firms to contribute to the professional development of new
28 attorneys by allowing them to present oral argument to the Court on motions. To that

1 end, if any party to a motion files a notice with the Court stating that an attorney with
2 **less than four years' experience** will present oral argument, the Court will hold a
3 hearing on that motion. This notice must be filed no later than **fourteen days** before
4 the hearing. The Court will take into account the attorney's inexperience when
5 considering their oral arguments.

6 7. **Final Pretrial Conferences and Local Rule 16 Filings**

7 Please read this portion carefully, as there are some differences between the
8 Court's requirements and the Local Rules.

9 **a. General Provisions**

10 The Final Pretrial Conference ("PTC") will be held on the date specified on the
11 last page of this Order, unless the Court expressly waived the PTC at the Scheduling
12 Conference. (In the rare cases where the Court waives a PTC, the parties must follow
13 Local Rule 16-10.) If adjustments in the Court's calendar to accommodate congestion
14 become necessary, the Court may re-schedule the PTC instead of the trial date.
15 Therefore, the parties should assume that if the PTC goes forward, the trial will go
16 forward without continuance, although some brief period of trailing may prove
17 necessary.

18 The lead trial attorney on behalf of each party shall attend both the PTC and all
19 meetings of the parties in preparation for the PTC, unless excused for good cause shown
20 in advance of the PTC.

21 A continuance of the PTC at the parties' request or by stipulation is highly
22 unlikely. **Specifically, failure to complete discovery is not a ground for**
23 **continuance**. In the unlikely event that the Court agrees to continue the PTC, the trial
24 date is likely to be delayed as a result. If a change to the trial date is necessitated or
25 likely because of the Court's calendar or otherwise, modifications of that date will be
26 discussed at the PTC.

27 At the PTC, the parties should be prepared to discuss means of streamlining the
28 trial, including, but not limited to the following: bifurcation; presentation of

1 foundational and non-critical testimony and direct testimony by deposition excerpts;
2 narrative summaries and/or stipulations as to the content of testimony; presentation of
3 testimony on direct examination by affidavit or by declaration subject to
4 cross-examination; and qualification of experts by admitted resumes. The Court will
5 also discuss settlement.

6 **b. Courtesy Copies**

7 The parties must submit courtesy copies of all PTC documents, to be prepared
8 and delivered to chambers as follows:

9 (i) **One copy** of all PTC documents (i.e., both plaintiff’s documents and
10 defendant’s documents) shall be delivered to the Court in **one**
11 **three-ring binder**;

12 (ii) Each document shall be separated by numerical side-tabs, and shall
13 be placed in the following order: (1) Proposed Pretrial Conference
14 Order; (2) Plaintiff’s Memorandum and Contentions of Facts and
15 Law; (3) Defendant’s Memorandum and Contentions of Facts and
16 Law; (4) Joint Witness List; (5) Joint Exhibit List and Stipulation;
17 (6) Plaintiff’s Proposed Findings of Fact and Conclusions of Law;
18 (7) Defendant’s Proposed Findings of Fact and Conclusions of Law;
19 (8) Joint Report re: Settlement; and (9) Other Pretrial documents;

20 (iii) The binder shall include a Table of Contents.

21 **c. Final Pretrial Conference Order (“PTCO”)**

22 The proposed PTCO shall be lodged seven calendar days before the PTC, unless
23 the Court specifically orders otherwise. Adherence to this time requirement is necessary
24 for in-chambers preparation of the matter. The form of the proposed PTCO shall
25 comply with **Appendix A to the Local Rules** and the following:

26 (i) Place in “**ALL CAPS AND BOLD**” the separately numbered
27 headings for each category in the PTCO (e.g., “**1. THE PARTIES**”
28 or “**7. CLAIMS AND DEFENSES OF THE PARTIES**”).

- 1 (ii) Include a Table of Contents at the beginning.
- 2 (iii) In specifying the surviving pleadings under section 1, state which
3 claims or counterclaims have been dismissed or abandoned, e.g.,
4 “Plaintiff’s second cause of action for breach of fiduciary duty has
5 been dismissed.” Also, in multiple party cases where not all claims
6 or counterclaims will be prosecuted against all remaining parties on
7 the opposing side, please specify to which party each claim or
8 counterclaim is directed.
- 9 (iv) In specifying the parties’ claims and defenses under section 7, each
10 party shall closely follow the examples set forth in Appendix A of
11 the Local Rules.
- 12 (v) In drafting the PTCO, **the Court expects that the parties will**
13 **attempt to agree on and set forth as many non-contested facts as**
14 **possible.** A carefully drafted and comprehensively stated
15 stipulation of facts will reduce the length of trial and increase the
16 Court’s understanding of the case. **It is unacceptable for the**
17 **parties to indicate in the Proposed Pretrial Conference Order**
18 **that they are not able to stipulate to any facts whatever.**
- 19 (vi) In drafting the factual issues in dispute for the PTCO, the parties
20 should attempt to state issues in ultimate fact form, not in the form
21 of evidentiary fact issues. The issues of fact should track the
22 elements of a claim or defense on which the Court will be required
23 to make findings.
- 24 (vii) Issues of law should state legal issues on which the Court will be
25 required to rule during the trial, and should not list ultimate fact
26 issues to be submitted to a trier of fact.
- 27 (viii) If expert witnesses are to be called at trial, each party must list and
28 identify its respective expert witnesses, both retained and non-

1 retained. Failure of a party to list and identify an expert witness in
2 the PTCO could result in a court order which precludes the party
3 from calling that expert witness at trial.

4 (ix) The parties shall submit only ONE proposed PTCO. **It is**
5 **unacceptable to submit multiple or competing proposed**
6 **PTCOs.** See Local Rule 16-7.

7 d. **Rule 16 Filings; Memoranda; Witness Lists; Exhibit Lists**

8 Unless otherwise indicated, the parties must comply fully with the requirements
9 of Local Rule 16. See the last page of this Order for applicable dates.

10 Memoranda and Contentions of Fact and Law

11 Memoranda of Contentions of Fact and Law shall be filed by the date listed in
12 this Scheduling Order, and shall comply with the requirements set forth in Local
13 Rule 16-4. The parties are strongly encouraged to submit one joint Memorandum where
14 possible.

15 Joint Witness List

16 Counsel shall prepare a **joint** list of their witnesses, including a brief summary
17 (two to three paragraphs) of each witness's expected testimony, **what makes the**
18 **testimony unique** from any other witness testimony, **an estimate of the length of time**
19 **needed for direct examination of each side's own witnesses and an estimate for the cross**
20 **examination of opposing witnesses, and whether the witness will testify by deposition**
21 **or in person.** The joint witness list shall be filed at the same time counsel lodge the
22 PTCO. If a party intends to offer deposition testimony into evidence at trial, the party
23 shall designate the relevant portions of the deposition testimony to be read at trial and
24 advise opposing counsel of same. Opposing counsel shall then designate any additional
25 portions of such deposition testimony which counsel intends to offer in evidence. **All**
26 **objections to any such designated deposition testimony shall be made in writing**
27 **and filed at the same time counsel lodge the PTCO** so that the Court may consider
28

1 whether ruling on the objections will facilitate trial or result in the disposition of
2 evidentiary matters that may assist continuing settlement negotiations.

3 If expert witnesses are to be called at trial, each party shall list and identify their
4 respective expert witnesses. Failure of a party to list and identify an expert witness may
5 preclude a party from calling that expert witness at trial. If expert witnesses are to be
6 called at trial, the parties shall exchange at the PTC short narrative statements of the
7 qualifications of the expert and the testimony expected to be elicited at trial. Previously
8 prepared and exchanged expert reports shall not substitute for the narrative statements
9 required.

10 **On the first day of trial, the parties must lodge with the Court three (3)**
11 **copies of the witness list**, which shall include the names of the witness in the
12 approximate order in which they may be called to testify.

13 Joint Exhibit List and Exhibit Stipulation

14 The parties shall prepare a joint Pretrial Exhibit Stipulation that shall contain each
15 party's numbered list of all trial exhibits, with objections, if any, to each exhibit
16 including the basis of the objection and the offering party's response. All exhibits to
17 which there is no objection shall be deemed admitted. The parties shall stipulate to the
18 authenticity of exhibits whenever possible, and the Pretrial Exhibit Stipulation shall
19 identify any exhibits for which authenticity has not been stipulated to and the specific
20 reasons for the party's failure to stipulate.

21 The Pretrial Exhibit Stipulation shall be substantially in the following form:
22

23 **Pretrial Exhibit Stipulation**

24 **Plaintiff(s)/Defendant(s)' Exhibits**

25 **Number** **Description** **If Objection, State Grounds** **Response to Objection**
26

27 The Pretrial Exhibit Stipulation shall be filed at the same time counsel lodge the
28 proposed PTCO. Failure to comply with this paragraph could be deemed to constitute

1 a waiver of all objections. However, **do not submit** blanket or boilerplate objections
2 to the opposing party's exhibits. These will be disregarded and overruled. **NOTE:**
3 Counsel are instructed not to bring excessive exhibits to trial, but only those exhibits
4 that are reasonably expected to actually be used.

5 All counsel are to meet not later than ten (10) days before trial and to stipulate so
6 far as is possible as to authenticity, foundation, waiver of the best evidence rule, and to
7 those exhibits which may be received into evidence at the start of trial. The exhibits to
8 be so received will be noted on the copies of the exhibit lists.

9 **On the first day of trial, the parties must lodge with the Court Clerk three**
10 **(3) copies of the of the final exhibit list.**

11 Proposed Findings of Fact and Conclusions of Law

12 Counsel for each party shall lodge and serve initial proposed findings of fact and
13 conclusions of law with the memorandum and contentions of fact and law. The parties
14 should follow Local Rule 52-3 for the format of the proposed findings.

15 Declarations of Witnesses in Lieu of Direct Testimony

16 Counsel may submit the direct testimony of their witnesses in writing in a
17 declaration executed under penalty of perjury. These declarations shall be in admissible
18 form with appropriate foundation established for the declarant's statements. Paragraphs
19 in each declaration shall be numbered consecutively to facilitate the identification of
20 paragraphs for evidentiary objections.

21 Counsel are to exchange and file these declarations with the Court at least **eleven**
22 calendar days before trial, unless otherwise ordered by the Court. **Seven** calendar days
23 before trial, counsel may file evidentiary objections to those declarations. Counsel shall
24 prepare a separate document for each declaration for which they have an evidentiary
25 objection, in which they shall quote the specific language from the declaration to which
26 they object, followed by the objection and any relevant argument. Counsel shall file
27 any reply or response to the objections **by noon on the fourth** calendar day before trial.
28 Courtesy copies of the declarations and evidentiary objections shall be deposited in the

1 Judge's courtesy box, located outside of the Clerk's office on the 4th floor on the date
2 due. The Court urges the parties to be judicious with their objections and any arguments
3 in support of or in opposition to those objections. **Do not submit blanket or**
4 **boilerplate objections to the opposing party's witness declarations. These will be**
5 **disregarded and overruled.**

6 At trial, the Court will rule on the evidentiary objections and, depending upon the
7 ruling, the declarations will be received in evidence, either in whole or in part, or
8 rejected. Counsel will then conduct the cross-examination and re-direct examination at
9 trial. Failure to comply with the literal terms of this Order will result in sanctions or the
10 Court may refuse to allow that witness to testify.

11 **e. First Day of Trial**

12 Trial Exhibits

13 Counsel must deliver two sets of exhibits to the Court Clerk (one for witnesses
14 and one for the Judge) on the morning of the first day of trial as follows:

- 15 (i) Judge's Copy: Counsel are to prepare the Judge's copy of the
16 exhibits by placing them in 3-ring binders. The holes are to be 3/8"
17 in diameter. The notebooks are to be tabbed down the right side
18 with numeric tabs separating each exhibit.
- 19 (ii) Witnesses' Copy: Counsel are to prepare the Witnesses' copy of the
20 exhibits by placing each exhibit in its own separate manilla folder.
21 Each manilla folder should have a tab on the right side with the
22 exhibit number written on it. The manilla folders should be put in a
23 box in numerical order, with the tabs facing upward. The exhibits
24 used in this folder should be the original exhibits, and should be
25 tagged with Court-approved tags. Court-approved exhibit tags can
26 be obtained from the Clerk's Office window on the 4th Floor.

27 The exhibits are to be numbered sequentially, with Plaintiff's exhibits numbered
28 1, 2, 3, etc. and Defendant's exhibits numbered 1000, 1001, 1002, etc. Exhibit

1 numbering must further comply with Local Rule 26-3.

2 Other Documents

3 The Court requires that the following be submitted to the Courtroom Deputy
4 Clerk on the first day of trial (which is **in addition to any other documents** referenced
5 above):

- 6 (i) Judge’s copy of exhibits (as described above).
- 7 (ii) Witnesses’ copy of exhibits (as described above).
- 8 (iii) Three (3) copies of the exhibit list.
- 9 (iv) Three (3) copies of the witness list. In addition to the information
10 otherwise required in the exhibit list, the witnesses shall be listed in
11 the approximate order in which they may be called to testify.
- 12 (v) The complete original transcript of any depositions to be used at
13 trial.

14 **Any items that have not been admitted into evidence and are left in the**
15 **courtroom overnight without prior approval will be discarded.**

16 Real-Time Reporting Requirement

17 Each party must file with the Court, at the same time counsel lodges the PTCO,
18 a document for the Court Reporter that contains proper names, unusual or scientific
19 terms, or any other foreign or uncommon words that are likely to be used by the parties
20 during the PTC and the Trial.

21 **8. Settlement**

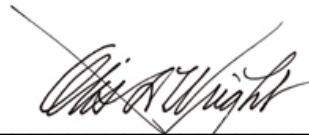
22 This Court will not conduct settlement conferences in non-jury cases unless
23 counsel for all parties and their respective clients agree either in writing or on the record.
24 The parties must file a Status Report regarding settlement at the time they lodge the
25 proposed PTCO. This Report shall not disclose the parties’ settlement positions, i.e.
26 the terms of any offers or demands. It shall merely describe the efforts made by the
27 parties to resolve the dispute informally, i.e. the occasions and dates when the parties
28 participated in mediation or settlement conferences. The Status Report shall also

1 include the name and phone number of the Settlement Officer who assisted the parties
2 with their settlement conference.

3 **Caveat: If counsel fail to file the required Pretrial documents or fail to**
4 **appear at the Pretrial Conference and such failure is not otherwise satisfactorily**
5 **explained to the Court: (a) the cause shall stand dismissed for failure to prosecute**
6 **if such failure occurs on the part of the plaintiff; (b) default judgment shall be**
7 **entered if such failure occurs on the part of the defendant; or (c) the Court may**
8 **take such action as it deems appropriate.**

9
10 **IT IS SO ORDERED.**

11
12
13 November 28, 2023



14 **OTIS D. WRIGHT, II**
15 **UNITED STATES DISTRICT JUDGE**

JUDGE OTIS D. WRIGHT, II
SUMMARY OF TRIAL AND PRE-TRIAL DATES
(BENCH TRIAL)

Event	Date
Bench Trial at 9:00 a.m. Estimated Length: XX days	Friday
Last Date to File Final Trial Exhibit Stipulation	1 week and 1 day before trial
Hearing on Motions in Limine at 1:30 p.m.	1 week and 4 days before trial
Pretrial Conference at 1:30 p.m.	3 weeks and 4 days before trial
Deadline to File Motions in Limine;	4 weeks and 2 days before trial
Deadline to File: <ul style="list-style-type: none"> • Proposed Pretrial Conference Order; • Memoranda and Contentions of Fact and Law; • Joint Witness List; • Joint Exhibit List and Exhibit Stipulation; • Proposed Findings of Fact and Conclusions of Law • Joint Report re: Settlement • Deposition Designations and Objections 	4 weeks and 4 days before trial
Last Date for Hearing Motions*	10 weeks and 4 days before trial
Last Date to Conduct Settlement Conference	11 weeks and 4 days before trial
Expert Discovery Cutoff	14 weeks and 4 days before trial
Percipient/Fact Discovery Cutoff	17 weeks and 4 days before trial
Last Date to Hear Motions to Amend Pleadings or Add Parties	12 weeks after Sch. Conference

Updated December 26, 2023

* This does not apply to motions for class certification, which **must** be filed in accordance with Local Rule 23-3 unless the Court expressly orders otherwise.