**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

|  |  |
| --- | --- |
| , Plaintiff(s), vs., Defendant(s). |  Case No. 00-CV/CR-000 |

**DRAFT FORM OF FINAL PRETRIAL ORDER – BENCH TRIAL**

This matter was before the Court on\_\_\_\_\_\_\_\_, at the final pretrial conference held before Nancy D. Freudenthal, United States District Judge, pursuant to Fed. R. Civ. P. 16. \_\_\_\_\_\_\_\_\_\_\_\_ appeared as counsel for Plaintiff(s) and \_\_\_\_\_\_\_\_\_\_\_\_\_ appeared as counsel for Defendant(s). The Court took the following action:

**A. JURISDICTION AND PARTIES**: This is an action for \_\_\_\_\_\_\_\_\_\_\_\_. The Court has jurisdiction under \_\_\_\_ U.S.C. § \_\_\_\_\_\_. Jurisdiction and venue are [disputed]/ [not disputed].

**B.** **GENERAL NATURE OF THE CLAIMS OF THE PARTIES:**

1. Plaintiff’s claims: Plaintiff seeks to recover [set out summary without detail].

2. Defendant’s claims: Defendant alleges [set out summary without detail].

3. All other parties’ claims: [if applicable, set out summary of third-party claims without detail].

**C.** **UNCONTROVERTED FACTS**: The following facts are established by admissions in the pleadings or by stipulation of counsel prior to the pretrial conference:

1. [State uncontroverted facts, including admitted jurisdictional facts and all other significant facts to which there is no genuine issue.]

**D. CONTESTED ISSUES OF FACT:** The contested issues of fact remaining for decisions are:

1. [State here].

**E. CONTESTED ISSUES OF LAW:** The contested issues of law in addition to those implicit in the foregoing issues of fact are:

1. [State here in question form (e.g., Whether . . .?]. [Or, alternatively: There are no special issues of law reserved other than those implicit in the foregoing issues of fact.]

**F. EXHIBITS:** The following exhibits have been identified and offered into evidence:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Plaintiff’s Exhibits** | **Objections** | **Category****A, B, C** | **Offered** | **(A)-(NA)\*** |
| 1 |  |  |  |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|   | **Defendant’s Exhibits** | **Objections** | **Category****A, B, C** | **Offered** | **(A)-(NA)\*** |
| A |  |  |  |  |  |

\* This column is for use by the trial judge at trial. Nothing should be entered in this column by the parties.

1. **The following categories are the objections to exhibits**:

A. **Category A**. These exhibits are admissible on motion by any party and will be available for use by any party at any stage of the proceedings without further proof or objection.

B. **Category B**. These exhibits are objected to on grounds other than foundation, identification, or authenticity. This category should be used for objections such as hearsay or relevance.

C. **Category C**. These exhibits are objected to on grounds of foundation, identification, or authenticity. This category should not be used for other grounds, such as hearsay or relevance.

2. The parties reserve the right to submit any exhibits listed by the opposing party, and any exhibits necessary for rebuttal.

3. The Court does not require any copies of exhibits. The originals of exhibits shall be provided to the Deputy Clerk as they are introduced and admitted at trial.

4. Five (5) business days prior to trial, each party will furnish the court reporter, Jan Davis at **jbd.davis@gmail.com**, an electronic list of names for all anticipated witnesses. Requests for Realtime, daily copy or other services shall be made at least five (5) business days prior to trial. Requests to test Realtime technology can be made at the same time or in requesting courtroom technology testing from the Courtroom Deputy.

**G. DEPOSITIONS:** Any party proposing to offer all or any portion of a deposition (whether discovery depositions or trial depositions) shall notify opposing counsel at least ten (10) business days before trial of the offers to be made (unless the necessity for using the deposition develops unavoidably thereafter). If objection is to be made, or if additional portions of a deposition are to be requested, opposing counsel will notify offering counsel at least five (5) business days before trial of such objections or requests. If any differences cannot be resolved, the Court must be notified in writing of such differences at least three (3) business days before trial.

If the need for a trial deposition arises unavoidably only after the 10-business day deadline above, the party proposing to take and offer the trial deposition shall immediately notify the other parties and the Court of the need for same. In such circumstances, the proponent party shall present the deposition only by the transcript and shall not be permitted to rely on presenting the deposition by videotape unless there is no opposition to playing the entire videotape.

**H. DISCOVERY:** Discovery has been completed. [Or] Discovery is to be completed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [Or] Further Discovery is limited to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [Or] The following provisions were made for discovery: \_\_\_\_\_\_\_\_\_ [state].

**I. WITNESSES:** The parties intend to call the following witnesses at trial:

* 1. Plaintiff will call or will have available at trial the following witnesses:
		1. **Witness 1:** [statement including name, substance of testimony, whether any party objects to the witness, and the nature and grounds of any objections].
	2. Plaintiff may call the following witnesses:
		1. **Witness 1:** [statement]
	3. Defendants will call or will have available at trial the following witnesses:
		1. **Witness 1:** [statement]
	4. Defendants may call the following witnesses:
		1. **Witness 1:** [statement]

 5. The parties reserve the right to call any witness listed by the opposing party, and any witnesses required for rebuttal. A party listing a will-call witness guarantees his or her presence at trial.

 **J. REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Plaintiff shall submit proposed Findings of Facts and Conclusions of Law at least ten (10) days prior to the commencement of trial. Defendant shall submit proposed findings of fact and conclusions of law five (5) days before trial. The parties’ Findings of Fact and Conclusions of Law shall be filed and emailed to Chambers,NMJudgeNDF@wyd.uscourts.gov**,** in Word.

1. **Plaintiff’s proposal shall include:**

 i. A narrative statement of all facts: [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. 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 the opposing parties will be able to admit or deny each separate sentence of the statement.]

 ii. A concise statement of Plaintiff’s legal contentions: [Plaintiff’s statement shall set forth all such contentions necessary to demonstrate the liability of Defendant. 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.]

**2. Defendant’s responsive proposal shall correspond to Plaintiff’s proposal:**

 i. Each factual statement shall admit or deny each separate sentence contained in the narrative statement of fact of Plaintiff, except in instance where a portion of a sentence can be admitted and a portion denied. In those instances, Defendant shall state clearly the portion admitted and the portion denied. Each separate sentence of Defendant’s response shall bear the same number as the corresponding sentence in Plaintiff’s narrative statements of facts. In a separate portion of Defendant’s narrative statement of facts, shall set forth all affirmative matter of a factual nature relied upon by Defendant, constructed in the same manner as Plaintiff’s narrative statement of facts.

 ii. Defendant’s separate statement of proposed conclusions of law shall respond directly to Plaintiff’s legal contentions and shall contain such additional contentions of Defendant as may be necessary to demonstrate the non-liability of Defendant. Defendant’s statement of legal contentions shall be constructed in the same manner as is provided for the similar statement of Plaintiff.

 \*\*\***The Court is using an electronic system for submission of exhibits. While this system was developed for jury trials, the court will also utilize this system for bench trials. The jury evidence recording system (JERS) allows the court to electronically review evidence (documentary, photo, or video/audio exhibits). Attorneys must provide their trial exhibits in electronic format on a USB drive, DVD, or CD to the office of the clerk of court no later than 8:30 a.m. five (5) days prior to the start of trial. Counsel is required to provide their exhibits in the following electronic formats:**

• Document and Photographs: .pdf, .jpg, .bmp, .tif, .gif

• Video and Audio Recordings: .avi, .wmv, .mpg, .mp3, .mp4, .wma, .wav

Regarding the file size of electronic evidence, individual files should not exceed 500MB. If possible, exhibits approaching or exceeding this size limit should be separated into multiple files. Parties may obtain additional information regarding the submission of electronic exhibits by contacting the clerk’s office at 307-433-2120.

Parties may request to test courtroom technology (and Realtime, when requested) or otherwise familiarize themselves and witnesses with the courtroom before trial by contacting the Courtroom Deputy, Abby Logan.

 **K. AMENDMENTS TO PLEADINGS**: There were no requests to amend the pleadings. (Or) The following order was made with regard to amendments to the pleadings: \_\_\_\_\_\_ [state].

**L. OTHER MATTERS:** The following additional matters to aid in the disposition of the action were determined.

1. Openings and Closings: Each side will be given \_\_ minutes for opening statements. Each side will be given \_\_ minutes for closing arguments.

2. Pending Motions:

**M. MODIFICATIONS/INTERPRETATION:** This pretrial order has been formulated after conference at which counsel for the respective parties have appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter 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. The pleadings will be deemed merged herein. In the event of ambiguity in any provision of this order, reference may be made to the record of this conference to the extent reported by stenographic notes, and to the pleadings.

**N. WITNESS STATEMENTS:** All timely-filed Witness Statements shall be used at trial in accordance with the Procedure for Presentation of Direct Testimony by Witness Statement, available on the Judge’s webpage and incorporated here:

1.Form of Statement: For each witness whose direct testimony will be presented in statement form, counsel shall prepare a statement setting forth in declaratory form all of the facts to which that witness will testify. The facts shall be stated in a narrative form, not by question and answer. The statement shall contain all of that witness’s direct testimony so that a person reading it will know all of the relevant facts to which the witness would testify. It shall not be sworn or notarized.

2. Use of Statements: At trial, each witness whose direct testimony has previously been submitted in statement form shall take the stand and under oath shall adopt the statement as true and correct. The party offering that witness shall then offer the statement as an exhibit, subject to appropriate objections by the opposing party on which the court will then rule.

3. Supplementing Statements: The witness will then be allowed to supplement his/her statement by any additional live direct testimony considered necessary by counsel.

4. Cross-Examination: Thereafter cross-examination shall proceed in the ordinary course, followed by redirect, etc.

5. Exceptions to the Use of Statements: Statements will be required of the parties and other witnesses under their control, such as employees, contractors, experts, associates, etc. They are not to be used for adverse parties or for persons whose attendance is compelled by subpoena.

6. Exhibits Not Attached to Witness Statements: Documents to be offered as exhibits shall not be attached to witness statements but shall be pre-marked and exchanged along with other proposed exhibits in the usual fashion.

**O. TRIAL SETTING:** The case is set for a bench trial on \_\_\_\_\_\_\_\_\_\_, starting at \_\_\_\_ a.m./p.m., in Cheyenne, Wyoming.

**P. MEMORANDUM**: Estimated length of trial is \_\_\_\_\_\_\_\_. Possibility of settlement of this case is considered [good] [fair] [poor].

Dated this\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

NANCY D. FREUDENTHAL

UNITED STATES SENIOR DISTRICT JUDGE

Approved as to form:

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

Counsel for Plaintiff(s)

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

Counsel for Defendant(s)