**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 – JURY 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.

**\*\*\*The Court has implemented a system for electronic submission of exhibits to the jury. The jury evidence recording system (JERS) allows jurors to review evidence (documentary, photo, or video/audio exhibits) on a large led screen during deliberations. 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.

**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**. **REQUESTS FOR INSTRUCTIONS AND JOINT STATEMENT:**

The parties shall file their proposed voir dire questions, jury instructions and special verdict form no later than seven (7) days prior to the commencement of trial. Jury instructions must include citations of authority. **The proposed voir dire questions, jury instructions, and special verdict forms shall also be emailed to Chambers,** [NMJudgeNDF@wyd.uscourts.gov](mailto:NMJudgeNDF@wyd.uscourts.gov).  **The instructions must be formatted as a single document for Word.** Counsel need submit only proposed substantive jury instructions; the Court has its own general instructions, which can be found on the Judge’s webpage.

**The parties must submit joint jury instructions and a joint proposed verdict form**. **Unless otherwise agreed upon by counsel, the court expects plaintiff’s counsel to take the lead in drafting the joint jury instructions.** In order to produce these joint instructions, the parties shall meet and confer sufficiently in advance of the required submission date. The instructions should be submitted in the order in which the parties wish to have the instructions read.

If the parties cannot reach an agreement on the instructions, then instructions shall be submitted in three (3) sets as follows:

1. The agreed upon instructions.

2. Those instructions propounded by Plaintiff, opposed by Defendant.

3. Those instructions propounded by Defendant, opposed by Plaintiff.

For disputed instructions, the party should note its objections to the proposed instruction. The parties should also submit differing versions of disputed instructions or a statement as to why the instruction should not be included.

At the same time as the filing of the jury instructions, the parties shall file a joint statement setting forth briefly and simply, in a noncontentious manner, the background of the case and the claims and defenses being asserted. The parties should make every effort to agree upon the language for the statement. To the extent the parties cannot agree, they should use the following format: Plaintiff contends . . . .; Defendant contends . . . .

**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. Submission of proposed voir dire: Proposed voir dire questions shall be submitted with each parties' jury instructions. Each side will be given fifteen (15) minutes to conduct their own voir dire of the jury panel following voir dire by the Court.

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

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

**O. JURY PANEL**: The Court shall impanel the jury in the following manner:

1. Fourteen (14) jurors shall be called to the jury box for voir dire examination;

2. If any juror is excused for cause, another juror will be called;

3. After the panel of fourteen (14) jurors is accepted for cause, counsel, starting with the Plaintiff, shall alternately write on a form provided by the Clerk of Court their peremptory challenges. Each side shall receive and exercise three (3) peremptory challenges and the remaining eight (8) jurors shall constitute the jury.

**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)