IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

|  |  |  |
| --- | --- | --- |
| , Plaintiff(s), vs., Defendant(s). |  |   Case No.  |

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

This matter having come before the Court on\_\_\_\_\_\_\_\_, at the final pretrial conference held before Kelly H. Rankin, United States Magistrate Judge, pursuant to Fed. R. Civ. P. 16; and \_\_\_\_\_\_\_\_\_\_\_\_, having appeared as counsel for Plaintiff(s) and \_\_\_\_\_\_\_\_\_\_\_\_\_, having appeared as counsel for Defendant(s); the following action was taken:

(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 (set out summary without detail)

2. Defendant(s) claims (set out summary without detail)

3. All other parties claims (same type of statement where third parties are involved).

(c) *UNCONTROVERTED FACTS*: The following facts are established by admissions in the pleadings or by stipulation of counsel prior to the pretrial conference: (Set out 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: (Set out).

(e) *CONTESTED ISSUES OF LAW*: The contested issues of law in addition to those implicit in the foregoing issues of fact are: (set out). (Or) There are no special issues of law reserved other than those implicit in the foregoing issues of fact.

(f) *EXHIBITS*:

There are identified and offered into evidence the following:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Plaintiff(s) Ex. No. | Description | File Name | Objections(cite Fed.R.Evid) | CategoryA, B, C | Offered | Admit/NotAdmitted(A)-(NA)\* |
|  |  | (e.g. \*\*\*\*\*.pdf) |  |  |  |  |
|  |  | (e.g. \*\*\*\*\*.jpeg) |  |  |  |  |
|  |  |  |  |  |  |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Defendant(s) Ex. No. | Description | File Name | Objections(cite Fed.R.Evid) | CategoryA, B, C | Offered | Admit/NotAdmitted(A)-(NA)\* |
|  |  | (e.g. \*\*\*\*\*.pdf) |  |  |  |  |
|  |  | (e.g. \*\*\*\*\*.jpeg) |  |  |  |  |
|  |  |  |  |  |  |  |

\* 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:

**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.

**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.

**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. Failure to indicate objections to foundation shall be deemed to be a waiver of objections as to foundation for listed exhibits. Any party establishing foundation over objection may move for attorney fees and costs necessary to establish the foundation.

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

3. Before trial, each party must supply the Court with two (2) hard copies and one (1) electronic copy of all exhibits to be used at trial. The hard copies of exhibits should be placed in a ringed binder with a copy of the exhibit list at the front and with each exhibit tabbed.

4. **Five (5) business days prior to trial**, each party will furnish the court reporter at jan\_davis@wyd.uscourts.gov, an electronic list of all exhibits to be offered, an electronic list of names for all anticipated witnesses, and an electronic keyword indices (if available) for all anticipated expert witnesses. Requests for realtime and daily copy or other services should be made at least seven (7) business days prior to trial.

(g) *JURY EVIDENCE RECORDING SYSTEM (JERS):* The Court is implementing a new system for electronic submission of exhibits to the Court. Attorneys should provide their trial exhibits in electronic format on a USB drive, DVD, or CD to the office of the Clerk of Court a minimum of **seven (7) days** prior to the start of trial.

 All electronic evidence should be provided using the following formats:

* Documents 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.

(h) *DEPOSITIONS*: Any party proposing to offer all or any portion of a deposition 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.

(i) *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 (Specify).

(j) *WITNESSES*: The parties intend to call the following witnesses at trial:

1. Plaintiff(s) will call, or will have available at trial the following witnesses: [list name, substance of testimony, whether any party objects to the witness, and the nature and grounds of any objections];

A.

B

Plaintiff(s) may call the following witnesses: [list name, substance of testimony, whether any party objects to the witness, and the nature and grounds of any objections];

A.

B.

2. Defendant(s) will call, or will have available at the trial the following witnesses: [list name, substance of testimony, whether any party objects to the witness, and the nature and grounds of any objections];

A.

B.

 Defendant(s) may call the following witnesses: [list name, substance of testimony, whether any party objects to the witness, and the nature and grounds of any objections];

A.

B.

3. 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.

(k) *REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW*: Plaintiff(s) shall submit proposed Findings of Facts and Conclusions of Law at least **ten (10) days** prior to the commencement of trial. Defendant(s) 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 submitted in writing and filed and also sent as an attachment via email directly to Judge Rankin’s Chambers, ***wyojudgekhr@wyd.uscourts.gov*,** formatted for Word. Plaintiffs proposal shall include (1) a narrative statement of all facts proposed to be provided and (2) a concise statement of plaintiffs legal contentions and the authorities supporting them:

 (A) Plaintiffs narrative statement of facts shall set forth in simple declarative sentences all the facts relied upon in support of Plaintiffs claim for relief. It shall be complete in itself and shall contain no recitation of any witness testimony or what any Defendant(s) 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.

 (B) Plaintiffs statement of legal contentions shall set forth all such contentions necessary to demonstrate the liability of Defendant(s). 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.

 Defendants responsive proposal shall correspond to Plaintiffs proposal:

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

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

(l) *AMENDMENTS TO PLEADINGS*: There were no requests to amend the pleadings. (Or) The following order was made with regard to amendments to the pleadings: (Set Out)

(m) *OTHER MATTERS*: The following additional matters to aid in the disposition of the action were determined:

 1. Pending Motions:

 2.

(n) *MODIFICATIONSINTERPRETATION*: 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.

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

(p) *WITNESS STATEMENTS*: The parties shall exchange and file witness statements **seven (7) days** **prior to the Final Pretrial Conference**. Witness Statements shall be provided for expert witnesses and witnesses whose testimony involves significant technical matters, but no significant issues of credibility. These statements are not to be used for adverse parties or for persons whose attendance is compelled by subpoena. These witness statements shall be used at trial in accordance with the following procedure.

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 witnesss 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.

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.

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

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

Exhibits. 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.

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

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

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

KELLY H. RANKIN

UNITED STATES MAGISTRATE JUDGE

Approved as to form:

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

Counsel for Plaintiff(s)

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

Counsel for Defendant(s)