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| [[1]](#footnote-1)  IN THE UNITED STATES DISTRICT COURT  FOR THE DISTRICT OF UTAH, CENTRAL DIVISION | |
| ,  Plaintiff,  vs.  ,  Defendant. | **PRETRIAL ORDER**  Case No. - CW  Judge Clark Waddoups |

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, but superseding local rule DUCiv R 16-1, the procedures and practices set forth in this Order must be followed at the trial of this matter, except for good cause shown. As discussed below, this Order requires the respective parties to submit a Pretrial Notice. If the Pretrial Notices show there is agreement among the parties as to the remaining issues and elements, those Notices shall control the course of action at trial. If there is disagreement as to the remaining issues or elements, the court will address the matter at the Final Pretrial Conference and issue an order that will control at trial.

1. **Dates**. A Final Pretrial Conference is scheduled for \_\_\_\_\_\_\_\_\_\_\_\_at \_\_\_\_\_\_ p.m. The \_\_\_\_\_\_\_-day jury trial shall commence on Friday, \_\_\_\_\_\_\_\_\_. The trial shall end on \_\_\_\_\_\_\_.
2. **Final Pretrial Conference**. At the Final Pretrial Conference, each party should be prepared to do the following: (1) identify and discuss the issues in the case; and (2) specify how much time they will need for the presentation of the evidence. The parties should be prepared to discuss the allocation of time available for the presentation of evidence between the parties assuming 5.25 hours each day. The court will use a chess clock to keep track of the time used by each side. Except for good cause shown, a party will not be allowed more time than the amount allocated at the final pre-trial conference.
3. **Trial Schedule.**

a. With the exception of the first and last day of trial, trial will be held each day from 8:30 a.m. until 2:30 p.m., with a 15-minute break at mid-morning and a 30-minute lunch break at noon. The parties should schedule witnesses to be available on this schedule. The court intends to have the jury enter the courtroom by 8:30 a.m. each day. The parties must, therefore, be in the courtroom by 8:15 a.m. each morning and inform the courtroom deputy if there are any preliminary matters to be discussed outside of the jury’s presence before 8:30 a.m. The parties should plan for lunch breaks that do not exceed 30 minutes.

b. On the first day of trial, the parties are required to appear at 8:30 a.m. to resolve any outstanding pretrial matters. Jury selection will begin at approximately 9:00 a.m. and the selected jury will be dismissed for the day as soon as they are sworn in. Preliminary instructions, opening statements and witness testimony will commence on the second day of trial. On the second and successive days of trial, the parties are required to appear at 8:15 a.m. so as to prevent delay in bringing the jury into the courtroom by 8:30 a.m. The parties should notify chambers each evening during trial by e-mail ([utdecf\_waddoups@utd.uscourts.gov](mailto:utdecf_waddoups@utd.uscourts.gov)) if there will be matters to address outside of the jurors’ presence at 8:15 a.m. the following day.

c. On the last day of trial, closing arguments must be concluded no later than 2:00 p.m. so the jury may begin deliberations at a reasonable time.

4. **Exchange of Witness Lists**. Each party must exchange with all opposing parties a list of witnesses the party will call or may call at trial. The plaintiff must provide the witness list to opposing parties no later than twenty-one (21) days before the Final Pretrial Conference. The defendants must provide the witness list to the plaintiff no later than fourteen (14) days prior to the Final Pretrial Conference. Proposed witness lists should also be provided to the court at these times. Except for good cause shown, witnesses who are not disclosed on the witness list will not be permitted to testify.

5. **Exchange of Exhibits.** The parties must exchange with all opposing parties copies of each exhibit to be used at trial. The plaintiff must provide such exhibits to opposing parties no later than twenty-one (21) days before the Final Pretrial Conference. The defendants must provide such exhibits to the plaintiff no later than fourteen (14) days prior to the Final Pretrial Conference. The parties should use reasonable effort to avoid duplication of any exhibit pre-marked by the opposing party. Exhibits to be exchanged shall include all evidence to be offered except the following: oral testimony to be offered at trial, sworn deposition testimony, documents to be used solely for impeachment, demonstrative exhibits created in connection with oral testimony at trial, and objects or other physical evidence. Photos of objects and other physical evidence, however, must be exchanged. Copies must be exchanged in electronic media, but may also include a hard copy. The parties will be required to report to the court at the Final Pretrial Conference whether this requirement has been completed. Proposed witness and exhibit lists should be filed on the docket and submitted to the court no later than 4 p.m. the day prior to the Final Pretrial Conference.

6. **Pre-marking Exhibits**. All exhibits to be used at trial must, at the time they are exchanged with opposing parties, be marked for identification numerically preceded by a designation of the party offering the exhibit, such as, “Plaintiff’s Exhibit \_\_\_\_\_” or “Defendants’ Exhibit \_\_\_\_\_.” The parties are to designate a range of numbers to be used by each side to avoid the same number being used for more than one exhibit. For example, if the plaintiff elected the numeric range of 1 to 100, the defendants would begin at the numeric range of 200. Alphabetic identification is not permitted.

7. **Electronic Copies of Exhibits for Trial**. All exhibits that have been pre-marked must be presented to the Courtroom Deputy in electronic media at the 8:30 a.m. hearing set for \_\_\_\_\_\_\_\_\_\_\_\_\_\_. The acceptable electronic formats are pdf, jpeg, wma or wmv. At that time, the parties shall also submit an electronic copy of the exhibit list (in Word or WordPerfect format) to the Courtroom Deputy to manage and track the exhibits offered and received at trial. If an exhibit is marked at trial that was not previously provided to the Courtroom Deputy, the new exhibit must be submitted electronically to the Courtroom Deputy on the same day it is marked at trial.

8. **Hard Copies of Exhibits for Trial**. The parties shall make four hard copies of all exhibits that have been pre-marked. At the 8:30 hearing on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, the parties shall give three of the hard copies to the Courtroom Deputy: one copy for the Judge, one copy for the law clerk, and a third copy for the witnesses. The remaining hard copy shall be used to compile the jury binder. When an exhibit has been admitted into evidence, a hard copy of that exhibit shall be handed to the Courtroom Deputy for placement in the jury binder. When an object or physical evidence has been admitted, along with its corresponding photo, the photo shall be handed to the Courtroom Deputy for placement in the jury binder.

9. **Reconciliation of Exhibits**. At the conclusion of *each* day of trial, counsel for each party shall meet with the Courtroom Deputy to confirm that all exhibits admitted that day have been entered into the jury binder. Counsel shall certify on the record that the exhibits entered into the jury binder that day are correct and complete copies of the exhibit.

10. **Pretrial Objections.** The requirement for objections to exhibits under Federal Rule of Civil Procedure 26(a)(3)(B) is superseded by this order. Any objection as to the authenticity of an exhibit, as defined by Federal Rule of Evidence 901, must be made in writing no later than seven (7) days after exhibits have been exchanged. The challenges to the authenticity of an exhibit will be addressed at the Final Pretrial Conference. All other objections to the admissibility of an exhibit are reserved until the exhibit is offered at trial.

11. **Exchange of Sworn Testimony.** A party intending to offer sworn testimony from a deposition or other proceeding must identify the testimony by line and page number in the transcript. Highlighting the portions of sworn testimony to be read will constitute adequate identification under this requirement. Sworn testimony to be presented by video media must be edited to display only the testimony designated.

The identified testimony must be provided to all opposing parties no later than 6:00 p.m. two days in advance of when the sworn testimony will be used. For example, a deposition to be used during trial on Monday must be provided to opposing counsel no later than 6:00 p.m. on Saturday evening. Any counter designation must be identified no later than 6:00 p.m. on the evening before the testimony is to be offered. Any objections must be raised and will be resolved by the court before the sworn testimony is read or displayed to the jury.

12. **Motions in Limine.** All *Daubert* motions and motions in limine must be filed on a schedule that allows all briefing to be completed no later than forty-five (45) days before trial.

13. **Pretrial Submissions.** The plaintiff, including any counter or cross claimant, shall submit a Pretrial Notice that states each cause of action the plaintiff is proceeding forth on at trial. The plaintiff also shall list all elements that must be proved for each cause of action, as well as the standard of proof for that claim. The plaintiff’s Pretrial Notice must be submitted to the court no later than two weeks before the Final Pretrial Conference.

The defendants, including any counter or cross-claim defendant, shall also submit a Pretrial Notice that states each defense to the causes of action listed by the plaintiff. Additionally, if a defendant believes that a cause of action has not been preserved or that plaintiff has articulated incorrect elements for that cause of action, the defendant must state its objection in the notice. The defendants’ Pretrial Notice must be submitted to the court no later than one week before the Final Pretrial Conference.

In addition, the following must be submitted to the court no later than 4:00 p.m. on the day before the Final Pretrial Conference. Each shall be filed on the docket and shall be provided to the chambers inbox (utdecf\_waddoups@utd.uscourts.gov) in either WordPerfect or MS Word.

a. Proposed Voir Dire questions. Proposed questions should be drafted in a form that can be answered in writing with a “yes” or “no.” A “yes” answer should indicate that there may be a need for additional follow up questions in chambers.

b. Proposed Preliminary Instructions for the jury

c. Proposed Final Jury Instructions

d. Proposed Verdict Form

The court’s stock voir dire and preliminary/general jury instructions are located at <http://www.utd.uscourts.gov/judge-clark-waddoups> and should be considered a starting point for counsel’s submissions, unless an explanation for the proposed departure is provided.

14. **Closing Argument.** Closing argument will follow the court’s final instructions to the jury. The plaintiff is cautioned that any closing rebuttal argument must be limited to addressing new issues raised during the defendants’ closing argument. The court will sustain an objection and instruct the jury to disregard rebuttal argument that could and should have been made in the plaintiff’s initial closing argument. The plaintiff’s closing argument must be structured to allow the defendants a fair opportunity to address the argument in their closing.

15. **Vouching.** The parties are cautioned that they should be certain that prior to giving closing argument they understand and avoid improper vouching. The court will sustain an objection to improper vouching and instruct the jury that the argument is improper.

16. **Podium**. Counsel is not permitted to stray more than arm’s length from the podium and should keep in mind that the acoustics of the courtroom are not well suited to engaging the jury or ensuring an accurately transcribed record unless counsel speaks into the microphone. During opening statements and closing arguments, counsel may angle the podium toward the jury box.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_.

BY THE COURT:

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

Clark Waddoups

United States District Judge

1. UPDATED 12/20/2018 [↑](#footnote-ref-1)