|  |
| --- |
| IN THE UNITED STATES DISTRICT COURTFOR THE DISTRICT OF UTAH  |
| [PLAINTIFF],  Plaintiff,  v.  [DEFENDANT], Defendant. | **TRIAL ORDER**Case No. [CASE NUMBER]Chief Judge Robert J. Shelby |

 The final pretrial conference in this matter is scheduled for **[DATE]** **at**

**[TIME]**. This case is set for a [###]-day bench trial to begin on **[DATE] at** **[TIME]**.

 Counsel are instructed as follows:

**1. Court-Imposed Deadlines.**

 The deadlines described in this Order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time or continuance is necessary **must** make an appropriate motion to the court. Unless otherwise stated, the parties’ submissions should be docketed with the court.

**2. Pretrial Order.**

 No less than **seven (7) days before the final pretrial conference**, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1(e) and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah. The parties should include in the pretrial order a list of witnesses and a brief statement of each witness’s anticipated testimony.

**3. Witness Lists and Deposition Designations.**

 Parties are instructed to exchange Rule 26(a)(3)(A)(i) and Rule 26(a)(3)(A)(ii) disclosures in a time and manner agreed upon by counsel, but in any event, not less than **21 days before the final pretrial conference**. Objections to these disclosures shall be served not less than **14 days before the final pretrial conference**.

**4. Exhibit Lists and Marking Exhibits**

 Counsel for all parties must exchange with all opposing parties copies of each exhibit to be used at trial. The plaintiff must provide opposing counsel such exhibitsno later than **twenty-one (21) days before the final pretrial conference**. The defendant must provide opposing counsel such exhibitsno later than **fourteen (14) days before the final pretrial conference**. Counsel should use reasonable effort to avoid duplication of any exhibit premarked 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. But counsel should exchange photos of objects and other physical evidence. Counsel should exchange copies in electronic media, but may also include a hard copy. Counsel must report to the court whether this requirement has been completed at the final pretrial conference.

 All exhibits to be used at trial must, at the time they are exchanged with opposing counsel, be marked for identification numerically. Plaintiffs should start numbering their exhibits at 1. Defendants should start their numbering at 1000. The exhibit identification should include a designation of the party offering the exhibit, such as “Plaintiff’s Exhibit \_\_\_” or “Defendant’s Exhibit \_\_\_.”

 All parties are required to prepare an exhibit list for the court’s use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Mary Jane McNamee, at 801-524-6970. The parties should email their exhibit lists to chambers no later than **three (3) days before trial begins**.

 All exhibits that have been premarked must be presented in court in both hard copy and electronic media. An electronic copy of each exhibit should be submitted to the courtroom deputy to manage and track the exhibits offered and received at trial. A hard copy of every exhibit offered in evidence shall be presented to the court at or before the time it is first used.

Pages of documentary exhibits must retain Bates stamps used when the documents were produced in discovery.

The requirement for objections to exhibits under Rule 26(a)(3)(B) of the Federal Rules of Civil Procedure is superseded by this Order. Any objection to the authenticity of an exhibit as defined by Rule 901 of the Federal Rules of Evidence must be made in writing no later than **seven (7) business days before the final pretrial conference**. The court will address these challenges at the final pretrial conference. All other objections to the admissibility of an exhibit are reserved until the exhibit is offered at trial.

**5. Motions in Limine**

 Motions in limine are permissive in a bench trial. Any motion in limine must be filed with the court at least **twenty-one (21) days before the final pretrial conference**, unless otherwise ordered by the court. The nonmoving party should file any opposition no later than **fourteen (14) days before the final pretrial conference**, and the moving party should submit a reply if they so choose at least **seven (7) days before the final pretrial conference**. Motions in limine should not exceed five pages absent leave of the court. Parties are required to file a motion in limine if a ruling on the issue presented may make it unnecessary for a witness to appear at trial to testify.

**6. Opening Argument**

 Opening argument is disfavored in bench trials and ordinarily not permitted.

**7. Closing Argument**

 The court will hear closing arguments at the close of evidence. Any closing rebuttal argument must be limited to addressing new issues raised during the defendant’s closing argument. The plaintiff’s closing argument must be structured to allow the defendant a fair opportunity to address the argument in its closing.

 In some instances, the court will consider hearing closing argument after receiving posttrial briefing from the parties.

**8. Findings of Fact and Conclusions of Law**

 The court’s requirement regarding proposed findings of fact and conclusions of law will vary based on the nature of each case. If the court orders the parties to submit proposed findings of fact and conclusions of law, the findings of fact must be supported by reference to the record. For that reason, the court urges the parties to make arrangements with the court reporter for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

 The proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and electronic Word format (email utdecf\_shelby@utd.uscourts.gov), and should also be docketed.

**9. Courtroom Conduct**

 In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

a) It is expected and required that counsel will be on time for each court session. In most cases, trial will be conducted from 9:00 a.m. until 2:30 p.m., with breaks. Trial engagements take precedence over any other business.

 b) Stand as court is opened, recessed, or adjourned.

 c) Stand when addressing, or being addressed by, the court.

 d) In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court. For example, the following objections would be proper: “Objection . . . hearsay” or “Objection . . . foundation.” The following objection would be improper unless the court had requested further argument: “Objection, there has been no foundation laid for the expert’s opinion and this testimony is inherently unreliable.”

 e) Counsel should address witnesses from the podium, but counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

f) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses.

 g) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

 h) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

 i) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Except as necessary to coordinate the presentation of witnesses or evidence, do not confer with or visit with anyone in the spectator section while court is in session.

 DATED this **[DATE]**,

 BY THE COURT:

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

 ROBERT J. SHELBY

 Chief United States District Judge