

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Revised May 19, 2021

_____ ,

Plaintiff(s),

vs.

No. CIV

_____ ,

Defendant(s).

PRETRIAL ORDER

This matter is before the Court pursuant to Fed. R. Civ. P. 16. The parties conferred and submit the following Pretrial Order.

I. APPEARANCES

Attorneys who will try the action:

For Plaintiff(s)

For Defendant(s)

For other parties

II. JURISDICTION AND RELIEF SOUGHT

A. Subject Matter Jurisdiction.

1. Was this action removed or transferred from another forum? ___ Yes ___ No.

If yes, was the action removed or transferred?

___ Removed ___ Transferred ___ Original forum

2. Is subject matter jurisdiction of this Court contested?

___ Uncontested ___ Contested _____ Party contesting

3. Asserted basis for jurisdiction.

___ Federal Question ___ Diversity ___ Other

Statutory Provision(s) Invoked: _____

B. Personal Jurisdiction and Venue.

1. Is personal jurisdiction contested?

___ Uncontested ___ Contested

Identify the party contesting personal jurisdiction and basis for objection:

2. Is venue contested?

___ Uncontested ___ Contested _____ Party contesting

C. Are the proper parties before the Court?

___ Uncontested ___ Contested

If contested, identify each missing party or improper party and the basis for the contention:

D. Identify the affirmative relief sought in this action.

1. Plaintiff seeks:
2. Defendant seeks:
3. Other party seeks:

III. BRIEF DESCRIPTION OF NATURE OF CLAIMS/DEFENSES.

A. Plaintiff's claims:

B. Defendant's defenses: *(A defendant claiming entitlement to qualified immunity must set forth with specificity the basis of the defense.)*

C. Claims or defenses of other party(s):

(Where counterclaims or cross-claims exist, also give brief description.)

IV. FACTUAL CONTENTIONS UNDERLYING CLAIMS/DEFENSES

A. Stipulated Factual Contentions.

The parties agree to the following facts listed separately below:

B. Contested Material Facts.

1. Plaintiff's Contentions:
2. Defendant's Contentions:
3. Contentions of Other Party(s):

V. APPLICABLE LAW

A. Do the parties agree which law controls the action?

_____ Yes _____ No

If yes, identify the applicable law. _____

If no, identify the dispute and set forth each party's position regarding the applicable law.

1. Plaintiff
2. Defendant
3. Other party

VI. CONTESTED ISSUES OF LAW

Identify the specific issues of law which are contested.

1. Plaintiff
2. Defendant
3. Other Party

VII. MOTIONS

A. Pending Motions (indicate the date filed):

1. Plaintiff
2. Defendant
3. Other party

B. Motions (other than motions in limine) which may be filed:

1. Plaintiff
2. Defendant
3. Other party

The briefing must be complete and a Notice of Completion of Briefing must be filed with the Court by _____.

C. Motions in limine which may be filed.

1. Plaintiff
2. Defendant
3. Other party

4. Motions in limine should be filed with the Court not later than 14 calendar days before trial; responses should be filed not later than 7 calendar days after such a motion is filed. Replies are optional, a Notice of Completion of Briefing is not required, and the Court may rule upon a motion in limine based upon the motion and response.

VIII. DISCOVERY

A. Has discovery been completed? _____ Yes _____ No

If no, discovery terminates on _____.

B. Are there any discovery matters of which the Court should be aware?

IX. ANTICIPATED WITNESSES

Each party is under a continuing duty to supplement this list and the description of anticipated testimony. This does not, however, apply to a rebuttal witness. Indicate if the witness will testify in person or by deposition and include a brief description of the anticipated testimony. If the testimony is by deposition, identify the deposition by page number and line number. A witness who has not been identified and whose testimony has not been disclosed may not testify at trial unless good cause is shown. Counsel should make every effort to avoid duplicative witness testimony.

A. Plaintiff's Witnesses:

1. Plaintiff will call or have available at trial the following witnesses:
2. Plaintiff may call the following witnesses:

B. Defendant's Witnesses:

1. Defendant will call or have available at trial the following witnesses:
2. Defendant may call the following witnesses:

X. TRIAL PREPARATION

A. Exhibits.

The parties must confer over all trial exhibits. This does not apply to rebuttal exhibits that cannot be anticipated before trial. The parties must file a “consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible” and a “consolidated exhibit list identifying all exhibits the parties have stipulated to be authentic, but to which there are other objections,” including the basis of the objections, no later than _____ calendar days before trial.

For those exhibits on which a stipulation could not be reached, the offering party must file a separate “contested exhibit list” no later than _____ calendar days before trial.

All exhibits must be marked **before** trial. Exhibits must be marked numerically, e.g., Plaintiff takes numbers 1-50 and Defendant takes numbers 51-100, and should not identify the party offering the exhibit. The identification number will remain the same whether the exhibit is admitted or not.

B. Witness Lists.

A party’s witness list must be filed and served on all parties by _____.

Indicate whether the witness is testifying by deposition or in person. Objections to use of deposition testimony, including the specific basis of the objection(s), are due within fourteen (14) calendar days of service of the witness list. The objecting party must highlight those portions of the requested deposition testimony to which the party objects. Plaintiff must use a yellow highlighter and Defendant must use a blue highlighter. The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing at least _____ calendar days before trial.

C. *Voir Dire.*

1. If allowed, do the parties wish to participate in *voir dire*?

Plaintiff _____ Yes _____ No

Defendant _____ Yes _____ No

Other Party _____ Yes _____ No

2. Each party must file and serve on all parties a pleading entitled “Proposed *Voir Dire* Questions.” The pleading must identify the specific areas about which the party wishes to inquire and must set forth proposed *voir dire* questions. This request must be filed at least _____ calendar days prior to jury selection.

3. Ordinarily the court will conduct *voir dire* and will ask the approved *voir dire* questions submitted by the parties. Counsel will then be permitted a brief period of time to ask follow-up questions.

D. Jury Instructions and Verdict.

1. **In General.** The parties must confer about proposed jury instructions and make a good faith effort to agree.

2. Submission of Proposed Instructions. The parties must submit one mutually approved set of jury instructions with citations, including pin cites, not later than _____ (normally, the date of the Pretrial Conference). For those **few** instructions the parties were unable to agree upon, each party must submit its own proposed instructions with citations, including pin cites, at the same time as submission of the mutually agreed instructions.

3. Form of Instructions.

- a. Submit sets of double-spaced instructions as follows: A set with citations and numbered sequentially, which will be filed. Include a proposed verdict form.
- b. Submit no more than one instruction to a page. Pattern instructions should be identified.
- c. All deviations from pattern instructions must be identified as “modified” in the citation and the modification must be highlighted in the body of the instruction. Be sure to include pertinent, i.e. Supreme Court, Tenth Circuit or New Mexico, authority. Use pin cites.
- d. Submit a cover sheet on all sets of instructions.

4. Deadlines for Submitting Instructions.

- a. Instructions shall be filed not later than _____ (normally, the date of the Pretrial Conference).
- b. Supplemental unanticipated jury instructions may be submitted at trial. Please include a cover sheet.

E. Statement of Case.

The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection. The statement must be filed with the Court _____ days before jury selection.

F. Submissions for Bench Trials.

1. The parties must submit one mutually approved set of proposed findings of fact and conclusions of law not later than ____ calendar days before trial. For those findings of fact and conclusions of law the parties were unable to agree upon, each party must submit its own proposed findings of fact and conclusions of law at the same time as submission of the mutually approved set. Parties should submit ultimate findings of fact, as opposed to evidentiary findings.

G. Trial Briefs.

1. The parties may submit optional trial briefs not to exceed fifteen pages, not later than ____ calendar days before trial.

XI. OTHER MATTERS

A. Settlement Possibilities.

1. The possibility of settlement in this case is considered:

_____ Poor _____ Fair _____ Good _____ Excellent _____ Unknown

2. Do the parties have a settlement conference set with the assigned Magistrate Judge?

_____ Yes _____ No If yes, when? _____

If a settlement conference has already been held, indicate approximate date.

Would a follow-up settlement conference be beneficial? _____ Yes _____ No

3. Does either party wish to explore any alternatives for dispute resolution such as mediation or a summary jury trial? If yes, please identify. _____ If no, explain why not. _____

B. Length of Trial and Pretrial Conference and Trial Settings.

1. This action is a _____ Bench trial _____ Jury Trial _____ Both
2. The case is set for a pretrial conference on _____.
3. The case is set for trial on _____. If there is no setting, the parties estimate they will be ready for trial by _____.
4. The parties shall make every effort to avoid cumulative exhibits, witnesses and questioning. The estimated length of trial is _____ day(s).

XII. EXCEPTIONS

XIII. MODIFICATIONS-INTERPRETATION

The Pretrial Order when entered will control the course of trial and may only be amended *sua sponte* by the Court or by consent of the parties and Court approval. The pleadings will be deemed merged herein.

The foregoing proposed Pretrial Order (prior to execution by the Court) is hereby approved this _____ day of _____, 20 _____.

Attorney for Plaintiff
Address: _____

Attorney for Defendant

Address: _____

Attorney for other parties (if any)
Address: _____

Dated: _____

UNITED STATES CIRCUIT JUDGE
Sitting by Designation