Revised 10/15

MEMORANDUM

TO: Counsel

FROM: Senior Judge John L. Kane

SUBJECT: Pretrial and Trial Procedures

This memorandum provides information on my general procedures and practices for civil cases, my requirements and expectations concerning the scheduling and discovery order, motions for summary judgment, the pretrial order and conference, the final trial preparation conference and trial. Please familiarize yourself with this memorandum and the current Local Rules of Practice[1] so that I can try your case efficiently and fairly.

My procedures and requirements depart from or add to those set forth in the Local Rules in some significant respects. For example, I encourage the use of a unified numbering system in discovery and require parties to estimate litigation costs as part of the Rule 16 Scheduling process. In addition, I seldom refer pretrial proceedings/discovery matters to magistrate judges as described in the Local Rules. As a result, I do not use the forms or procedures for scheduling and pretrial orders described in D.C.COLO.LCiv.R.16.2 and R.16.3. Form scheduling and pretrial orders for use in cases assigned to me are included in this Pretrial and Trial Procedures packet and are available through the District Court web site (www.cod.uscourts.gov) under the dropdown tab Judicial Officers→Senior Article III Judges→Hon. John L. Kane→and then a list of forms. Parties should be aware that I will not refer a case for proceedings before a magistrate judge pursuant to the consent jurisdiction provisions of 28 U.S.C. § 636(c)(1) and D.C.COLO.LCivR 72.2 even where the parties have unanimously consented to the referral.

I have special requirements concerning the form and content of summary judgment motions, protective orders and motions to seal, the schedule for filing *Daubert* motions, and the process and schedule for submitting proposed jury instructions. Counsel should be aware, for example, that proposed jury instructions tailored to the facts and circumstances of the case must be submitted to me **thirty days after the Pretrial Conference** and that they will be reviewed and finalized before the start of a jury trial.

In those instances in which I receive a case previously assigned to another judge of this court, I try to uphold the directions of the previous judge with respect to trial management and briefing schedules. Of course, with respect to rulings, the law of the case doctrine applies.

[1] The Local Rules of Practice for the District of Colorado are updated yearly. Please use the most recent version of those rules available on the court's website, www.cod.uscourts.gov or in the clerk's office.

Notwithstanding the foregoing, in all jury trials I will insist that counsel follow my directions with respect to proposed jury instructions.

I am sensitive to the anxieties of trial practice, so I hope to minimize the apprehension about local practices. If you have any questions about my practices, please call my judicial assistant, Deb Wilhelm, at (303) 844-6118. While Ms. Wilhelm may refer certain questions to my law clerks, counsel and their staff should not ask to speak directly to a law clerk unless specifically authorized to do so.

Thank you for your cooperation.

PRETRIAL AND TRIAL PROCEDURES
SENIOR JUDGE JOHN L. KANE

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I.

GENERAL PRACTICES AND PROCEDURES

I have a few customary ways of managing cases with which you should become familiar. They include the following:

A. Magistrate Judges. I generally refer cases to magistrate judges only for settlement and mediation purposes. With some exceptions, I do not refer discovery disputes, motions, or trials to other judicial officers.

B. Duty to confer in advance of motion. I require complete, good faith and, some may argue, expanded compliance with D.C.COLO.LCiv.R 7.1A. By this I mean that, before filing any motion, status report, statement or other substantive paper with the Court, other than a motion pursuant to Fed. R. Civ. P. 12 or a paper that only responds or replies to a paper previously filed by another party, the party filing the motion, status report, statement or other substantive paper shall have conferred or made reasonable, good faith efforts to confer with opposing counsel to resolve all disputed matters. Certification that a telephone call, e-mail or fax was directed to opposing counsel fewer than 24 hours before the paper was intended to be filed and "no response" was received is per se NOT a good faith effort**.** Papers filed in accordance with Rule 7.1A shall include a certification describing specifically counsel's efforts to comply with this requirement and the matters on which agreement was reached.

In complying with this requirement to confer, parties are encouraged to discuss and agree upon collateral matters such as proposed briefing schedules, requests for hearing, sub-issues to which they may be able to stipulate, and other matters that can be resolved through the extension of mutual courtesies or other demonstration of good will. *See Visor v. Sprint*, 1997 WL 796989 (D. Colo.)(Kane, J.) (available on District Court's web site, www.cod.uscourts.gov under Judicial Officers→Senior Article III Judges→Hon. John L. Kane→Visor Decision).

A response will be ordered for any motion to which an objection is made. If it appears upon review of the response that no good faith basis for the objection lies, I may sanction the party or its counsel for frivolity or vexatiously multiplying proceedings.

C. Page limits. It is not possible to predetermine the length of a good brief. Accordingly, I do not adhere to any prescribed page limits for briefs. Counsel are expected to exercise good judgment. Bear in mind, however, that the longer it takes to make a point, the less likely it is to be understood, and I will disregard string citations and repetitive arguments. I prefer the body of the text to be in 13-point type while footnotes should be no smaller than 12-point type. Furthermore, sarcastic, rude, or ungrammatical briefs are not only unconvincing but often counterproductive.

D. Et al. The use of "et al." to identify additional plaintiffs or defendants should be avoided in pleadings relating to dispositive motions and proposed orders. Common sense should prevail in applications of a general rule.

E. Oral argument. With the exception of discovery motions, I normally rule on motions without oral argument. If after reading the briefs I think oral argument would be of benefit, I will notify counsel and specify the point or points I want elucidated. If counsel wants oral argument, a specific request explaining why briefing alone is inadequate must be made in the response or reply brief. A general statement that oral argument is requested without provision of a discrete reason will be of no effect.

F. Discovery disputes. My general practice is to hear oral argument on discovery-related motions and to decide them shortly after briefing on the motion is completed. Reasonable attorney fees and other sanctions as appropriate may be assessed against the losing party as permitted by the Federal Rules of Civil Procedure and other relevant authority. I strongly discourage the parties from abuse of the discovery process.

G. Attorney fee awards. If I award attorney fees in connection with a motion or other action, the party receiving the award shall confer with the paying party in an attempt to reach agreement on the amount of the award. If the parties cannot reach agreement, the receiving party shall file an itemization of its time and services at its hourly rate with an affidavit from an independent source/expert attesting to the reasonableness of the time expended and hourly rate. If a hearing is held, the costs of the hearing and witnesses may be added to or subtracted from the award as the circumstances warrant.

H. Protective Orders and motions to seal. Absent good cause, the parties shall use my form Stipulation and Protective Order regarding the treatment of confidential information exchanged in discovery. Note that this form Order requires the parties and their counsel to obtain affidavits from recipients before disclosing confidential information to others and imposes additional requirements before confidential information may be filed under seal. *See* Judge Kane's form Stipulation and Protective Order, ¶¶ 4, 6-7, 11. These provisions or their equivalent must be included in any protective order submitted for my approval. Any motion to restrict or otherwise seal the contents of a filing must also comply with the requirements set forth in Paragraph 11 of my form Protective Order. The form Order is available on request from my chambers (303-844-6118) or through the District Court web site (www.cod.uscourts.gov under Judicial Officers→Senior Article III Judges→Hon. John L. Kane→Form Protective Order). Please be aware that maintaining filings under seal is disfavored except in limited circumstances.

I. Trial dates. There is danger of trial dates being preempted because of statutorily required priorities such as the Speedy Trial Act. Otherwise, trials and hearings are set on a fixed rather than trailing basis. Civil trial dates are not stacked; only one trial is set at a specific time. I generally set the trial date at the Pretrial Conference with the goal of commencing trial 60-120 days after this conference. The trial date may be set approximately 150 days after the Pretrial Conference if the parties intend to file *Daubert/Kumho Tire* motions requiring evidentiary hearing. Continuances or re-settings of trial dates will be considered only for compelling reasons.

J. Jury instructions. I place the utmost importance on the careful preparation of jury instructions and special verdict forms and their use throughout trial. For additional information, please see Section V of this memorandum.

K. Electronic courtroom technology. My courtroom is equipped with extensive technology to assist counsel in presenting the case. Courtroom technology includes: an evidence presentation system including monitors on counsel tables, the bench, witness stand and jury box; hookups for evidence presentation via laptop or hand-held computer; a video presenter for hard copy evidence (ELMO); DVD/VCR players; audio inputs and the capability for telephone conferencing and video conferencing. Utilization of this technology requires training. To arrange for training and for additional information regarding the available technology, please contact my courtroom deputy, Bernique Abiakam at 303-335-2097 at least **thirty days before the hearing or trial**. Further information is available on the Court's website at www.cod.uscourts.gov., under Courtroom Technology Manual for Attorneys.

L. Oaths. Kindly remember that the administration and taking of oaths are integral parts of the trial or evidentiary hearing. Your complete attention and that of everyone else in the courtroom is required. *See also infra* Section VII.1.g.

M. Transcripts. Transcripts of any court proceeding can be ordered directly from the court reporter or transcriptionist sitting at the particular hearing. If you do not remember the reporter's name, please consult the minutes of the proceedings before contacting chambers. You may contact Nick Richards, Court Operations Supervisor, at 303-335-2180. Copies of forms to be filed that relate to transcripts should be mailed to: Nick Richards, Clerk's Office, 901 19th Street, Room A-105, Denver, CO 80294.

N. Cell phones. Cell phones MUST be turned off while in the courtroom.

O. Settlements and partial settlements. The court should be notified promptly (the same or next business day) of any settlement or partial settlement specifying the claim or defense settled, the parties affected, and the claims defenses, and parties which remain in controversy, as well as the time and date previously set for hearing or trial.

P. Motions. If a motion is confessed or agreement made which moots it, the court should be notified promptly (the same or next business day).

Q. Deadlines. Unless otherwise ordered, all dates and deadlines stated in this memorandum and attached form orders should be determined according to the counting rules stated in Fed. R. Civ. P. 6.

R. Motions for Extensions of Time. Motions for extension of time require a showing of good cause, which must be established with particularity. Motions for extension of time should be filed **before noon at least one business day before the date the filing would otherwise be due**.

II.

INSTRUCTIONS CONCERNING PREPARATION FOR SCHEDULING AND DISCOVERY CONFERENCE IN CIVIL CASES

After I set a scheduling conference pursuant to Fed. R. Civ. P. 16 and D.C.COLO.LCivR 16.1 and 16.2, the parties shall prepare and submit a stipulated Scheduling and Discovery Order in accordance with these instructions. Unless otherwise ordered by the court, no formal discovery shall be undertaken by the parties until they meet and attempt to agree on the Scheduling and Discovery Order. *See* Fed. R. Civ. P. 26(f). This Rule 26(f) meeting shall be held at least **twenty-one days before the proposed Scheduling and Discovery Order is due to be tendered**. The parties shall exchange the disclosures required by Fed. R. Civ. P. 26(a)(1) at or within **fourteen days of their Rule 26(f) meeting**. The parties are not to file any disclosure statements with the court.

In accordance with the procedures set forth in Fed. R. Civ. P. 26 and 16 (and unless otherwise ordered), counsel shall tender their proposed stipulated Scheduling and Discovery Order for my approval no later than **five days before the Scheduling Conference** or as otherwise ordered. This order shall be in the form specified in Attachment A to this memorandum and shall include the signatures of counsel and pro se litigants. Please note that the form of stipulated Scheduling and Discovery Order set out in Attachment A in some instances requires more or different information than that required by D.C.Colo.LCivR 16.2. My form Scheduling and Discovery Order is also available in electronic form through the District Court web site (www.cod.uscourts.gov) under the Judicial Officers' tab.

As provided in the Local Rules, counsel and *pro se* parties should try in good faith to agree upon the matters addressed in the stipulated Scheduling and Discovery Order. If there are any areas of disagreement, the parties should make a brief statement in the proposed Scheduling and Discovery Order concerning the basis for disagreement. The parties should expect that I will discuss these and any other issues affecting the management of the case at the Scheduling Conference and that I may modify their proposed Order.

At the Scheduling Conference I want to learn what the case is about in counsels' own words, I want to learn what the costs of litigation will be and what steps the parties are taking to reduce costs. I want counsels' best estimate of when in the course of pretrial it makes sense to discuss settlement and whether a magistrate judge can assist in that endeavor.

Regarding expert witnesses, I want to learn if experts will be retained, the subject area of expertise and the proposed methodology to be used by each such expert if salient and the proposed filing dates and pretrial proceedings for any *Daubert/Kuhmo Tire* motions.

III.

SPECIAL INSTRUCTIONS CONCERNING MOTIONS FOR SUMMARY JUDGMENT

Upon receipt of a Motion for Summary Judgment filed in accordance with these special instructions, I usually issue an Order establishing a briefing schedule. I will generally adhere to the 21-14 briefing schedule set forth in D.C.COLO.LCiv.R 56.1 (*i.e.*, twenty-one days for a response, fourteen days for a reply), but may order a shorter or longer briefing schedule as I deem appropriate. In every case, unless otherwise ordered, the movant is permitted to file a reply brief and no further permission to file a reply need be sought.

All motions for summary judgment, responses and replies submitted to me must comply with the following requirements:

1. In a section of the brief styled "Statement of Undisputed Material Facts," the movant shall set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact that the movant believes is not in dispute and that supports movant's claim that movant is entitled to judgment as a matter of law.

2. Each separately numbered and paragraphed fact must be accompanied by a specific reference to evidence in the record that establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. A "specific reference" means:

(a) In the case of papers filed with the court, the title of the paper, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the paper is attached to the motion, the paragraph or page and line number;

(b) In the case of interrogatories or requests for admission (the pertinent parts of which must be filed with the motion), the number of the interrogatory or request;

(c) In the case of depositions or other documents bearing line numbers (pertinent parts of which must be filed with the motion), the specific page and line(s) establishing the fact;

(d) In the case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact;

(e) In the case of other evidence not numbered by paragraph, line, or page, a reference that will enable me to ascertain the fact without reviewing the entire document. The effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.

3. Only if the nature of the material fact does not permit a specific reference (*e.g.*, "The contract contains no provision for termination."), is a general reference sufficient.

4. Any party opposing the motion for summary judgment shall, in a section of the brief styled "Response to Statement of Undisputed Material Facts," admit or deny the asserted material facts set forth by the movant. The admissions or denials shall be made in paragraphs numbered to correspond to the movant's paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to evidence in the record supporting the denial. Formulaic explanations repeatedly incanted are distracting, unpersuasive and therefore discouraged. Stipulating to facts not reasonably in dispute strengthens credibility and is encouraged.

5. If the non-movant believes there are additional disputed material questions of fact not adequately addressed in its "Response to Statement of Undisputed Material Facts" (for example, disputed facts concerning an affirmative defense), the non-moving party shall, in a separate section of its brief styled "Statement of Additional Disputed Facts," set forth in simple, declarative sentences, separately numbered and paragraphed**,** each additional, material disputed fact that it believes undercuts the movant's claim of entitlement to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a specific reference to evidence in the record that establishes the fact or demonstrates it is disputed.

6. In its reply brief (if any) the movant shall:

(a) In a separate section styled "Reply Concerning Undisputed Material Facts," set forth any factual reply it cares to make to the non-movant's "Response to Statement of Undisputed Facts." This reply shall be made in separate paragraphs numbered according to the original motion and the opposing party's response and shall be supported by specific references to evidence of record.

(b) In a separate section styled "Response Concerning Additional Disputed Facts," admit or deny any of the asserted material facts set forth by the non-movant in its "Statement of Additional Disputed Material Facts." The admissions or denials shall be made in paragraphs numbered to correspond to the non-movant's paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to evidence in the record supporting the denial.

7. The sole purpose of these procedures is to establish facts and determine whether any of them are in dispute. Legal argument is not permitted here and should be reserved for separate portions of the briefs. If a party believes an undisputed fact is immaterial, for example, the fact should be admitted and the party's belief regarding its lack of materiality should be expressed in the portion of its brief devoted to legal argument. If, on the other hand, a party

believes the asserted fact is simply not supported by the referenced evidence, this factual argument should be included in the party's response to the allegedly undisputed fact.

8. Subject to the admonitions in Section I.C above, there is no page limit on summary judgment briefs.

9. No party should file a motion for summary judgment or a response thereto without first being completely familiar with the Supreme Court's trilogy of 1986 summary judgment decisions, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Matsushita Elec. Ind. Co. v. Zenith Radio*, 475 U.S. 574 (1986), and controlling Tenth Circuit authority. *See, e.g., Simms v. Oklahoma ex rel. Dep't of Mental Health & Substance Abuse Servs.*, 165 F.3d 1321, 1326 (10th Cir. 1999); *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670-72 (10th Cir. 1998). Counsel are also encouraged to read Professor Miller's compelling article on the *Anderson-Celotex-Matsushita* trilogy, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Clichés Eroding our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. Law. R. 982 (June 2003).

10. Failure to follow these procedures may result in an order striking the motion or brief.

IV.

INSTRUCTIONS FOR PRETRIAL CONFERENCE IN CIVIL CASES AND FOR THE SUBMISSION OF PRETRIAL ORDER

1. Schedule and Checklist for Pretrial Conference.

When the case is at issue, meaning discovery is completed and all motions that might dispose of the case have been decided, counsel will be contacted to set a date for the Pretrial Conference.

At least fourteen days before the scheduled date of the Pretrial Conference, counsel shall meet and confer to develop jointly the contents of the proposed Pretrial Order. It is the responsibility of plaintiff's counsel to both schedule meetings and e-file and then submit the proposed Pretrial Order. If the parties agree, plaintiff may delegate responsibility for filing and submission to defendant.

Unless otherwise ordered, the parties shall submit their proposed Pretrial Order for the Court's approval **no later than five days before the date of the Pretrial Conference**. The proposed Pretrial Order should be filed in the case as a pdf document and submitted electronically in editable (Word or WordPerfect) format directly to my chambers at Kane_chambers@cod.uscourts.gov.

2. Form of Proposed Pretrial Order.

Because I do not refer cases to magistrate judges for pretrial conferences, my form Pretrial Order differs from that referenced in D.C.COLO.LCiv.R 16.3 and set forth in Appendix G to the Local Rules. The preferred form for Pretrial Orders submitted to my chambers is set forth in Attachment B to this memorandum and is also available through the District Court web site www.cod.uscourts.gov under the dropdown tab Judicial Officers→Senior Article III Judges→Hon. John L. Kane→Pretrial Order.

Also note:

a. *Daubert/Kumho Tire* motions and other motions in limine. My form Pretrial Order requires the parties to identify any motion they anticipate filing that will challenge the admissibility of any expert testimony based on *Daubert*, *Kumho Tire* and their progeny. The form Order further provides that any *Daubert/Kumho Tire* motion so identified must be filed **no later than thirty days after the Pretrial Conference**. Any *Daubert/Kumho Tire* motion not specifically identified in the Pretrial Order and filed by this date is deemed waived unless otherwise ordered.

The Pretrial Order requires all other motions in limine, including objections to exhibits and deposition designations, be filed **no later than thirty days before the Final Trial Preparation Conference**, which is generally set two or three weeks before trial. This schedule is necessary to facilitate my practice of resolving all such evidentiary issues before trial begins.

b. Voluminous evidence. For trial, parties shall either: (1) redact voluminous evidence to reflect only the relevant portions thereof and any portions necessary to provide context; or (2) consistent with the requirements of Rule 1006 of the Federal Rules of Evidence, prepare and offer charts, summaries, or calculations to communicate the contents of voluminous evidence to the court and jury. Although a complete original or copy of the evidence on which a redacted exhibit or Rule 1006 chart, summary or calculation is based need not be offered and admitted into evidence, such underlying evidence must itself be admissible and available to the parties for examination or copying and to the court for production if so ordered. Note that I apply the Sixth Circuit's approach to the admissibility of charts and summaries discussed in *U.S. v. Bray*, 139 F3d 1104, 1112 (6th Cir. 1998).

The parties shall include any redacted evidence or Rule 1006 chart, summary or calculation they intend to use at trial in the list of exhibits set forth in the Pretrial Order and in the exhibit copies exchanged following the Pretrial Conference. The voluminous evidence on which such redacted, summary, chart, or calculation exhibit is based shall be identified in an appendix to the exhibit list and such underlying evidence shall be made available to the other parties at the time the parties exchange exhibits.

3. Attendance at Pretrial Conference.

As required by Fed.R.Civ.P. 16(c), at least one of the attorneys who will conduct the trial for each of the parties, as well as any unrepresented parties, must attend the Pretrial Conference.

4. Enforceability of Pretrial Orders.

I know that some lawyers and judges pay scant attention to pretrial orders. I, on the other hand, consider them of utmost importance. Please consider the Federal Rules of Civil Procedure as if they are sitting on a three legged stool consisting of 1) Notice Pleadings; 2) Liberal Discovery, and 3) the Pretrial Order. Without all three, the system collapses.

V.

INSTRUCTIONS CONCERNING PREPARATION OF JURY INSTRUCTIONS

Proposed Jury Instructions

After the Pretrial Conference the parties to a jury trial shall have thirty days in which to develop and submit a package of proposed jury instructions and special forms of verdict. The parties shall meet or otherwise exchange their proposed jury instructions and verdict forms at least **ten days before this due date**. Just as with the filing of the proposed Pretrial Order, the plaintiff is responsible for both ECF filing and also submitting to chambers in editable format the parties' proposed jury instructions and forms of verdict, including any objections to and responses in support of disputed instructions in a single, unified document. Again, with consent, this responsibility may be delegated to the defendant. More specific directions concerning the format and content of proposed jury instructions in cases before me, along with standard and sample instructions, will be sent to counsel in jury trials concurrent with the setting of the Pretrial Conference.

The parties' preparation of thorough, thoughtful and sensible jury instructions is of paramount importance to me. I require the parties to prepare and submit their proposed instructions well in advance of the trial so they can devote the time necessary for this crucial task before trial pressures intervene. Starting the jury instruction process early allows the instructions to be finalized before trial so that I may, as is my practice, instruct the jury in full before opening argument and again as appropriate during and at the end of trial.[2] This practice allows counsel to refer to the instructions in their opening arguments and presentation of testimony and exhibits. The special verdict form will be cross-referenced to the instructions and provides a made-to-order outline for closing arguments. In my experience, the repeated use of the instructions results in more efficient trials and better informed decision-making by the jury.

[2] If events at trial require modifications to the original instructions, I will instruct the jury to this effect during and at the end of trial.

I will not accept proposed jury instructions that have been copied from form books without thought or tailoring to the facts and circumstances of the particular case. Plain language is to be used wherever possible rather than legal or technical jargon. The jury instructions must provide the jury with clear direction on the issues presented for their decision. Towards this end, I typically devote substantial time to reviewing and refining proposed jury instructions, and I expect no less effort from counsel. Jury instructions will be argued, revised and finalized at the Final Trial Preparation Conference. In lengthy or complex cases, jury instructions may be the subject of a second or even third "Final" Trial Preparation Conference.

VI.

INSTRUCTIONS CONCERNING PREPARATION FOR FINAL TRIAL PREPARATION CONFERENCE

I generally hold a Final Trial Preparation Conference two to three weeks before trial is set to commence. Lead counsel for each party and any unrepresented party must attend this conference unless excused in advance. The Pretrial Order should be reviewed by counsel before this final conference, because it will control the course of the trial. If amendments to the Pretrial Order are required "to prevent manifest injustice," those amendments can be considered at this conference. Any pending motions in limine and other evidentiary matters will also ordinarily be heard, if necessary, at the conference, and the parties proposed jury instructions will be reviewed and the record of any objections made. The Final Trial Preparation Conference is also counsel's opportunity to invite the court's attention to any other problems that need to be resolved before trial commences or that may arise during the course of the trial.

If trial is to be to a jury, counsel will be given an opportunity at the Final Trial Preparation Conference to argue any differences concerning jury instructions and verdict forms. I will make rulings at the conference and may instruct the parties to make necessary revisions and resubmit the instructions and verdict forms before trial. It is the parties' responsibility to make necessary corrections/revisions of jury instructions unless I state otherwise. The Final Trial Preparation Conference may be continued for a second or additional day(s) in order to finalize jury instructions or address other matters.

Irrespective of whether a trial is to be to a jury or to the court, the following must be filed or submitted in advance of the Final Trial Preparation Conference by the deadline stated unless otherwise ordered by the court. These deadlines are designed to ensure that all motions in limine and objections to exhibits and designated deposition testimony will be fully briefed, argued if necessary, and decided before trial begins:

No later than the deadline stated in the Pretrial Order (generally **thirty days after the Pretrial Conference**):

1. Any motions challenging the admissibility of any expert witness testimony based on *Daubert, Kumho Tire* and their progeny. *See supra* Section IV.2.

2. In cases set for jury trial, a unified set of stipulated and proposed jury instructions, in numeric order, with objections and legal authority incorporated after each proposed instruction. See Section V and my specific directions concerning format and content of jury instructions, sent concurrently with the pretrial conference setting.

3. Motions in limine, including objections to exhibits and to designated deposition testimony (but not including *Daubert/Kumho Tire* motions, which are subject to a different filing and briefing schedule). The parties should be prepared to argue any pending motion in limine or other evidentiary objection at the Final Trial Preparation Conference.

No later than **five days** before the Final Trial Preparation Conference:

1. Any stipulated or proposed amendments to the Pretrial Order and exhibit lists. For exhibit lists, use the form set forth in Attachment C.

2. The court's copies of:

   a. All exhibits, including any redacted or Rule 1006 exhibits (*see supra* Section IV.2.b.); and

   b. Any designated deposition testimony.

   Note: Copies of all exhibits and designations of deposition testimony should already have been provided to opposing counsel pursuant to the terms of my standard Pretrial Order.

3. Final witness lists. List separately:

   a. Witnesses to be called by your party in its case in chief. Set forth the best estimate of the time required for that witness for direct examination and a brief description of the nature of the testimony of the witness. This witness list is counsel's representation, upon which opposing counsel may rely, that the witnesses listed will be present and available for testimony at trial. If, upon receipt of the status reports from opposing counsel, names of certain witnesses are not listed, counsel may file an addendum. Counsel filing the addendum must have listed witnesses present for trial.

b. Witnesses whose testimony is to be presented by way of deposition, together with a designation of the portions of the deposition to be used. Note: Unless otherwise ordered, this designation must be consistent with the deposition designations made in compliance with the Pretrial Order. *See* Section 6 and accompanying text in form Pretrial Order (Attachment B).

c. Upon motion, witnesses will be sequestered until a particular witness's testimony is complete. Each party may retain one advisory witness throughout the trial.

4. Provide citations to any case law counsel believes the court should review before trial. Limit the citations to those which are believed to be controlling or most persuasive and which counsel has read and is prepared to discuss. String cites are not welcome.

5. Any trial briefs the parties wish to have the court review. Trial briefs are encouraged for use in bench trials, but are of dubious import in jury trials. As stated in Section VII.2.f below, counsel are also encouraged and in some cases required to submit timelines or similar aids for reference during the course of their presentations. Any such demonstrative aids shall be provided to the court and opposing counsel no later than the beginning of trial unless otherwise ordered.

6. If trial is to the court, proposed findings of fact, in chronological sequence.

VII.

INSTRUCTIONS FOR TRIAL

1. General

a. Speaking in court. There is a lectern in the courtroom from which the attorneys are required to address the court, witnesses, and jury. Objections may be made only while standing, not sitting, at counsel table. Ordinarily, only the courtroom deputy will hand exhibits to the witnesses. Thus, you may simply say "Please look at exhibit number one . . ." and the exhibit will be given to the witness. Exhibits are offered in evidence; they are not "moved into evidence."

b. Schedule. Trials are normally set to begin at 9:00 a.m. Counsel will be present to go over the attached trial checklist with the courtroom deputy at 8:30 a.m. on the first day of trial. The normal trial day begins at 9:00 a.m. and continues until 4:30 p.m. Lunch recess normally is from 12:00 noon to 1:15 p.m. We may continue beyond 4:30 p.m., but jurors have a right to rely on their being excused for the day not later than 5:00 p.m.

For the convenience of everyone, additional recesses are scheduled for 10:15 - 10:30 a.m. and 3:15 - 3:30 p.m. If you need a recess at any other time, make a request without explanation and it will be granted.

c. Voir dire. I will conduct a *voir dire* examination. Counsel will have 30 minutes per side to conduct supplemental *voir dire*. I do not require counsel to submit *voir dire* questions to me in advance.

d. Witnesses. In scheduling your witnesses, follow the baseball rule: one at bat, one on deck, and one in the hole.

e. Transcripts. As noted earlier, transcripts should be ordered directly from the court reporter immediately before or after the day's proceedings. Copies of forms to be filed that relate to transcripts should be mailed to: Nick Richards, Court Operations Supervisor, Clerk's Office, 901 19th Street, Room A-105, Denver, CO 80294. Requests for special services, such as daily copy, should be made to Mr. Richards at least **thirty days in advance of the trial date**.

f. Settlement. Pursuant to D.C.COLO.LCivR 54.2, you must notify the court of a settlement before twelve noon on the last court business day before the scheduled trial date in order to avoid a possible assessment of jury costs.

g. Oaths. Please note and advise all persons appearing with you in court, including co-counsel, paralegals, clients, witnesses, and spectators that oath taking is treated quite formally in my courtroom. The courtroom deputy is directed to administer an oath to a jury or witness ONLY when all other activity in the courtroom has ceased. Attorneys are directed to observe the administration of the oath and to stop all other activity such as making notes, reading or shuffling papers, talking to others, or moving about. I usually advise juries of the reasons for this rule. If you want a more detailed explanation, simply ask.

h. Courtroom attire. It should not be necessary to make this comment, but experience has shown I must. All counsel, parties, witnesses and assistants should dress in business attire.

2. Checklist for Trial

a. Witness lists. Using the form set forth in Attachment C, prepare an updated and current list of your witnesses and provide three copies to the court and copies to opposing counsel on the morning of the trial. One of the court's copies will be given to the court reporter to avoid asking for the spelling of names.

b. Exhibit lists. Using the form set forth in Attachment C, prepare an updated and current index of exhibits, including any Rule 1006 charts, summaries, or calculations of voluminous evidence (*see supra* Section IV.2.b) that you expect to offer. You will need to provide three copies of this form to the court and copies for opposing counsel on the morning of trial.

c. Exhibits. We will use a unified numbering system in all trials for all exhibits. *see* Attachment A, form Scheduling and Discovery Order, § 5.h. Each exhibit shall be marked with a label stating its designation under the unified system used. Each label shall also state the civil action number.

Each original document exhibit submitted to the clerk for use by the witnesses shall bear an extended tab showing the number of the exhibit.

Counsel should not duplicate exhibits submitted by opposing parties as an exhibit may be used by any of the parties.

Each document exhibit shall be paginated, including any attachments thereto.

d. Copies of exhibits. Unless otherwise ordered, in addition to the original exhibits, the parties shall provide sufficient copies of all exhibits for use by: (1) opposing counsel; (2) the judge; and (3) the jury in jury trials. (The jury is to receive one complete set of exhibits. With respect to exhibit copies provided to individual jurors, see § VII(2)(e) below.)

The copies shall be submitted in 3-ring binders and shall bear extended tabs.

Each copy of a document exhibit shall be paginated corresponding to its original.

Only those exhibits admitted by stipulation should be placed in the exhibit notebooks for the jury's use. At the beginning of trial, these exhibit notebooks will be made available to the jurors in the jury room. If additional exhibits are admitted during the trial, the courtroom deputy will arrange for copies of these additional exhibits to be placed in the jurors' set of exhibit notebooks.

Those exhibits that are NOT stipulated should be placed in manila folders, grouping copies of the same exhibit in one file, for easy distribution by the courtroom deputy if admitted.

e. Exhibit notebooks for individual jurors. In addition to the single complete set of exhibits provided for use by the jury, in some cases it is also helpful for counsel to provide each juror with a notebook containing copies of the parties' key exhibits. If used, individual juror notebooks should be condensed to include selected exhibits of both plaintiff and defendant. At the beginning of trial, these individual exhibit notebooks should include only those exhibits admitted by stipulation. If additional key exhibits are admitted during the trial, the party offering a key exhibit shall provide the clerk with sufficient copies to include it in the individual juror notebooks. This rule may be modified if the exhibits are too voluminous for easy use by individual jurors.

f. Timelines and other demonstrative aids. In cases in which a sequence of events is relevant or helpful to deciding any issue presented, the parties shall prepare a stipulated demonstrative exhibit that sets out the timeline of these events. If any element of this timeline is disputed, the demonstrative exhibit should so indicate. The parties are also encouraged to submit similar demonstrative aids for reference during the course of their presentations if such would assist the court and jury. The parties shall provide three copies of the required timeline and any other demonstrative aids to the court, and include them in the individual juror exhibit notebooks.

g. Jury instructions and verdict forms. As described in Section V, the jury instructions and verdict forms will be submitted to the court, argued, revised as necessary, and approved by the court before trial begins. I will use the Statement of the Case instruction during *voir dire* examination and will read all but the closing instructions to the jury after they are sworn in. After being sworn in, each individual juror will also receive a notebook of these instructions, not including the forms of verdict. Counsel may use the instructions in opening statements and in presenting their case. In addition to any record created at the Final Trial Preparation Conference or other supplemental jury instruction conference(s), counsel will be provided the opportunity to make a record of objections before final arguments and after the close of evidence.

h. Terminology. Provide the court reporter with a glossary of any unusual or technical terminology.

i. Written curriculum vitae. In bench trials, a written curriculum vitae, marked as an exhibit, will usually suffice for the qualification of an expert witness.

j. Depositions. Pursuant to Fed. R.Civ.P. 5(d), depositions, interrogatories, requests for admissions, and the answers and responses thereto are not filed with the clerk unless on special order of the court. The original deposition transcripts should be in the possession of the party to whom they were delivered and must be brought to the trial at the request of any party. In jury trials, you are requested to provide a person (who may be co-counsel) to read answers. In trials to the court, depositions will not be read in open court. I will read them in chambers in any requested sequence in advance of trial.

k. Courtroom technology and special equipment. If you intend to use any of the available courtroom technology, please contact my courtroom deputy clerk, Bernique Abiakam at 303-335-2097, **no later than thirty days before the subject hearing or trial**. Also contact Ms. Abiakam to make appropriate arrangements if you intend to use any other special equipment, such as VCR or DVD players, movie or slide projectors, or tape recorders.

l. Trial briefs. Unless otherwise ordered, trial briefs must be filed **five days before the Final Trial Preparation Conference**. *See supra* Section VI.5.

ATTACHMENT A
(rev'd 10/15)

STIPULATED SCHEDULING AND DISCOVERY ORDER
FOR CASES ASSIGNED TO JUDGE KANE

[Please note that except for the caption and signature blocks, the Stipulated Scheduling and Discovery Order actually filed must comply with the double-spacing requirement of D.C.Colo.LCivR 10.1E. The bracketed and italicized text on the form convey instructions to counsel or parties appearing pro se and should not be included in the proposed Scheduling and Discovery Order submitted to the court.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. *****

*****,

Plaintiff*,

v.

*****,

Defendant*.

STIPULATED SCHEDULING AND DISCOVERY ORDER

---

1. DATE OF CONFERENCE

[Provide the date of the Scheduling and Discovery Conference.]

2. STATEMENT OF CLAIMS AND DEFENSES

Do not quote from the complaint, answer or other pleadings. State concisely and without boilerplate the essence of your case. Include the specific basis for the court's jurisdiction.

a. Plaintiff(s)' statement:

b. Defendant(s)' statement:

c. Other parties' statement:

[Each party shall make a concise narrative statement of all claims or defenses. Unless the same items of relief are sought against all defendants, use of the collective "defendants" is inappropriate. Each party should, in light of any informal discovery undertaken thus far, take special care to eliminate frivolous claims or defenses. Jurisdictional or otherwise dispositive affirmative defenses should be addressed by dispositive motion or risk being deemed waived at the Pretrial Conference. Do not summarize the pleadings. Statements such as "defendant denies the material allegations of the complaint" are not acceptable. State with particularity what is asserted and what is denied.]

3. UNDISPUTED FACTS

The following facts are undisputed:

a.

b.

c.

[....., etc.]

[A statement of all facts which the parties acknowledge to be undisputed. When the parties have their Rule 26(f) meeting, they should make a good faith attempt to determine the facts that are not in dispute. There is a continuing duty throughout the discovery period to supplement undisputed facts. This supplement will be included in the Pretrial Order.]

4. COMPUTATION OF DAMAGES

[Include a computation of all categories of damages sought or the basis and theory for calculating damages. See Fed.R.Civ.P. 26(a)(1)(A)(iii). This should include the claims, counterclaims and cross-claims of all parties. If the computation cannot be complete, set forth the reasons why and the date when it will be completed.]

5. REPORT OF PRE-CONFERENCE DISCOVERY & MEETING UNDER Fed.R.Civ. P. 26(f)

a. Date of Rule 26(f) meeting:

b. Names of each participant and each party represented:

c. Proposed changes, if any, in timing or requirement of disclosures under Fed.R.Civ.P. 26(a):

d. Statement as to when Rule 26(a) disclosures were made or will be made:

[If a party's disclosures were not made within the time provided in my Pretrial and Trial Procedures Memorandum and Fed. R. Civ. P. 26(a)(1), the party must here provide an explanation showing good cause for the omission.]

e. Statement concerning any agreements to conduct informal discovery:

[State what processes the parties have agreed upon to conduct informal discovery such as joint interviews with potential witnesses or joint meetings with clients or exchanging documents outside of formal discovery. If there is an agreement to conduct joint interviews with potential witnesses, list the names of such witnesses. The parties should at a minimum meet and exchange, collate and number documents.]

f. Statement concerning any agreements or proposals regarding electronic discovery:

[In cases in which: (i) the substantive allegations involve extensive computer-generated records; (ii) a substantial amount of disclosure or discovery will involve information or records in electronic form (e.g., e-mail, word processing, databases); (iii) expert witnesses will develop testimony based in large part on computer data and/or modeling; or (iv) either party plans to present a substantial amount of evidence in digital form at trial, the parties shall confer regarding steps they can take to preserve relevant computer records and data, facilitate computer-based discovery, limit discovery costs and delay and avoid discovery disputes. Counsel should provide a statement here regarding agreements or proposals regarding electronic discovery made at the Rule 26(f) conference and be prepared to discuss these issues, as appropriate, at the Scheduling Conference.]

g. Statement concerning any other agreements or proposals to reduce discovery and other litigation costs:

[Examples of means of reducing discovery and other litigation costs include depositions via telephone, joint repositories for documents, use of discovery in other cases and extensive use of expert affidavits to support judicial notice.]

h. Statement regarding use of the unified exhibit numbering system: *Parties are required, to use the unified exhibit numbering system. A unified exhibit numbering system means that each exhibit is given only one Arabic number throughout the litigation and that number is used no matter who presents or offers it. If counsel wish to learn more about this system, upon request, I will provide further explanation and the names of attorneys who have used it to their satisfaction.*

i. Each party shall set forth its anticipated costs of conducting this litigation, itemizing costs including travel and attorney fees for taking depositions, paralegal expenses, costs of preparations, costs of drafting written discovery, anticipated motions and costs of complying with discovery requests. This information is used by me to fulfill the requirements of Fed. R. Civ. P. 1.

6. CASE PLAN AND SCHEDULE

The plan and schedule must include the following items:

a. Deadline for Joinder of Parties

[No later than 45 days after the Scheduling Conference.]

b. Deadline to Amend Pleadings

[No later than 45 days after the Scheduling Conference.]

c. Discovery Cut-off

[Not more than six months if one plaintiff and one defendant. Not more than 12 months if multiple parties. This period includes both fact and expert discovery. Any longer periods proposed by the parties must be fully justified to the court at the Scheduling Conference.]

d. Dispositive Motion Deadline

[Not more than 30 days after discovery cut-off.]

e. Expert Witness Disclosure

(1) Statement regarding anticipated fields of expert testimony, if any:

(2) Statement regarding any limitations proposed on the use or number of expert witnesses:

(3) The parties shall designate all experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before _____, 20__.

[*This deadline should ordinarily be no later than 90 days after the scheduling conference.]*

(4) The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before _____, 20__.

[This deadline should ordinarily be no later than 30 days after receipt of the experts' report to which the rebuttal is addressed.]

(5) All designations of experts shall include a statement describing the methodology to be used by the particular expert. *Daubert/Kumho Tire* motions challenging any proposed methodology may be considered before the expert is deposed. Such a motion does not preclude the filing of any subsequent motions. The aim is to cut off faulty methodology before undertaking extensive discovery and may result in amended designation with either a new expert, a revised methodology or both.

(6) Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2), no exception to the requirements of the rule will be allowed by stipulation of the parties unless the stipulation is approved by the court.

f. Deposition Schedule

Name of Deponent	Date of Deposition	Time of Deposition	Expected Length of Deposition

[List the names of persons to be deposed and a schedule of any depositions to be taken, including: (i) a good faith estimate of the time needed for the deposition and (ii) time(s), date(s), and location(s) for the deposition to which the persons signing the Stipulated Scheduling and Discovery Order have agreed. Counsel ***must confer in advance of the Scheduling Conference****, and unless otherwise ordered and for good cause stated (*e.g.*, counsel does not know the names of any deponent until receipt of answers to interrogatories), identify by name, title or occupation the persons counsel wishes to depose.]*

g. Interrogatory Schedule

[Set a schedule for the submission of and response to any written interrogatories.]

h. Schedule for Request for Production of Documents

[Set a schedule for the submission of and response to any requests for documents.]

i. Discovery Limitations

(1) Any limits any party proposes on the length of any deposition:

(2) Any modifications any party proposes on the presumptive numbers of depositions or interrogatories contained in the federal rules:

(3) Any limitations any party proposes on the number of requests for production of documents and/or requests for admissions:

j. Other Planning or Discovery Orders

[Set forth any other proposed orders concerning scheduling or discovery.]

7. SETTLEMENT

[The parties must certify here that, as required by Fed.R.Civ.P. 26(f), they have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution. This statement should also report whether any of the parties requests a settlement conference before a magistrate judge. ***Note:*** *I do not preside over settlement conferences in cases assigned to me for trial. I will refer this case to a magistrate judge for a settlement conference if any party requests such a reference. Be prepared at the Scheduling Conference to advise me when and under what circumstances it will be propitious to take further steps toward settlement. I encourage but do not require use of privately retained mediators.]*

8. OTHER SCHEDULING ISSUES

a. Statement of those discovery or scheduling issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement:

b. Statement of anticipated motions to be filed, by whom, estimated time of filing, and any proposed briefing schedule:

[Note that my general practice is to require that the response or answer brief be filed 20 days from the date of filing of the motion and the reply brief 15 days from the date of filing of the response brief.]

c. Statement whether trial is to the court or jury. If a mixed trial, e.g. declaratory judgment and damages, specify which claims are to tried to a jury and which to the court.

9. AMENDMENTS TO DISCOVERY AND SCHEDULING ORDER

[Include the following statement:]

This Stipulated Scheduling and Discovery Order may be altered or amended only upon motion showing good cause and order entered thereon. As stated elsewhere herein, I will almost always grant stipulated motions for extensions of time and changes in deadlines up to and including the signing of a pretrial order. If the parties cannot agree on such extensions, my inclination is, the absence of abuse, to be permissive. On the contrary, I am not permissive or lenient in changing trial dates.

DATED this ____ day of _____, 20___

BY THE COURT:

_____
JOHN L. KANE
Senior U.S. District Court Judge

[Please affix counsels' signatures in the form below <u>before</u> submission of the Stipulated Scheduling and Discovery Order to the court.]

STIPULATED SCHEDULING AND DISCOVERY ORDER APPROVED:

_____	_____
(Name) (Address) (Telephone Number)	(Name) (Address) (Telephone Number)
Attorney for Plaintiff (or Plaintiff, *Pro Se)*	Attorney for Defendant (or Defendant, *Pro Se)*

ATTACHMENT B
(rev'd 10/15)

PRETRIAL ORDER
FOR USE IN CASES ASSIGNED TO JUDGE KANE

[Except for the caption and signature blocks, the proposed Order itself, like all filings, should be double-spaced as required by D.C.Colo.LCivR 10.1e. The bracketed and italicized text on the form convey instructions to counsel or parties appearing pro se and should not be included in the proposed Pretrial Order submitted to the court.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. *****

*****,

Plaintiff*,

v.

*****,

Defendant*.

PRETRIAL ORDER

---

1. DATE AND APPEARANCES

[State the date of the Pretrial Conference and identify the counsel present.]

2. JURISDICTION

*[State the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, **give the specific reasons** for the denial.]*

3. CLAIMS AND DEFENSES

a. Plaintiff(s)' statement:

b. Defendant(s)' statement:

c. Other parties' statement:

[Summarize the claims and defenses of all parties, including the respective versions of the facts and legal theories. Do not copy the pleadings and make certain to eliminate claims and defenses that are unnecessary, unsupported, no longer asserted or have been decided as a result of court rulings on dispositive motions. Identify the specific relief sought and the specific party or parties against whom such is sought. Use of the collective terms "plaintiffs" or "defendants" is inappropriate.]

4. STIPULATIONS

[Set forth in sequential order all stipulations concerning a. facts, b. evidence, and c. the applicability of 1. statutes, 2. regulations, 3. rules, 4. ordinances, etc.]

5. PENDING MOTIONS

[List any pending motion(s) to be decided before trial, giving its filing date and the filing dates of any briefs in support or opposition. If there are no pending motions, please state "None."]

6. WITNESSES

a. Non-expert Witnesses

*[List the **non-expert** witnesses to be called by each party. List separately:]*

(1) Witnesses who **will** be present at trial *[see Fed.R.Civ. P. 26(a)(3)(A)]*;

(2) Witnesses who **may** be present at trial if the need arises [*see id.*]; and

(3) Witnesses whose testimony is expected to be presented by means of a deposition and a transcript of the pertinent portions of the deposition testimony. *[See Fed. R. Civ. P. 26(a)(3)(B).]*

b. Expert Witnesses

*[List the **expert** witnesses to be called by each party. List separately:]*

(1) Witnesses who **will** be present at trial *[see Fed. R. Civ. P. 26(a)(3)(A)]*;

(2) Witnesses who **may** be present at trial *[see id.]*; and

(3) Witnesses whose testimony is expected to be presented by means of a deposition and a transcript of the pertinent portions of the deposition testimony. *[See Fed. R. Civ. P. 26(a)(3)(B)]*.

[With each witness's name, set forth: (1) the city and state in which he or she resides; (2) a short statement as to the nature and purpose of the witness's testimony; and (3) whether the witness is expected to testify in person or by deposition.

[For witnesses who are or may testify by deposition, the deposition testimony to be offered must be identified to opposing counsel by page and line reference to facilitate the preparation of objections and offer of additional portions of the deposition transcript. This information must be furnished to opposing counsel no later than 5 days after the Pretrial Conference (i.e., at the same time the parties are required to exchange copies of listed exhibits). Objections to the use of designated deposition testimony (see Fed. R. Civ. P. 26(a)(3)(B) must be filed with the clerk and served on opposing counsel by the deadline for filing all non-Daubert motions in limine, which is 30 days before the scheduled date of the Final Trial Preparation Conference unless otherwise ordered. Note that the relevant portions of deposition transcript and page and line references should not be delivered to the court, unless necessary to decide any objections to the designated deposition, until five days before the Final Trial Preparation Conference.]

7. EXHIBITS

a. *[List the exhibits to be offered with the number given to it in the unified numbering system, identifying the party offering the exhibit, those regarding which admission is stipulated. Include in this list any summary or similar exhibits offered pursuant to Fed. R. Ev. 1006. This list should be specific enough so that other parties and the court can understand, merely by referring to the list, each separate exhibit that will be offered. General references such as "all deposition exhibits" or "all documents produced during discovery" are unacceptable. Objections to the authenticity of any exhibit will not be well taken absent a specific statement of good cause for believing the document inauthentic.]*

b. *[Include the following paragraph in the Pretrial Order:]*

Copies of listed exhibits must be provided to opposing counsel no later than five days after the Pretrial Conference. <u>The objections contemplated by Fed.R.Civ.P. 26(a)(3)(B) shall be e-filed and served no later than 30 days before the scheduled date of the Final Trial Preparation Conference</u> unless otherwise ordered.

8. DISCOVERY

[Include the following language. Unless otherwise ordered, upon a showing of good cause in an appropriate motion, there will be no discovery after entry of the Pretrial Order.]

Discovery has been completed.

9. SPECIAL ISSUES

[List any special or additional issues of law which the court may wish to consider before trial. Also list any objections to testimony of expert witnesses based on the requirements of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) and their progeny and whether testimony will be required to rule on the objection. If none, please state, "None." Any Daubert/Kumho Tire objection will be deemed waived unless identified in this section and filed by the deadline stated in Section 12 below. Any motions raising Daubert/Kumho Tire objections requiring testimony will be set for hearing before the date of the Final Trial Preparation Conference and will be decided before the date of the Final Trial Preparation Conference.]

10. SETTLEMENT

[Include a certification by the undersigned counsel for the parties and any pro se party that:]

a. Counsel for the parties (and any *pro se* party) met (in person)(by telephone) on _____, 20__, to discuss in good faith the settlement of the case. *[You must have at least one discussion.]*

b. The participants in the settlement conference, included counsel, party representatives and any *pro se* party.

c. Counsel for the parties and any *pro se* party (do)(do not) intend to hold future settlement conferences.

d. It appears from the discussion that there is *[select and insert one of the following: a good possibility of settlement, some possibility of settlement, little possibility of settlement, or no possibility of settlement. Describe what the Court can do, if anything, to facilitate settlement.]*

11. EFFECT OF PRETRIAL ORDER

[The following paragraph shall be included in the Pretrial Order:]

Hereafter, this Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by

order of the court to prevent manifest injustice. The pleadings are deemed merged herein. This Pretrial Order supersedes the Scheduling and Discovery Order. In the event of ambiguity in any provision of this Pretrial Order, reference may be made to the record of the Pretrial Conference to the extent reported by stenographic notes and to the pleadings.

12. TRIAL AND ESTIMATED TRIAL TIME/FURTHER TRIAL PREPARATION PROCEEDINGS

a. *[State: (1) whether trial is to the court or a jury, or mixed bench and jury; (2) itemized estimate of trial time; (3) situs of trial; and (4) any other orders pertinent thereto (e.g., view of premises or relevant locale, special equipment to be used, security needs).]*

b. Trial Date: _____. *[Leave blank. The court will set this date at the Pretrial Conference or will enter other orders as appropriate. The target trial date is usually 90-120 days from the date of the Pretrial Conference, or approximately 150 days from the conference date if parties intend to file Daubert motions.]*

c. Final Trial Preparation Conference Date: _____. *[Leave blank. The court will set this date at the Pretrial Conference or will enter other orders as appropriate.]* In advance of this conference, the parties shall comply with the Instructions Concerning Preparation for Final Trial Preparation Conference. *See* Pretrial and Trial Procedures Memorandum, § § V & VI, from Senior Judge John L. Kane to Counsel.

d. Deadline for filing motions objecting to any testimony of an expert witness based on the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999), and their progeny*: 30 days after the date of the Pretrial Conference.

Any such objections not identified in Section 9 of this Order and filed by motion by this date are deemed waived. Unless otherwise ordered, a written response to such a motion must be filed no later than 20 days after the motion is filed. A reply, if any, must be filed no later than 15 days after the response. If an evidentiary hearing is required or desired say so and set forth the time needed for hearing.

e. Deadline for filing unified set of jury instructions based on the requirements set forth in section V, *supra*: 30 days after the date of the pretrial conference.

f. Deadline for filing all other motions in limine, including objections to exhibits and designated deposition testimony: 30 days before the scheduled date of the Final Trial Preparation Conference.

Unless otherwise ordered, a written response to such a motion or objection must be filed no later than 15 days after the motion is filed, and the reply, if any, must be filed no later than 11 days after the response.

DATED this ____ day of _____, 20__.

BY THE COURT:

_____
JOHN L. KANE
Senior U.S. District Court Judge

[Please affix counsels' signatures in the form below <u>before</u> submission of the Pretrial Order to the court.]

PRETRIAL ORDER APPROVED:

_____	_____
(Name) (Address) (Telephone Number)	(Name) (Address) (Telephone Number)
Attorney for Plaintiff (or Plaintiff, *Pro Se)*	Attorney for Defendant (or Defendant, *Pro Se)*

ATTACHMENT C
(rev'd 10/15)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JOHN L. KANE, SENIOR JUDGE

Case No. _____ **Date** _____

Case Title _____

_____ **Witness List**
(Plaintiff/Defendant)

Witness	**Date(s) Testified**

UNIFIED EXHIBIT LIST IN CASE NUMBER _____ Page No. 1

CASE CAPTION _____ v. _____

Use Unified Numbering System

EX NO.	PARTY OFFERING	WITNESS	DESCRIPTION	REC.	REJ.	RUL. RESVD.	COMMENTS