

**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. 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 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 before submission of the Pretrial Order to the court.]

PRETRIAL ORDER APPROVED:

(Name)
(Address)
(Telephone Number)

Attorney for Plaintiff (or Plaintiff, *Pro Se*)

(Name)
(Address)
(Telephone Number)

Attorney for Defendant (or Defendant, *Pro Se*)