

***[STIPULATED SCHEDULING AND DISCOVERY 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 10.1(e). The bracketed text on the form conveys 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

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

2. STATEMENT OF CLAIMS AND DEFENSES

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 Do not quote from the complaint, answer, or other pleadings.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

- a. Plaintiff(s):
- b. Defendant(s):
- c. Other parties:

[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 Federal Rule of Civil Procedure 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 FEDERAL RULE OF CIVIL PROCEDURE 26(f)

- a. Date of Rule 26(f) meeting:
- b. Name of each participant:
- c. Proposed changes, if any, in timing or requirement of disclosures under Federal Rule of Civil Procedure 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 14 days after the Rule 26(f) meeting, as provided in my Pretrial and Trial Procedures Memorandum, and Rule 26(a)(1), the party must provide an explanation showing good cause for noncompliance.]

- 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., emails or 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 efforts to reduce discovery and other litigation costs include depositions via remote means, 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 a unified exhibit numbering system, meaning that each exhibit is given only one Arabic number throughout the litigation and that number is used no matter who presents or offers it.]

- i. Statement on anticipated costs of litigation:

a. Plaintiff(s):

b. Defendant(s):

[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 and anticipated motions, and costs of complying with discovery requests. This information is used by me to fulfill the requirements of Federal Rule Civil Procedure 1.]

6. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties

[This deadline should be no later than 45 days after the Scheduling Conference.]

b. Deadline to Amend Pleadings

[This deadline should be no later than 45 days after the Scheduling Conference.]

c. Discovery Cut-off

[This deadline should be not more than 6 months if the case involves one plaintiff and one defendant or not more than 12 months if multiple parties are involved. 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

[This deadline should be 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 Rule 26(a)(2) on or before _____.

[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 Rule 26(a)(2) on or before _____.

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

[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 an amended designation with either a new expert, a revised methodology, or both.]

- (5) Notwithstanding the provisions of Rule 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) Limits on the length of any deposition:

[List those proposed by either party or agreed upon.]

- (2) Modifications to the presumptive numbers of depositions or interrogatories contained in the Federal Rules:

[List those proposed by either party or agreed upon.]

- (2) Limitations on the number of requests for production of documents and/or requests for admissions:

[List those proposed by either party or agreed upon.]

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 Federal Rule of Civil Procedure 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. Nor do I wish to be informed about the specifics of settlement offers, counteroffers, proposals, etc. 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 21 days from the date of filing of the motion and the reply brief 14 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 be tried to a jury and which to the court.]

9. AMENDMENTS TO DISCOVERY AND SCHEDULING ORDER

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, in 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__

JOHN L. KANE
SENIOR U.S. DISTRICT JUDGE

[Please affix counsel's signatures in the form below before submission of the Stipulated Scheduling and Discovery Order to the court.]

**STIPULATED SCHEDULING AND
DISCOVERY ORDER APPROVED:**

[Name]
[Address]
[Telephone Number]

*[Attorney for Plaintiff or Plaintiff,
Pro Se]*

[Name]
[Address]
[Telephone Number]

*[Attorney for Defendant or Defendant,
Pro Se]*