UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

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| --- | --- |
| Click here to enter text.,    Choose an item.,    v.    Click here to enter text.,    Choose an item.. | Case No.Enter Case Number |

**SCHEDULING ORDER**

On **[insert date]**, the undersigned U.S. Magistrate Judge, Gwynne E. Birzer, conducted a scheduling conference in accordance with Fed. R. Civ. P. 16. Plaintiff [insert name] appeared through counsel [list attorneys], [(*if not in person*) by videoconference/phone]. Defendant [insert name] appeared through counsel [list attorneys], [(*if not in person*) by videoconference/phone].[[1]](#footnote-1)

Following is a brief summary of the nature of the case:

*[Insert a brief case summary, preferably a single paragraph and no more than one page, that states: (1) the general nature of the case, e.g., employment discrimination, personal injury, etc.; (2) the asserted subject-matter jurisdiction statutes, e.g., 28 U.S.C. § 1332; (3) plaintiff’s legal theories; and (4) defendant’s primary defenses.]*

After consultation with the parties, the court enters this scheduling order, summarized in the following table:

1. **Alternative Dispute Resolution (ADR).**

After discussing ADR during the scheduling conference, the court determined that settlement [potentially would be] [would not be] enhanced by early mediation. Toward that end, plaintiff must submit a good-faith settlement proposal to defendant by [**insert date**]. Defendant must make a good-faith counter-proposal by [**insert date**]. By [**insert date**], either (a) the parties must file a joint notice stating the full name, mailing address, and telephone number of the mediator they selected, along with the firmly scheduled date, time, and place of mediation, or (2) each party must submit a confidential settlement report by e-mail to the undersigned U.S. Magistrate Judge at [*ksd\_birzer\_chambers@ksd.uscourts.gov*](mailto:ksd_birzer_chambers@ksd.uscourts.gov)*.* These confidential reports must not be submitted to the presiding U.S. District Judge or filed with the Clerk’s Office. These confidential reports must set forth in detail the parties’ settlement efforts to date (including the amounts of offers exchanged), evaluations of the case, views concerning future settlement negotiations, overall settlement prospects, and a specific recommendation regarding mediation or any other ADR method, e.g., arbitration, early-neutral evaluation, or a settlement conference with a magistrate judge. If the parties cannot agree on a mediator and any party wishes the court to consider a particular mediator or other ADR neutral, then up to three nominations may be provided in the confidential settlement reports; such nominations must include each nominee’s qualifications and billing rates, and confirmation that the nominee already has pre-cleared all ethical and scheduling conflicts. [Absent further order of the court, mediation is ordered no later than [insert date]] OR [The court will decide whether to require the parties to participate in mediation (or another ADR process) after receiving their confidential settlement reports]. Defense counsel must file an ADR report within 14 days after any scheduled ADR process, using the form on the court’s website: [*http://www.ksd.uscourts.gov/adr-report/*](http://www.ksd.uscourts.gov/adr-report/).

1. **Discovery.**
2. The parties already served Fed. R. Civ. P. 26(a)(1) initial disclosures regarding witnesses, exhibits, damage computations, and insurance coverage. [*Recommended additional language*: To facilitate settlement negotiations and to avoid unnecessary expense, the parties have agreed that, without the need for formal requests for production, copies of the documents described in the parties’ Rule 26(a)(1) disclosures must be [exchanged] **OR** [made available for inspection and copying] by [date].] Supplementations of initial disclosures must be served at such times and under such circumstances as required by Fed. R. Civ. P. 26(e). In addition, such supplemental disclosures must be served [*optional: insert specific dates or intervals, and*] 40 days before the deadline to complete discovery, to identify all witnesses and exhibits that probably will be or even might be used at trial so that the opposing party can decide whether to take a particular deposition or pursue follow-up written discovery before the time allowed for discovery expires. Witnesses or other information included in a party’s final Fed. R. Civ. P. 26(a)(3) disclosures that did not previously appear in the initial Rule 26(a)(1) disclosures or a timely Rule 26(e) supplement thereto presumptively will be excluded from evidence under Fed. R. Civ. P. 37(c)(1).
3. All discovery must be commenced or served in time to be completed by [**insert date**].
4. [The parties agree that principles of comparative fault do not apply.] **OR** [By [**insert date**], any party asserting comparative fault must identify all persons or entities whose fault is to be compared and specify the nature of the fault claimed.]
5. [*Optional*: The parties have stipulated that no expert testimony will be used.] **OR** [Expert disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from retained experts, must be served by plaintiff by **[insert date]**, and by defendant by **[insert date]**; disclosures and reports by any rebuttal expert(s) must be served by **[insert date]**.; **OR** [As required by Fed. R. Civ. P. 26(a)(2)(D), expert disclosures must be served by [**insert date**] and, for experts testifying solely to contradict or rebut evidence on the same subject matter identified by another party, disclosures must be served within 30 days after the other party’s disclosure. [*Optional*: The parties have stipulated that no rebuttal-expert disclosures will be made pursuant to Fed. R. Civ. P. 26(a)(2)(D)(ii).] The parties must serve any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law), within 14 days after service of the disclosures. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all the information required by Rule 26(a)(2)(B) has been provided) and need not extend to the admissibility of the expert’s proposed testimony. If such technical objections are served, counsel must confer or make a reasonable effort to confer consistent with D. Kan. Rule 37.2 before raising those objections in a pre-motion conference with the court pursuant to D. Kan. Rule 37.1(a).]
6. The parties [agree that] [disagree whether] physical or mental examinations pursuant Fed. R. Civ. P. 35 [are] [are not] appropriate in this case. [The parties must complete all physical or mental examinations under Fed. R. Civ. P. 35 by [**insert date**]. If the parties disagree about the need for or scope of such an examination, a formal motion must be filed sufficiently in advance of this deadline to allow the motion to be fully briefed and decided by the court, and the examination conducted, all before the deadline expires.]
7. The court [considered] [resolved] the following discovery problem(s) raised by one or more of the parties: [list problems not covered elsewhere, if any].
8. Consistent with the parties’ agreement, electronically stored information (ESI) in this case will be handled as follows:

[Provide a brief description of the parties’ agreement or separate proposals. Note: The parties must directly address ESI during the planning conference instead of avoiding it. Therefore, it is unacceptable for the parties to vaguely state here, for example, that “discovery of ESI will be conducted in accordance with the Federal Rules.” The parties must confer and decide on a reasonably specific protocol for retrieving and producing ESI. However, the parties may agree, for economic reasons or otherwise in a small case, not to conduct any ESI discovery or that any limited ESI that does exist will simply be printed out in hard-copy form.]

1. Consistent with the parties’ agreement, claims of privilege or of protection as trial-preparation material asserted after production will be handled as follows:

[Provide a brief description of the parties’ proposal, unless the parties anticipate relying on the procedures described in the court’s form protective order (or a similar protective order) that will be submitted as a proposed order to the court.]

1. To encourage cooperation, efficiency, and economy in discovery, and also to limit discovery disputes, the court adopts as its order the following procedures agreed to by the parties and counsel: [insert here].
2. [*Optional*: No party may serve more than [insert number] interrogatories, including all discrete subparts, on any other party.]
3. [*Optional*: No more than [insert number] depositions may be taken by [each] [all] plaintiff[s], and no more than [insert number] depositions may be taken by [each] [all] defendant[s]. Each deposition must be limited to [insert number] hours [except for the deposition(s) of [insert specified deponents, if applicable] which must be limited to [insert number] hours].] All depositions will be governed by the written guidelines on the court’s website:

[*http://www.ksd.uscourts.gov/wp-content/uploads/2015/10/depoguidelines.pdf*](http://www.ksd.uscourts.gov/wp-content/uploads/2015/10/depoguidelines.pdf)

1. [*Optional*: Discovery may be governed by a protective order. If the parties agree on the need for, scope, and form of such a protective order, they must confer and then submit a jointly proposed protective order by [**insert date**]. This proposed protective order should be drafted in compliance with the guidelines available on the court’s website:

[*http://www.ksd.uscourts.gov/wp-content/uploads/2015/10/PO-Guidelines-Form-Rev.-March-2019.pdf*](http://www.ksd.uscourts.gov/wp-content/uploads/2015/10/PO-Guidelines-Form-Rev.-March-2019.pdf)

At a minimum, such proposed orders must include a concise but sufficiently specific recitation of particular facts that provide the court with an adequate basis upon which to make the required good cause finding pursuant to Fed. R. Civ. P. 26(c). A pre-approved form protective order is available on the court’s website:

[*http://ksd.uscourts.gov/index.php/forms/?open=CivilForms*](http://ksd.uscourts.gov/index.php/forms/?open=CivilForms)

If the parties disagree on the need for, scope, and/or form of a protective order, the party or parties seeking such an order must file an appropriate motion and supporting memorandum, with the proposed protective order attached, by [**insert date**]].

1. The parties [do] [do not] consent to electronic service of disclosures and discovery requests and responses. *See* Fed. R. Civ. P. 5(b).
2. The expense and delay often associated with civil litigation can be dramatically reduced if the parties and counsel conduct discovery in the “just, speedy, and inexpensive” manner mandated by Fed. R. Civ. P. 1. Accordingly, the parties and counsel are reminded of their important obligations under Fed. R. Civ. P. 26(g) in certifying discovery disclosures, requests, responses, and objections and that the court “must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both” if the certification violates Rule 26(g) (e.g., overbroad discovery requests, boilerplate objections, etc.) without substantial justification.
3. **Motions**
4. Any motion for leave to join additional parties or to otherwise amend the pleadings must be filed by [**insert date**].
5. All potentially dispositive motions (e.g., motions for summary judgment), must be filed by [**insert date**]. The court plans to decide dispositive motions, to the extent they are timely filed and briefed without any extensions, approximately 60 days before trial.
6. Compliance with Fed. R. Civ. P. 56 and D. Kan. Rule 56.1 is mandatory, i.e., summary-judgment briefs that fail to comply with these rules may be rejected, resulting in summary denial of a motion or consideration of a properly supported motion as uncontested. Further, the court strongly encourages the parties to explore submission of motions on stipulated facts and agreement resolving legal issues that are not subject to a good faith dispute. The parties should follow the summary-judgment guidelines available on the court’s website:

[*http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf*](http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf)

1. All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Before filing any disputed discovery-related motion, and after satisfying the duty to confer or to make a reasonable effort to confer under Fed. R. Civ. P. 37(a)(1) and D. Kan. Rule 37.2, the party intending to file a discovery-related motion must email the court to arrange a telephone conference with the judge and opposing counsel. The email request, preferably in a joint submission, must include a brief, nonargumentative statement of the nature of the dispute; the estimated amount of time needed for the conference, and suggested dates and times; and any preference for conducting the conference in person or by phone. The court will typically grant the request and contact the parties to arrange the conference within a few days. The court will inform the parties whether any additional information should be submitted or filed in advance of this conference. Unless otherwise requested by the court, no disputed discovery-related motion, material, or argument should be filed or submitted prior this telephone conference. *See* D. Kan. Rule 37.1(a).

**For purposes of complying with the “meet and confer” requirements, the Court construes the term “confer” to require more than mere email communication. The parties, in person and/or through counsel, shall have verbal communications with each other; that is, they must first actually *talk* with each other about their discovery disputes, and then contact the Court for a discovery conference, before filing a motion to compel or similarly related discovery motion.**

1. To avoid unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for briefing or hearing a motion, or for trial. *See* Fed. R. Civ. P. 29; D. Kan. Rule 6.1(c).
2. Page limitations for principal briefs, responses and replies must comply with D. Kan. Rule 7.1.
3. **Pretrial Conference, Trial, and Other Matters.**
4. [Pursuant to Fed. R. Civ. P. 16(a), a status conference is scheduled for [insert date], [by telephone conference call (888-\_\_\_\_\_; access code \_\_\_\_\_)] [in the U.S. Courthouse, Room \_\_\_, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, Kansas]. **OR** [A status conference prior to the pretrial conference is not requested.]
5. Pursuant to Fed. R. Civ. P. 16(a), a pretrial conference is scheduled for [**insert date**] in the U.S. Courthouse, Room \_\_\_, \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_, Kansas [**OR** by telephone (888-\_\_\_\_; access code \_\_\_\_\_\_)]. Attorneys wishing to appear by phone may request permission to do so by sending an e-mail to chambers 7 days before the conference; however, the judge may require all parties to appear in person if the pretrial order is not in the appropriate format or other problems require counsel to appear in person. No later than [**insert date**], defense counsel must submit the parties’ proposed pretrial order in Word format as an attachment to an e-mail sent to [*ksd\_birzer\_chambers@ksd.uscourts.gov*](mailto:ksd_birzer_chambers@ksd.uscourts.gov). The proposed pretrial order must not be filed with the clerk’s office. It must be in the form available on the court’s website:

[*http://ksd.uscourts.gov/index.php/forms/?open=CivilForms*](http://ksd.uscourts.gov/index.php/forms/?open=CivilForms)

1. [The parties expect the [jury] [non-jury] trial of this case to take approximately [insert number] trial days. This case is set for trial beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Kansas. Unless otherwise ordered, this is not a “special” or “No. 1” trial setting. Therefore, during the month preceding the trial docket setting, counsel should stay in contact with the trial judge’s courtroom deputy to determine the day of the docket on which trial of the case actually will begin. The trial setting may be changed only by order of the judge presiding over the trial.] [The court will subsequently set this case for trial.]
2. If at any time the parties wish to consent to trial by a U.S. Magistrate Judge, they must email the Clerk’s Office their signed form, “Notice, Consent, and Reference of a Civil Action to a Magistrate Judge” available on the court’s website at:

[*http://ksd.uscourts.gov/index.php/forms/?open=CivilForms*](http://ksd.uscourts.gov/index.php/forms/?open=CivilForms)

1. This scheduling order will not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated April 20, 2023, at \_\_\_\_\_\_\_\_\_, Kansas.

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

GWYNNE E. BIRZER

U.S. Magistrate Judge

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| SUMMARY OF DEADLINES AND SETTINGS | |
| Event | Deadline/Setting |
| Jointly proposed protective order submitted to court |  |
| Motion and brief in support of proposed protective order (only if parties disagree about need for and/or scope of order) |  |
| Plaintiff’s settlement proposal |  |
| Defendant’s settlement counter-proposal |  |
| Jointly filed mediation notice, or confidential settlement reports to magistrate judge |  |
| Comparative fault identification |  |
| Motions to amend |  |
| Mediation completed |  |
| ADR report filed by Defendant | **14 days after mediation** |
| Experts disclosed by Plaintiff |  |
| Experts disclosed by Defendant |  |
| Rebuttal experts disclosed |  |
| Physical and mental examinations |  |
| Supplementation of initial disclosures | **40 days before the deadline for completing all discovery** |
| All discovery completed |  |
| Proposed pretrial order due |  |
| Pretrial conference |  |
| Potentially dispositive motions (e.g., summary judgment) |  |
| Motions challenging admissibility of expert testimony |  |
| Trial @ [insert location]; ETT: [insert number] days |  |

1. As used in this scheduling order, the term “plaintiff” includes plaintiffs as well as counterclaimants, crossclaimants, third-party plaintiffs, intervenors, and any other parties who assert affirmative claims for relief. The term “defendant” includes defendants as well as counterclaim defendants, crossclaim defendants, third-party defendants, and any other parties who are defending against affirmative claims for relief. [↑](#footnote-ref-1)