

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

Plaintiff,

vs.

No. CIV

Defendant.

PRETRIAL ORDER

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

I. APPEARANCES

Attorneys who will try the action:

For Plaintiff(s)

For Defendant(s)

For other parties

II. JURISDICTION AND RELIEF SOUGHT

A. Subject Matter Jurisdiction.

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

yes, was the action removed or transferred?

____ Removed ____ Transferred _____ Original forum

2. Is subject matter jurisdiction of this Court contested?

____ Uncontested ____ Contested _____ Party contesting

3. Asserted basis for jurisdiction.

____ Federal Question ____ Diversity ____ Other

Statutory Provision(s) Invoked: _____

B. Personal Jurisdiction and Venue.

1. Is personal jurisdiction contested?

____ Uncontested ____ Contested

Identify the party contesting personal jurisdiction and basis for objection:

2. Is venue contested?

____ Uncontested ____ Contested _____ Party contesting

C. Are the proper parties before the Court?

____ Uncontested ____ Contested

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

D. Identify the affirmative relief sought in this action.

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

III. BRIEF DESCRIPTION OF NATURE OF CLAIMS/DEFENSES.

A. Plaintiff's claims:

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

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

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

IV. FACTUAL CONTENTIONS UNDERLYING CLAIMS/DEFENSES

A. Stipulated Factual Contentions.

The parties agree to the following facts listed separately below:

B. Contested Material Facts.

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

V. APPLICABLE LAW

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

_____ Yes _____ No

If yes, identify the applicable law. _____

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

1. Plaintiff
2. Defendant
3. Other party

VI. CONTESTED ISSUES OF LAW

Identify the specific issues of law which are contested.

1. Plaintiff
2. Defendant
3. Other Party

VII. MOTIONS

A. Pending Motions (indicate the date filed):

1. Plaintiff
2. Defendant
3. Other party

B. Motions which may be filed:

1. Plaintiff
2. Defendant
3. Other party

The briefing package must be complete and filed with the Court by _____.

VIII. DISCOVERY

A. Has discovery been completed? _____ Yes _____ No

If no, discovery terminates on _____.

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

IX. ANTICIPATED WITNESSES

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

A. Plaintiff's Witnesses:

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

B. Defendant's Witnesses:

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

X. TRIAL PREPARATION

A. Exhibits.

The parties must confer over all trial exhibits. This does not apply to rebuttal exhibits that cannot be anticipated before trial. The parties must file an original plus three (3) copies of the parties' " consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible" and a "consolidated exhibit list identifying all exhibits the parties have stipulated to be authentic, but to

which there are other objections" no later than _____ calendar days before trial.

For those exhibits on which a stipulation could not be reached, the offering party must file a separate "contested exhibit list" no later than _____ calendar days before trial. An original plus three (3) copies of each party's contested exhibit list must be filed on the date identified in the preceding paragraph. In addition, two courtesy copies of the contested and uncontested exhibit list must be delivered to the judge's chambers.

All exhibits must be marked before trial. Exhibits must be marked numerically and identify the party offering the exhibit. The identification number or letter will remain the same whether the exhibit is admitted or not.

B. Witness Lists.

An original and three (3) copies of a party's witness list must be filed with the Clerk and served on all parties by _____. Indicate whether the witness is testifying by deposition or in person. Objections to use of deposition testimony are due within fourteen (14) calendar days of service of the witness list. The objecting party must highlight those portions of the requested deposition testimony to which the party objects. Plaintiff must use a yellow highlighter and defendant must use a blue highlighter. The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing at least _____ calendar days before trial.

C. Voir Dire.

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

Plaintiff _____ Yes _____ No

Defendant _____ Yes _____ No

Other Party _____ Yes _____ No

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

D. Jury Instructions and Verdict.

1. **In General.** The parties must confer about proposed jury instructions. The Court will prepare and provide the parties with a Court-proposed set of general "stock" instructions that will be given. The stock instructions are available from the Clerk. The instructions that the parties must submit to the Court will be those which set forth the elements and definitions of the claims or charges, and the elements and any definitions of any defenses.

2. **Sources for Instructions.** If pattern instructions are followed by the judge, the judge will indicate at the pretrial conference his or her preference for the source of instruction.

3. **Submission of Proposed Instructions.** The parties must submit one mutually approved set of jury instructions no later than _____ calendar days before trial. For those instructions the parties were unable to agree upon, each party must submit its own proposed instructions at the same time as submission of the mutually agreed instructions.

4. Form of Instructions.

a. Submit sets of double-spaced instructions as follows:

____ set(s) of originals without citations and headed "Instruction No.____"; and

___ set(s) with citations and numbered accordingly, (Fig 1), one of which will be filed.

- b.** If available, also submit a hard 3.5 diskette of all instructions in a format compatible with Word Perfect 5.1.
- c.** Submit no more than one instruction to a page.
- d.** All deviations from pattern instructions must be identified as "modified" in the citation and the modification must be highlighted in the body of the instruction.
- e.** Submit a cover sheet on all sets of instructions.

5. Deadlines for Submitting Instructions.

- a.** Instructions and diskette shall be filed _____ calendar days before trial.
- b.** Supplemental unanticipated jury instructions may be submitted at trial.

E. Statement of Case.

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

F. Submissions for Bench Trials.

- 1.** The parties must submit one mutually approved set of proposed findings of fact and conclusions of law no later than _____ calendar days before trial. For those findings of fact and conclusions of law the parties were unable to agree upon, each party must submit its own proposed findings of fact and conclusions of law at the same time as submission of the mutually approved set.
- 2.** If available, submit a hard 3.5 diskette on Word Perfect 5.1 format of the findings of fact and conclusions of law.

XI. OTHER MATTERS

A. Settlement Possibilities.

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

_____ Poor _____ Fair _____ Good _____ Excellent _____ Unknown

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

_____ Yes _____ No If yes, when? _____

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

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

3. Does either party wish to explore any alternatives for dispute resolution such as mediation

or a summary jury trial? If yes, please identify. _____ If no, explain

why not. _____

B. Length of Trial and Trial Setting.

1. This action is a _____ Bench trial _____ Jury Trial _____ Both

2. The case is set for trial on _____. If there is no setting, the

parties estimate they will be ready for trial by _____.

3. The estimated length of trial is _____ day(s).

XII. EXCEPTIONS

XIII. MODIFICATIONS-INTERPRETATION

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

merged herein.

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

Attorney for Plaintiff

Address: _____

Attorney for Defendant

Address: _____

Attorney for other parties (if any)

Address: _____

Dated: _____

UNITED STATES DISTRICT JUDGE