**SAMPLE PROPOSED PRETRIAL ORDER**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

**[*Name of Division*]** DIVISION

**[*Name of the Plaintiff(s)*]**,

Plaintiff(s),

v.

**[*Name of the Defendant(s)*]**,

Defendant(s).

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Case No.: **[#:##-cv-####-LCB]**

**PRETRIAL ORDER**

A pretrial conference was held in the above case on **[*Date*]**, where the following actions were taken:

1. Appearances. Appearing at the conference were:

For **[*Enter Plaintiff(s)*]**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For **[*Enter Plaintiff(s)*]**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For **[*Enter Defendant(s)*]**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For **[*Enter Defendant(s)*]**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[*Include a line for each party in the case, unless the same counsel represents all parties on a particular side.*]**

2. Jurisdiction and Venue.

(a) The court has subject matter jurisdiction of this action under the following statutes, rules or cases:

**[*List each statute, rule, or case claimed to authorize the court's subject matter jurisdiction in this action*]**.

(b) All jurisdictional and procedural requirements prerequisite to maintaining this action **[*have/have not*]** been met.

(c) Personal jurisdiction and/or venue **[*are/are not*]** contested.

**[*If personal jurisdiction or venue is contested, briefly set out the relevant arguments.*]**

3. Parties and Trial Counsel. Any remaining fictitious parties are hereby **STRICKEN.** The parties and designated trial counsel are correctly named as set out below:

|  | Parties: | Trial Counsel: |
| --- | --- | --- |
| Plaintiff(s): | **[*Name of the Plaintiff(s)*]** | **[*Name of Counsel*]** |
|  | **[*Name of the Plaintiff(s)*]** | Same Counsel |
| Defendant(s): | **[*Name of the Defendant(s)*]** | **[*Name of Counsel*]** |
|  | **[*Name of the Defendant(s)*]** | Same Counsel |

**[*Include a line and designation for each party in the case.*]**

4. Pleadings. The following pleadings have been allowed:

**[*List pleadings in the order in which they were filed and allowed. Do not include pleadings that have been stricken or otherwise disallowed. See Fed. R. Civ. P. 7(a) for a list of allowable pleadings.*]**

5. Statement of the Case.

(a) Narrative Statement of the Case.

**[*The parties shall briefly summarize the case without using "color" words or arguments. In most cases, this should require no more than three or four sentences. In a jury trial, this section will be read to the jury venire during the jury selection process.*]**

(b) Undisputed Facts.

**[*The parties shall set out in separately numbered paragraphs each fact that is not in dispute. The parties are reminded that the court, in an effort to reduce the need for evidence at and length of the trial, expects them to approach this task in a good faith effort to agree on all relevant facts for which there is no reasonable basis for disagreement. In a jury trial, this section will be read to the jury and the jury will be instructed to accept these facts as true.]***

(c) Plaintiff's Claims.

**[*For each Defendant, each Plaintiff shall concisely state each legal theory relied upon and shall set out the factual allegations which he/she expects to prove in support of each theory. Vague, conclusory, and general claims and allegations are not acceptable. No weasel wording. By this stage of the proceedings, Plaintiff is expected to know what the claims are and must state precisely the issues expected to be tried. Each claim must be set out in a separately numbered paragraph, appropriately labeled. Think common law pleading. Under each claim, each Plaintiff shall list any citations to the major cases, statutes, etc. that support his/her legal theory.*]**

(d) Defendant's Defenses.

**[*For each claim against him/her, each Defendant shall concisely state each legal theory relied upon and shall set out the factual allegations which he/she expects to prove in support of each such legal theory. Vague, conclusory, and general claims and allegations are not acceptable. No weasel wording. By this stage of the proceedings, Defendant is expected to know what the defenses are and must state precisely the issues expected to be tried. Each defense must be set out in a separately numbered paragraph, appropriately labeled. Think common law pleading. Under each defense, each Defendant shall list any citations to the major cases, statutes, etc. that support his/her theory.*]**

6. Discovery and Other Pretrial Procedures.

(a) Pretrial Discovery.

i. \_\_\_\_\_\_\_\_ Pursuant to previously entered orders of the court, discovery is closed.

ii. \_\_\_\_\_\_\_\_ The parties are given leave to proceed with further discovery provided it is commenced in time to be completed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(b) Pending Motions.

**[*List all pending motions or state that there are no motions pending. Motions should be listed in separately numbered paragraphs, leaving sufficient space for the court to indicate its rulings below each listed motion.*]**

7. Trial Date.

(a) This case is set for **[*Jury/Non-Jury*]** trial on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This case will be ready for trial on or after \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(b) The trial of this matter is expected to last \_\_\_\_\_\_\_\_ days.

8. Exhibit A. The parties are to comply fully with each provision contained in Exhibit A – Standard Pretrial Procedures.

It is **ORDERED** that the above provisions be binding on all parties unless modified by further order for good cause shown.

**DONE** and **ORDERED** this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

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

**LILES C. BURKE**

UNITED STATES DISTRICT JUDGE

**EXHIBIT A -- STANDARD PRETRIAL PROCEDURES**

**1. Damages**. At least fourteen (14) days before trial, the parties shall file and serve a list itemizing all damages and equitable relief being claimed or sought, including the amount requested, and, where applicable, the method and basis of computation.

**2.** **Motions in Limine.**  Motions in limine must be filed at least fourteen (14) days before trial. Any response is duefive (5) days thereafter. No replies are permitted.

**3. Voir Dire**. At least seven (7) days before trial, each party shall submit any special questions or topics for voir dire examination of the jury venire to the Clerk’s office (for delivery to the judge’s chambers). The parties shall also e-mail same in Word format to *burke\_chambers@alnd.uscourts.gov*.

**4. Witnesses – Exchange of Lists**.

(a) **Expert Witnesses**. At least thirty (30 days before trial, the parties shall file and serve a list stating the names and addresses of all expert witnesses whose testimony may be offered at trial.

(b) **Witnesses**. At least thirty (30) days before trial, the parties shall file and serve a list stating the names and addresses of all witnesses whose testimony they may offer at trial.

(b) **Contents of List**. The parties shall appropriately indicate on their witness lists: (1) the “primary” witnesses - those witnesses whose testimony the party expects to offer; (2) the “optional” witnesses - those witnesses whose testimony the party expects will not be needed, but the party has listed to preserve its right to offer such testimony should the need arise in light of developments at trial; and (3) "deposition testimony" - those witnesses the party expects to present by means of depositions with a cite to the page and lines counsel anticipates reading at trial.

**5. Use of Depositions at Trial**.

(a) Before trial, counsel must provide the courtroom deputy with a copy of all depositions to be used as exhibits at trial.

(b) Within ten (10) days of receiving the opposing party's witness list designating witnesses whose testimony will be presented by deposition, a party may serve and file (1) the additional pages and line numbers of the deposition to be used; and (2) objections to the opposing party's designated testimony. Objections should include excerpts from the deposition testimony to which the objection related.

(c) Use of videotape depositions is permitted and the parties must make good faith efforts to agree on admissibility or edit the videotape to resolve objections.

(d) In a non-jury trial, for any deposition offered as a trial exhibit, counsel shall attach to the front of the exhibit a summary of what each party intends to prove by the deposition testimony, with line and page citations.

**6.** **Exhibits and Demonstratives**.

(a) **Exchange of lists**. At least thirty (30) days before trial, the parties shall file and serve a list of all exhibits to be used at trial. Exhibits shall be made available for inspection at the same time.

The parties shall identify those exhibits that the party expects to offer and those exhibits that the party may offer if the need arises.

(b) **Objections and Stipulations.** Within three (3) days of receiving the opposing party's Exhibit List, the parties shall immediately meet and confer regarding any objections to the listed exhibits. The parties should stipulate as to the admissibility of as many exhibits as possible. If the parties cannot agree, an opposing party shall serve and file objections at least ten (10) days before trial.

(c) **Counsel requiring authentication** of an opponent's exhibit must notify offering counsel in writing within ten (10) days after the exhibit is identified and made available for examination. Failure to do so is an admission of authenticity.

(d) **Marking**.Each party that anticipates offering more than five (5) exhibits as substantive evidence shall premark such exhibits in advance of trial, using exhibit labels and lists available from the Clerk of Court. The Court will provide up to 100 labels; if any party needs more labels, that party must use labels of the same type as those supplied by the court. Counsel must contact the courtroom deputy for the appropriate exhibit list form for use at trial.

(e) **Court's Copies**. In addition to the premarked trial exhibits mentioned above, the court requests for the bench an exhibit notebook of anticipated trial exhibits (to the extent possible and practical), including the filed Exhibit List.

(f) **Special and Visual Exhibits**.Should either side desire to present exhibits via projection onto a screen or monitor or by enlargement, counsel shall advise opposing counsel which documents it plans to present at least seven (7) days before trial.

(g) **Demonstratives.** At least fourteen (14) days before trial, the parties shall exchange the demonstratives each side plans to display during trial. Demonstratives include any aid, visual or otherwise, that a party plans to share with the jury.

**7.** **Trial Submissions to Court**.

(a) At least ten (10) days before trial, each party *may* submit the following to the Clerk’s office (for delivery to the judge’s chambers):

(i) A listing of what each party understands to be the essential elements of each of Plaintiff’s claim(s) (separate listing for each claim).

(ii) A listing of what each party understands to be the essential elements of each Defendant’s defense(s) (separate listing for each defense).

(iii) A listing of what each party understands to be the essential elements of each Defendant’s counterclaim(s), if any (separate listing for each counterclaim).

(iv) A listing of what each party understands to be the essential elements of each defense to any Defendant’s counterclaim, if any (separate listing for each defense).

(v) A listing of any special evidentiary or other anticipated legal problems with citation to legal authority that supports the party’s position.

(b) Parties may, if they desire, file trial briefs. Any such briefs must be filed at least ten (10) days before trial. Opposing parties may respond to such trial briefs at least five (5) days prior to trial. The briefs, if any, should not exceed ten (10) typed pages. Additionally, three-hole punched and bound courtesy copies of all briefs must be submitted to the Clerk’s office for delivery to the judge’s chambers, as well as emailed to the chamber's email address at *burke\_chambers@alnd.uscourts.gov* in Word format.

**8a. \*Jury Charges**.

No later than seven (7) days prior to the scheduled trial date, the parties shall file a **single, joint proposed jury charge**, including all necessary instructions, or definitions applicable to the specific issues of the case. The parties need not submit standard generic instructions regarding routine matters, *e.g.*, burden of proof, credibility of witnesses, duty of jurors, etc.

(a) **Each** requested **instruction** must be numbered and presented on a separate sheet of paper with authority cited.

(b) In their joint, proposed jury materials, counsel are to include all necessary instructions or definitions, specifically including: (1) the *prima facie* elements of each cause of action and defense asserted; (2) legal definitions required by the jury; (3) items of damages; and (4) methods of calculation of damages. Counsel are to use the Eleventh Circuit Pattern Jury Instructions, or appropriate state pattern jury instructions, as modified by case law or statutory amendments, wherever possible. Any deviations must be identified, and accompanied with legal authorities for the proposed deviation.

(c) Even if the parties, in good faith, cannot agree on all instructions, definitions or questions, the parties should nonetheless submit a single, **unified** charge. Each disputed instruction, definition, or question should be set out in bold type, underlined or italics and identified as disputed. Each disputed item should be labeled to show which party is requesting the disputed language. Accompanying each instruction shall be all authority or related materials upon which each party relies. **The parties shall also email the unified charge, in Word format, to the chamber’s email address at *burke\_chambers@alnd.uscourts.gov***.

**8b. \*Trial [Non-Jury]**.

(a) Proposed Facts.

(1) No later than twenty-five (25) before trial, Plaintiff's counsel shall submit to Defendant’s counsel a statement setting forth the principle facts proposed to be proved by Plaintiff in support of their claims as to liability and damages. These facts should be set out in short, separately numbered paragraphs.

(2) No later than fifteen (15) days before trial, Defendant’s counsel shall return the statement of principle facts to Plaintiff's counsel, indicating thereon those factual contentions of the Plaintiff with which they disagree and including any additional facts Defendant proposes to prove.

(3) No later than seven (7) days before trial, Plaintiff’s counsel shall indicate on the statement of principle facts those additional factual contentions of Defendant with which Plaintiff disagrees and shall file with the court the modified statement of principle facts, serving a copy thereof on opposing counsel. The final product should have all agreed facts, regardless of by whom proposed, collected under one heading and have the respective additional disputed facts proposed by the parties collected under separate headings. The final product should be submitted to the Clerk’s office (for delivery to the judge’s chambers), and then emailed to the chamber's email address at *burke\_chambers@alnd.uscourts.gov* in Word format.

(4) In stating facts proposed to be proved, counsel shall do so in simple, declarative, consecutively numbered sentences, avoiding “color words,” labels, and legal conclusions. In indicating disagreement with a proposed fact, counsel shall do so by deletion or interlineation of particular words and phrases so that the nature of the disagreement will be clear. Objections to the admissibility of a proposed fact (whether as irrelevant or on other grounds) may be made at trial and, without court order, may not be used to avoid indicating agreement or disagreement with the truth of the proposed fact.

(b) Proposed Conclusions of Law.

(1) No later than twenty-five (25) days before trial, Plaintiff’s counsel shall submit to Defendant’s counsel a statement setting forth the principles of law, with citation to authority, that Plaintiff contends are applicable to the case. These principles should be set out in short, separately numbered paragraphs.

(2) No later than fifteen (15) days before trial, Defendant’s counsel shall return the statement of principles of law, indicating thereon those principles of law of the Plaintiff with which they disagree, and including any additional principles of law on which Defendant relies.

(3) No later than seven (7) days before trial, Plaintiff’s counsel shall indicate on the statement of principles of law those additional principles of law of Defendant with which Plaintiff disagrees and shall file with the court the modified statement of principles of law, serving a copy thereof on opposing counsel. The final product should have all agreed principles of law, regardless of by whom proposed, collected under one heading and have the respective additional disputed principles proposed by the parties collected under separate headings. The final product should be submitted to the Clerk’s office (for delivery to the judge’s chambers), and then emailed to the chamber’s email address at *burke\_chambers@alnd.uscourts.gov* in Word format.