IN THE GEORGIA STATE-WIDE BUSINESS COURT

IN RE CASES ASSIGNED
TO JUDGE WALTER W. DAVIS

STANDING ORDER

This Standing Order (the "Order") is furnished to inform the parties and their counsel of the policies, procedures, and practices of the Georgia State-wide Business Court (the "Court"), and to promote the just, speedy, and economical disposition of cases. This Order, in combination with the Uniform Superior Court Rules and the Georgia Civil Practice Act, shall govern your case until the Supreme Court of Georgia approves the Rules of the Georgia State-wide Business Court, the most recent draft of which can be found on the Court's website (www.gsbc.us).

Litigation, by definition, is an adversarial process—one which, at times, can bring out our best qualities, and, in others, some of our worst. When the stakes are at their highest, as they may often be in matters before this Court, emotions and intemperance too can run high. The Court is sensitive to this potentiality and is sympathetic to the toll litigation takes on both counsel and their clients. The Court, therefore, offers to counsel what may be a familiar reminder. It is without question that the vast majority of attorneys who litigate in, and appear before, this Court will conduct themselves in accordance with the highest standards of the legal profession, even in the face of litigation's most demanding and stressful moments. As a new institution, the Court is well aware that it too will be held to an even higher standard of professionalism, one that it is ready to meet and exceed. It is the Court's expectation, therefore, that practitioners in this Court will take pride in doing the hard work of litigation the right way, and to help in that endeavor, this Order not only provides guidance on the policies, procedures, and practices of our Court, but it also sets

out the Court's expectations for how counsel and the parties are to treat one another, as well as the Court and its staff.

If you have any questions about this Order, please contact the Court's Senior Staff Attorney, Lynette Jimenez, at jimenezl@gsbc.us or (404) 463-8737.

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1. CASE ADMINISTRATION

(a) Protocols for Court Proceedings and Interactions Between and Among the Court and the Parties

The Court was created, in part, to be a forum for individuals and businesses who find themselves in significant, emergent, and sometimes existential, commercial disputes. Understandably, such disputes are hard-fought and highly contentious and the potential certainly exists that emotions will run high on occasion. Even so, Judge Davis and his staff take their roles in the judicial process seriously and will do everything in their power to make your experience litigating in the Court a positive one—the end result notwithstanding. The Court expects counsel and litigants to take their roles in this process seriously as well. As such, in the context of hearings, conferences, oral arguments, and the like, interruptions, reactive facial expressions, and other disturbances have no place in this Court and will be looked upon with disfavor.

(b) Interactions with Court Staff Outside of the Presence of the Court

Throughout the litigation process, you will deal regularly with Court staff, particularly with Ms. Jimenez. The Court expects staff to treat you with courtesy and respect, and to make the process as easy for you as possible. Please show them the same courtesy as you show the Judge, and realize that when you do not, the Judge usually hears about it. *Neither the parties, nor their counsel, should discuss the merits of the case with any of the Court's staff.*

(c) Contacting Chambers

Ms. Jimenez is your principal point of contact on matters related to your case. Communications with chambers should be conducted via e-mail to Ms. Jimenez at jimenezl@gsbc.us or via phone at (404) 463-8737. If you have questions concerning filing, or

questions that are not case-specific, you may either reach out to Ms. Jimenez by email or phone or e-mail the Court at filinghelp@gsbc.us.

The Clerk of Court and chambers are open from 8:30 a.m. to 4:30 a.m. ET, Monday through Friday. However, the Court understands that pressing matters arise outside of normal business hours, and should that occur, parties are encouraged to contact Ms. Jimenez via email at jimenezl@gsbc.us, with a copy to afterhours@gsbc.us.

Parties may also contact chambers via regular mail or overnight carrier at: The Honorable Walter W. Davis, Nathan Deal Judicial Center, Georgia State-wide Business Court, 330 Capitol Ave., S.E., Suite 3500, Atlanta, Georgia 30334. Parties are cautioned that the Court, in its discretion, may file on the docket written communications submitted to chambers. *Neither the parties, nor their counsel, should discuss the merits of the case with any of the Court's staff.*

(d) **Respect for the Courthouse Facility**

It is a privilege for the Court to be in the Nathan Deal Judicial Center, close to and among the Justices of the Georgia Supreme Court, the Judges of the Georgia Court of Appeals, and their respective staffs. The Court takes great pride in its new home and expects that practitioners and other visitors to the Judicial Center will as well. To that end, when you visit the Judicial Center, treat it with the respect and dignity it deserves, and when you depart, leave it better than you found it. When you leave the courtroom, conference rooms, or any other space in the Judicial Center, please clean up and straighten your area. Remove or throw away your trash. Replace any chairs that were moved and slide them under the tables. The Court staff has been instructed to inform the Judge about any litigation teams or lawyers that fail to clean up their area.

For the convenience of the parties and counsel, three conference rooms are located directly outside the courtroom. These rooms can be used during breaks and before and after any Court

proceeding. You will have access to additional public space in the common area of the 3rd floor, and additional private space, including meeting rooms, may be available to you upon request elsewhere in the Judicial Center, if available. Parties should promptly contact the Court if additional space or special accommodations are needed.

You are permitted to have food and refreshments delivered to the building, as necessary, and you may either eat in the conference rooms or visit the café on the second floor. But again, please leave the space you are assigned better than you found it, so that others may enjoy it in the same way you did.

(e) **Electronic Filing, Service, and Signatures**

All counsel and self-represented parties must register and participate in the Court's electronic filing ("e-file") system, PeachCourt. All filings to the Court must be e-filed and served through the PeachCourt system. To register for a PeachCourt account, please visit: https://peachcourt.com/. (For training, tips, and resources regarding e-filing and the PeachCourt system, please visit: http://awesome.peachcourt.com/.)

If any self-represented party requires an accommodation or to opt-out of the e-filing system, he or she must make the request in writing to the Court specifying the requested accommodation or the reason the party is unable to use the e-filing system. The request must be served on all parties/counsel. The Court will address such requests on a case-by-case basis.

A document filed and signed by counsel may be signed using an electronic signature. An electronic document bearing an electronic signature, *e.g.*, /s/ NAME, or a scanned copy of an ink signature shall be treated as a personal signature for all purposes under Georgia law.

(f) **Courtesy Copies of Documents**

Parties frequently forward copies of motions or other filings directly to chambers for the Court's convenience. Courtesy copies are not required except for emergency motions, motions for temporary restraining orders and/or preliminary injunctions, and motions for summary judgment. Courtesy copies of other motions that have voluminous exhibits should also be submitted to chambers.

Courtesy paper copies of emergency motions, motions for a temporary restraining order, and motions for a preliminary injunction should be hand-delivered to chambers at: Nathan Deal Judicial Center, 330 Capitol Ave., S.E., Suite 3500, Atlanta, Georgia 30334. Courtesy paper copies of motions for summary judgment, including all exhibits, and other motions with voluminous exhibits may be either hand-delivered to chambers (in the manner described immediately above) or submitted via regular mail to Ms. Jimenez's attention at the address provided above.

(g) **Stipulations**

Parties may not stipulate to extensions of time or additional pages. Instead, the Court requires the parties to contact the Court concerning such extensions in the manner outlined below.

(h) **Extensions of Time**

The Court, along with counsel and the parties, is responsible for processing a case towards a prompt and just resolution. To that end, the Court seeks to set reasonable, but firm, deadlines. Requests for extensions whether joint, unopposed, or designated as consent, will not be granted without the Court's due consideration. That said, the Court wants to be responsive to the particular needs of a case and the preferences of the parties and their counsel. If that means a case requires more time to complete discovery or other aspects of the pre-trial process, the Court will certainly take that into account when the issue is presented.

As such, parties seeking an extension should explain with specificity the unanticipated or unforeseen circumstances necessitating the extension and should set forth a timetable for the completion of the tasks for which the extension is sought. Parties should indicate whether opposing counsel consents to the extension, and if not, why not. A proposed order must be provided.

(i) **Conferences**

Scheduling, discovery, pre-trial, and settlement conferences promote the speedy, just, and efficient resolution of cases. Therefore, the Court invites the parties to request a conference with the Court when counsel believes that a conference will be helpful. Conferences may be requested by contacting Ms. Jimenez via email or telephone. If a conference is requested, counsel will be expected to prepare, in most instances, an agenda for the conference and submit it to chambers at least three (3) business days before the conference, absent compelling circumstances justifying departure from this requirement.

(j) **Court Reporter**

The Court does not have a dedicated court reporter on staff. The responsibility for securing court reporting services for any Court proceeding, including trial, is on the parties to the case. The Court will, however, be cognizant of the need to preserve the record of proceedings before the Court and will be available to help facilitate the same.

2. **PROPOSED ORDERS**

For all consent, unopposed, and joint motions, as well as applications for admission *pro hac vice*, the filing party shall include a proposed order granting the motion or application.

3. **ATTORNEYS**

(a) **Admission of Counsel *Pro Hac Vice***

Until the Supreme Court of Georgia approves the State-wide Business Court Rules, applications to appear before the Court *pro hac vice* must comply with Uniform Superior Court Rule 4.4. If lead counsel has been admitted *pro hac vice*, local counsel is required to be familiar with the case and may be called on to attend hearings or participate in conferences on behalf of lead counsel.

(b) **Leaves of Absence**

Counsel are encouraged to review their calendars and submit any requests for leaves of absence as early as possible. Leave requests shall comply with Uniform Superior Court Rule 16. All requests for or notices of a leave of absence must be e-filed. Counsel should not mail or hand-deliver paper copies to chambers. Notices of leave(s) of absence may be in the form of a letter.

(c) **Corporate Representation**

Corporate entities must be represented in court by an attorney. A corporate officer may not represent the corporation unless that officer is also licensed to practice law in the State of Georgia. Failure to comply with this rule may result in dismissal of a corporation's complaint or default judgment being entered against a corporation.

4. **CASE MANAGEMENT**

(a) **Case Management Meeting**

(i) **General Principles and Procedure**

The case management process described in this Standing Order will be applied in a flexible and case-specific manner. The process is designed to encourage parties to identify and to implement the case management techniques that are most likely to support the efficient resolution of the case. Recognizing that it is often difficult for litigants and their counsel to voluntarily enter

into discussions and reach agreement on early case management issues, the Court has identified the issues that it believes are important for the parties to address in their Case Management Meeting and subsequent Report. The Court also recognizes, however, that there is not a one-size-fits-all approach to case management and encourages the parties to consider how the case management process contemplated here can be adjusted to best suit the needs of the parties.

In summary, the case management process contemplates a Case Management Meeting between the parties/counsel, a Case Management Report submitted to the Court, a Case Management Conference with the Court, and entry of a Case Management Order setting forth the specific deadlines, policies, and procedures that will govern the case.

(ii) **Timing**

Unless the Court orders otherwise, the parties shall hold a Case Management Meeting within thirty (30) days of all named defendants answering or, for cases removed or transferred to this Court, within thirty (30) days of the order granting the petition. However, if a party files an objection to jurisdiction pursuant to O.C.G.A. §15-5A-4(a)(1), the parties shall not be required to hold a Case Management Meeting until the Court issues an order on such objection, at which time the parties will receive further direction from the Court.

Parties are invited to contact the Court to request additional time to conduct the Case Management Meeting if circumstances warrant.

(iii) **Case Management Meeting**

At the Case Management Meeting, the parties are required to address the issues laid out below. The meeting may be held by telephone, video conference, in person, or some combination thereof. The first named plaintiff (or that plaintiff's counsel) is responsible for contacting all other parties or counsel of record and scheduling the Case Management Meeting.

Unless the Court orders otherwise, the Case Management Meeting shall, at minimum, cover the following topics:

(1) The nature and basis of each party's claims and defenses and the possibilities of settling the case, including by early mediation (*see* paragraph (11) of this subsection);

(2) Any initial motions that a party might file and whether certain issues may be narrowed or presented to the Court for early resolution;

(3) The discovery topics, issues, and requirements described in section 5 below;

(4) Any discovery-related deadlines;

(5) Any potential ESI agreement as discussed in subsection 5(b)(iv) below;

(6) A proposed deadline for amending pleadings, adding parties, or both;

(7) A proposed deadline for filing dispositive motions;

(8) A proposed trial date;

(9) Whether a confidentiality/protective order is needed;

(10) Whether any law other than Georgia law may govern an aspect of the case and, if so, what law and which aspect of the case;

(11) Each party's view on the timing of mediation, including any plans for early mediation, a mediation deadline, and each agreed-upon mediator;

(12) Whether periodic Case Management Conferences with the Court (*see* subsections 1(i) and 4(c)) would be beneficial and, if so, the proposed frequency of such conferences;

(13) Whether the Case Management Conference should be transcribed;

(14) Whether a matter might be appropriate for a referee or special master;

(15) Whether client attendance at the Case Management Conference would be beneficial or detrimental; and

(16) Whether areas of disagreement exist among the parties that need to be resolved at the Case Management Conference.

The Court's future consideration of discovery motions and requests for discovery extensions, among other requests, by any party will be influenced by the parties' decision to spend

(or not to spend) the time and resources during the early stages of their case to seriously discuss and consider the foregoing matters, as well as the matters outlined immediately below.

If, because of the circumstances of the case, the parties need additional time after the Case Management Meeting to complete their discussion of discovery, the parties should arrange to have additional meetings, as needed, on any remaining discovery issues, and report the results of the same to the Court if they impact case management.

(b) **Case Management Report**

The parties shall jointly file a Case Management Report (*see* Appendix A) no later than ten (10) days after the date of the first Case Management Meeting. The first named plaintiff (or that plaintiff's counsel) shall circulate the initial draft of the Case Management Report, which shall incorporate the views of all other parties, to prepare for finalizing and filing the Report. The Case Management Report shall state whether the parties have completed their discussion of the issues described above and, if they have not, the parties shall identify the issues not yet resolved. If the parties participate in additional discovery meetings that impact case management at any time during the case, they shall promptly file a joint supplement to the Case Management Report.

The Court requires specific due dates to be provided in the Proposed Case Deadlines section of the Case Management Report. Once entered by the Court, such deadlines will not be amended absent good cause.

The Court recognizes that it may not be possible to set specific due dates when a defendant files a motion to dismiss or other motion that has the potential to delay the start of the discovery process. In such cases, the parties should state the number of months that discovery is expected to take and for the other deadlines that follow. Within fourteen (14) days after a ruling on any motion that delays the start of discovery, the parties must file an amended Case Management Report to

identify exact dates for each of the required deadlines. After the filing of a Case Management Report or an amended Case Management Report, the Court may—in the exercise of its discretion or at the request of any party—schedule a Case Management Conference. The scheduling of the Case Management Conference shall not delay the start of discovery.

(c) **Case Management Conference**

The Court shall have discretion regarding when and whether to convene a Case Management Conference and whether more than one such conference is needed. The Court may require representatives of each party, in addition to counsel, to attend any Case Management Conference. The Court may conduct the conference in person or by technological means accessible to all parties. Unless it orders otherwise, the Court will not hear substantive motions at a Case Management Conference. The conference will not be transcribed unless a party arranges for a court reporter to transcribe the proceeding.

(d) **Case Management Order**

Following submission of the Case Management Report and, if applicable, the Case Management Conference, the Court shall issue a Case Management Order. The Case Management Order shall address the issues developed in the Case Management Report, Case Management Conference, or both, as well as any other issues that the Court deems appropriate. Any party may move to modify the terms of the Case Management Order on a showing of good cause after consultation with all other parties.

5. **DISCOVERY**

(a) **General Principles of Discovery**

Counsel and self-represented litigants should be guided by courtesy, candor, and common sense, and should conform to the Civil Practice Act, this Standing Order, the Uniform Rules, and

any other applicable orders in conducting discovery. In particular, counsel and self-represented litigants are reminded of the appropriate scope of discovery provided in O.C.G.A. §9-11-26(b) and restrictions on the same.

(b) **Discovery Management**

The parties should be prepared to discuss discovery management at the Case Management Meeting to the fullest extent possible. As stated in subsection 4(a), the parties may conduct additional meetings after the initial Case Management Meeting to complete their discussion of discovery management.

This section is intended to facilitate a process through which the parties can set expectations, with reasonable specificity, concerning the information each party seeks to discover and how that information will be identified, preserved, retrieved, and produced, absent a good faith objection. The parties should at least discuss the following discovery topics:

(i) **Necessary Scope of Discovery**

The parties should discuss the scope of discovery (taking into account the needs of the case), the amount in controversy, limitations on the resources of each party, the burden and expense of the expected discovery compared with its likely benefit, the importance of the issues at stake in the litigation, and the importance of the discovery for the adjudication of the merits of the case.

(ii) **Organization of Discovery**

The parties should discuss how discovery will be organized, including the numbering system (*e.g.*, bates numbering) that will be used to identify any materials produced during discovery and the format for producing the same.

(iii) **Phased Discovery**

The parties should consider whether phased discovery is appropriate and, if so, they should discuss proposals for specific phases.

(iv) **Electronically Stored Information ("ESI")**

Parties should consider preparing an ESI agreement for the identification, preservation, collection, and production of ESI. The Court recognizes that ESI agreements will not be necessary in all cases. Where applicable, the ESI agreement shall be determined on a case-by-case basis and shall include, at minimum, the following topics:

(1) The specific sources, location, and estimated volume of ESI;

(2) Whether ESI should be searched on a custodian-by-custodian basis and, if so, (i) the identity and number of the custodians whose ESI will be searched, and (ii) the search parameters;

(3) A method for designating documents as confidential;

(4) Plans and schedules for any rolling production;

(5) De-duplication of data;

(6) Whether a device needs to be forensically examined and, if so, a process for the examination;

(7) The production format of documents;

(8) The fields of metadata to be produced; and

(9) How data produced will be transmitted to other parties (*e.g.*, in read-only media, segregated by source, encrypted, or password protected).

(c) **Treatment of Privileged Matters**

(i) **Meet and Confer**

As part of the Case Management Meeting, the parties shall confer regarding: the scope of any privilege review, the amount of information to be set out in a privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, the date by which privilege logs shall be exchanged, and any other issues pertinent to privilege review.

(ii) **Information Withheld**

If a party withholds information otherwise discoverable by claiming the information is privileged or subject to protection as attorney work-product, the party shall: (1) expressly make the claim; and (2) prepare a privilege log that describes the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that will enable other parties to assess such claim without revealing information that is itself privileged or protected.

(iii) **Privilege Log – Form**

The parties should use categorical designations, if appropriate, to reduce the time and costs associated with preparing privilege logs and to utilize any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that is established, the producing party shall provide a certification setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including but not limited to whether each document was reviewed or some form of sampling was employed, and if sampling was employed, how the sampling was conducted. The certification shall be signed by the Responsible Attorney, as defined in subsection 5(c)(vi) below, or by the party, through an authorized and knowledgeable representative.

If the requesting party objects to a categorical approach and insists on a document-by-document listing on the privilege log, absent an order of the Court to the contrary, the producing party shall proceed with preparing a document-by-document privilege log. After a showing of good cause, the producing party may apply to the Court for an allocation of costs (including attorney's fees) incurred in the preparation of the document-by-document log.

To the extent that a party insists upon a document-by-document log, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include all of the following:

(1) An indication that the e-mails represent an uninterrupted dialogue;

(2) The beginning and ending dates and times (as noted on the e-mails) of the dialogue;

(3) The number of e-mails within the dialogue; and

(4) The names of all authors and recipients, together with sufficient identifying information about each person (*e.g.*, name of employer, job title, role in the case) to allow for a considered assessment of privilege issues.

(iv) **Information Produced**

If information produced in discovery is subject to a claim of privilege or otherwise protected from disclosure, the party making the claim may notify any party that received the information of the claim and the basis for it. The producing party shall preserve the information until the claim is resolved. After being notified, a party: shall promptly return or destroy the specified information and any copies thereof; shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the dispute to the Court for determination of the claim.

(v) **Agreements to Prevent Privilege and Work Product Waiver**

Parties should agree to an order that provides for the non-waiver of the attorney-client privilege or work-product protection if privileged or work-product material is inadvertently produced.

(vi) **Responsible Attorney**

As used herein, the term "Responsible Attorney" means an attorney having supervisory responsibility over the privilege review. A Responsible Attorney shall be actively involved in

establishing and monitoring the procedures used to collect and review documents to determine that a reasonable and good faith effort is made to ensure that responsive, non-privileged documents are timely produced.

(d) **Prompt Completion and Presumptive Limits**

The discovery period and presumptive limits on discovery shall be governed by the following:

(i) **Time for Discovery**

A party may begin discovery before the entry of the Case Management Order, but the presumptive discovery period will be set in the Case Management Order. The Court presumes that an eight (8) month discovery period should be sufficient to complete all fact discovery. This period may be lengthened or shortened in consideration of the claims and defenses of a particular case, but a significantly longer discovery period shall require a showing of good cause (*e.g.*, the parties demonstrate a need for expert discovery).

Each party shall ensure that discovery is completed within the time specified in the Case Management Order. A party should serve interrogatories, requests for production, and requests for admission early enough that answers and responses can be completed before the end of the discovery period.

Any motion that seeks to extend the discovery period or take discovery beyond the limits in the Case Management Order shall be made before the current deadline for the completion of discovery expires. The motion to extend the discovery period shall explain the good cause that justifies the relief sought and demonstrate that the parties have diligently pursued discovery to date.

(ii) **Written Discovery**

Unless otherwise permitted by the Court, a party may serve no more than fifty (50) interrogatories on each party. Each subpart of an interrogatory counts as a separate interrogatory for purposes of this limit. The same limit shall apply to requests for admission.

(iii) **Depositions Upon Oral Examination—Duration and Number**

Unless otherwise permitted by the Court or stipulated by the parties, a deposition shall be limited to a single day of seven (7) hours. A party may take no more than fifteen (15) fact depositions, absent an order from the Court granting leave for additional depositions. For purposes of counting depositions taken by any party and for depositions conducted pursuant to O.C.G.A. § 9-11-30(b)(6) of the Civil Practice Act, each period of seven (7) hours of testimony shall count as a single deposition, regardless of the number of designees presented during that seven-hour period.

(iv) **Agreement, Reduction, and Modification of Limits**

The parties should attempt to agree, where appropriate, on reductions to the presumptive limits in this rule. Absent agreement of the parties, the presumptive limits may be increased only upon a showing of good cause. If each party agrees to conduct discovery after the discovery deadline without seeking an order permitting discovery after the deadline, the Court shall not entertain a motion to compel or a motion for sanctions in connection with that discovery.

(e) **Depositions**

(i) **Conduct**

The parties shall conduct depositions as follows:

(1) The parties should cooperate to schedule depositions.

(2) Counsel shall not direct a witness to refrain from answering a question unless—

(A) counsel objects to the question on the ground that the answer is protected by a privilege or another discovery immunity;

(B) counsel proceeds immediately to seek relief under the Civil Practice Act; or

(C) counsel objects to a question that seeks information in contravention of a Court-ordered limitation on discovery.

(3) Objections should be succinct and state only the basis for the objection. Counsel shall not make speaking objections (*i.e.*, argumentative or suggestive in manner).

(4) Counsel and any witness shall not engage in private, off-the-record conferences while a question is pending, except to decide whether to assert a privilege, discovery immunity, or Court-ordered limitation on discovery.

(ii) **Sanctions**

The Court may impose an appropriate sanction for conduct that impedes, delays, or frustrates the fair examination of a deponent. An appropriate sanction for a violation of this section may include reasonable attorney's fees and expenses incurred by any party.

(iii) **Depositions by Organizations**

Depositions of organizations shall proceed as follows:

(1) After a party serves a deposition notice under O.C.G.A. § 9-11-30(b)(6) of the Civil Practice Act, the organization to which the notice is issued should present any objections to the noticing party within a reasonable time of service and sufficiently in advance of the deposition.

(2) Counsel for the noticing party and for the organization to which the notice was issued shall then meet and confer in good faith to resolve any disputes over the topics for the deposition.

(3) The parties shall also discuss and attempt to agree on whether a deponent under O.C.G.A. § 9-11-30(b)(6) of the Civil Practice Act may be asked questions about the deponent's personal knowledge. Absent an agreement to the contrary, a deposition seeking discovery of a designee's personal knowledge in his or her individual capacity should be taken separately from the designee's deposition on behalf of an organization noticed under O.C.G.A. § 9-11-30(b)(6).

(iv) **Preservation of Testimony**

Lastly, the Court will not permit the taking of depositions for the preservation of testimony after the close of discovery, absent a good faith reason to do so. A party must request the Court's permission to conduct a preservation deposition.

(f) **Expert Witnesses**

(i) **Timely Designation of Expert Witnesses**

A party who desires to use the testimony of an expert witness shall designate the expert sufficiently early in the discovery period to permit the opposing party the opportunity to depose the expert and, if desired, to name his or her own expert witness sufficiently in advance of the close of discovery so that a similar discovery deposition of the second expert may also be conducted prior to the close of discovery. A party who does not comply with this section shall not be permitted to offer the testimony of his or her expert, unless otherwise ordered by the Court.

(ii) **Procedures**

Each party shall attempt to agree on procedures that will govern expert discovery, including limits on the number of experts or the number of expert depositions or both. In the absence of an agreement, the Case Management Report should list each party's respective position on expert discovery. The parties may elect to exchange disclosures only, or they may elect to exchange reports in addition to or instead of disclosures. The procedures for expert witnesses may include the following:

(1) Expert Reports

If the parties agree to exchange expert reports, the parties should further agree that the name of each expert, the subject matter on which the expert is expected to testify, and the expert's qualifications shall be exchanged at least thirty (30) days prior to the date of service of the expert report.

(2) Time and Manner of Disclosure

If the parties agree not to exchange expert reports, they shall agree on a schedule for the exchange of expert information in the form of interrogatory responses. In the absence of such an agreement, the Court shall establish a sequence for the exchange of expert information in the Case Management Order.

(3) Facts and Data Considered by the Expert Witness

The parties shall attempt to agree on when they will provide a copy of previously unproduced material that an expert witness considers in forming his or her opinion.

(iii) **Expert Depositions**

Unless the parties otherwise agree, each expert witness may be deposed by a party adverse to the party designating the expert. The expert witness shall only be subject to a single deposition at which all adverse parties may appear.

(g) **Discovery Responses: Boilerplate and General Objections**

Boilerplate and general objections in response to discovery requests are prohibited. Parties should not carelessly invoke the usual litany of rote objections, *e.g.*, attorney-client privilege, work-product immunity from discovery, overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Moreover, general objections are prohibited. A party shall not include in a response to a discovery request a "Preamble" or a "General Objections" section stating that the party objects to the discovery request "to the extent that" it violates some rule pertaining to discovery, *e.g.*, the attorney-client privilege; the work product immunity from discovery; the requirement that discovery requests be reasonably calculated to lead to the discovery of admissible evidence; and the prohibition against discovery requests that are vague, ambiguous, overly broad or unduly burdensome. Instead, each individual discovery request must be met with every specific objection

thereto—but only those objections that actually apply to that particular request. Otherwise, it is impossible for the Court or the party upon whom the discovery response is served to know exactly which objections have been asserted to each individual request. All such general objections may be disregarded by the Court.

Finally, a party who objects to a discovery request but then responds to the request must indicate whether the response is complete, *i.e.*, whether additional information or documents would have been provided but for the objection(s). For example, in response to an interrogatory, a party is not permitted to raise objections and then state, "Subject to these objections and without waiving them, the response is as follows . . ." unless the party expressly indicates whether additional information would have been included in the response but for the objection(s).

(h) **Discovery Disputes**

In the event a discovery dispute arises, the parties are required to first meet and confer in an effort to resolve the dispute. Counsel and/or self-represented litigants are required to confer, by telephone, videoconferencing, or in person, in good faith before bringing a discovery dispute to the Court. The duty to confer is not satisfied by sending a written document or correspondence to the adversary, unless repeated attempts to confer by telephone or in person are unsuccessful.

Before filing a discovery motion (including motions to compel, motions for protective order, and motions for sanctions), the Court requires parties to submit their discovery dispute to the Court in accordance with the process set forth in subsection 6(f) below. These disputes are often resolved through a conference with the Court, thus avoiding an unnecessary delay of discovery. Discovery conferences will not be transcribed unless the parties arrange for a court reporter. If the differences cannot be resolved during the conference with the Court, the Court may direct further proceedings.

If a bona fide dispute arises during a deposition that the parties cannot resolve despite a good faith effort to do so, counsel should not hesitate to call the Court's main line at (404) 656-3080, or the Court's Senior Staff Attorney, Ms. Jimenez, at (404) 463-8737. The Court is usually available by telephone to resolve objections and disputes that arise during depositions.

(i) **Confidentiality Agreements, Protective Orders, and Motions to Seal**

Any party seeking to make a filing under seal which contains personal or confidential information—other than protected identifiers that may be redacted as a matter of course pursuant to O.C.G.A. §9-11-7.1—shall file a redacted version with the Clerk of Court for the public record, a motion to file the unredacted materials under seal, and a proposed order. The motion must address why the filing under seal is warranted and demonstrate that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest. The party shall then contact the Court via email, copying all parties or counsel of record, to advise of the motion to file under seal and with a copy of the unredacted materials.

6. **MOTIONS**

(a) **Form of Motion**

Unless made during a hearing or trial, an application to the Court for an order shall be made by motion, which shall be in writing, state with particularity the grounds for the motion, and set forth clearly the relief sought. All briefs filed in support of motions made prior to trial shall include or be accompanied by citations of supporting authorities and, where allegations of unstipulated facts are relied upon, supporting affidavits or citations to evidentiary materials of record.

(b) **Briefing Schedule**

With respect to all written motions, the Court does not mandate a rigid time period for the briefing of motions, response briefs, or reply briefs. Rather, the parties may enter into a stipulated

briefing schedule that reflects the particular demands of the case. If the parties are unable to agree to such a schedule, the following default briefing schedule shall govern:

Opening Briefs. Except as provided below and unless otherwise ordered by the Court, a party shall file an opening brief at the same time the corresponding motion is filed.

Response Briefs. Unless otherwise ordered by the Court, a party opposing an opening brief shall file a response brief within fourteen (14) days of service of the motion. This period is extended to twenty-one (21) days after service for responses to motions for summary judgment. If a party fails to file a response within the time required by this section, the motion will be considered and decided as an uncontested motion, absent good cause.

Reply Briefs. Parties are permitted, but not required, to file reply briefs. When a party deems it necessary to file a reply brief, the reply must be served within ten (10) days of service of a responsive brief. This period is extended to fourteen (14) days after service for responses to motions for summary judgment. A reply brief must be limited to discussion of matters newly raised in the response brief. The Court retains discretion to strike any reply brief or portion thereof that violates this provision.

If the parties are unable to agree upon a briefing schedule, and special considerations warrant modification of the above default schedule, counsel may petition the Court for modification of such schedule by letter as provided in subsection 6(c)(iii) below.

(c) **Briefs**

This section is intended to provide consistency and structure, and hopefully simplify the process, for presenting briefs to the Court based on the complexity of the motion or other issue under consideration. The Court contemplates three (3) general types of briefs, as described in more detail below.

(i) **Briefs on Merit-Related Motions**

Merit-related motions include motions filed pursuant to O.C.G.A. §§ 9-11-12, 9-11-23, 9-11-56, and 9-11-65 of the Civil Practice Act. Unless the Court orders otherwise, briefs on merit-related motions shall comply with the following requirements.

(1) Opening briefs shall not exceed 14,000 words.

(2) Response briefs shall not exceed 14,000 words.

(3) Reply briefs, if any, shall not exceed 7,500 words.

(4) The front cover, table of contents, table of citations, page numbers, and signature block shall not count toward the word limitations in this paragraph. All other text (*e.g.*, footnotes, headings, subheadings, etc.) shall count toward the limitations.

(ii) **Briefs on Other Motions and Petitions**

Except as otherwise provided in this section, all other applications shall be made by motion without a supporting opening brief but may include a concise, incorporated memorandum of law, if appropriate based on the issue(s) presented. Unless the Court orders otherwise, briefing shall proceed in accordance with the following requirements.

(1) The motion or petition seeking relief shall not exceed 4,000 words.

(2) Response briefs, if any, to the motion or petition shall not exceed 4,000 words.

(3) Reply briefs, if any, shall not exceed 2,000 words.

(4) The caption, title, page numbers and signature block shall not count toward the word limitations in this paragraph. All other text (*e.g.*, footnotes, headings, subheadings, etc.) shall count toward the limitation.

The Court recognizes that motions that technically fall under this section may require more extensive briefing, and as such, the Court will consider requests to enlarge the limits set forth in this section on a case-by-case basis.

(iii) **Letter Briefs**

Parties may use letters to provide updates to the Court, to address logistical or scheduling issues, or to address discreet legal issues as directed by the Court. All such letters shall be e-filed via the Court's e-filing system. Counsel is, however, encouraged to contact Ms. Jimenez contemporaneous with the filing of such letters, to the extent the parties require the Court's immediate attention. Letters shall comply with the following requirements:

(1) A letter to the Court shall not exceed 1,000 words.

(2) The letterhead, header, address and delivery information, caption, salutation, complimentary close, signature, statement of enclosures, copy recipients, and page numbers shall not count toward the word limitation. All other text shall count toward the limitation.

(3) The Court shall provide additional instructions if additional correspondence or briefing is requested or otherwise warranted.

(iv) **Certificate of Compliance**

Any document listed in subsections 6(c)(i)-(iii) shall include in the signature block the term "Words:" followed by the number of words in the document. Use of the foregoing term constitutes a certification by the signatory of the document, whether counsel or self-represented litigant, that the document complies with the word limits set forth above. In so certifying, the signatory may rely on the word count of the word processing system used to prepare the document.

(v) **Legal Citations**

Legal citations should be in Bluebook Bluepages form (*i.e.*, citations should appear in the text of a brief immediately following the propositions they support, not in footnotes or endnotes).

(d) **Emergency Motions and Motions for Expedited Proceedings**

(i) **Notice to the Court**

If a party files or intends to file a motion for emergency relief or expedited proceedings, such party should contact chambers as soon as practicable. If circumstances permit, the moving

party shall give notice to all other interested parties before or contemporaneous with the filing of the motion. The moving party or any interested party may request a scheduling conference to address the motion. The moving party shall promptly advise all other interested parties of all conference dates and times obtained.

(ii) **Briefing Schedule**

As with other briefs filed pursuant to this section, the parties are expected to agree on a mutually acceptable briefing schedule, where possible, for all motions filed under this rule. Absent such an agreement, the Court will, in its discretion, establish a briefing schedule on a case-by-case basis.

(iii) **Briefing Limitations**

Unless the Court orders otherwise, the briefing limitations and other requirements of subsection 6(c)—including word count limitations—will apply to all briefs filed under this rule.

(e) **Motions for Temporary Restraining Orders or Preliminary Injunctive Relief**

Any request for a temporary restraining order or preliminary injunctive relief must be made by a separate motion and must comply with the briefing requirements and limitations set forth in subsection 6(c). A request for a temporary restraining order or preliminary injunction found only in the complaint will not be considered. After filing an appropriate motion, the movant must contact the Court to request expedited consideration.

(f) **Discovery Motions**

This subsection applies to motions under O.C.G.A. §§ 9-11-26 through 9-11-37 and 9-11-45 of the Civil Practice Act. References to "party" in this subsection shall include non-parties subject to subpoena under O.C.G.A. § 9-11-45 of the Civil Practice Act.

(i) **Pre-Filing Requirements**

The pre-filing requirements for discovery motions shall be as follows:

(1) Summary of Dispute

Before filing a motion related to discovery, including the failure of a party to make discovery, a party shall engage in a good faith attempt to resolve or narrow the dispute. If the dispute remains unresolved, the party seeking relief shall notify the Court as to the existence of the dispute, and unless the Court orders otherwise, the parties shall be directed to submit simultaneous summaries of the dispute via letter and in accordance with subsection 6(c)(iii). If the parties cannot agree on a deadline for the filing of the summaries, the Court shall set the deadline. No replies will be permitted absent an order of the Court.

(2) Certification of Good Faith Effort to Resolve the Dispute

A dispute summary under paragraph (1) of this subsection shall include a certification that, after consultation and diligent attempts to resolve differences, the parties could not resolve the dispute. The certificate shall state the date of each conference, the name of each attorney who participated, and the specific results achieved. The certificate shall state, if applicable, whether the parties discussed cost-shifting or alternative discovery methods that might resolve the dispute. The certificate shall not exceed 300 words and must be submitted with the dispute summary.

(3) Discovery Conference

After the foregoing summaries and certificates are submitted, the Court may schedule a telephone conference with counsel to discuss the dispute, order the parties to file a motion and brief regarding the dispute or provide additional materials, or issue an order deciding the issue(s) raised or providing the parties with further instructions. If the Court elects to conduct a telephone conference, the Court may make a decision regarding the dispute during the conference.

(ii) **Briefs on Discovery Motions**

No discovery motion shall be filed unless the pre-filing requirements described in subsection 6(f)(i) have been followed and the Court has permitted or instructed briefing on the dispute.

(iii) **Cost-Shifting Requests**

If a party contends that cost shifting is warranted as to any discovery sought, the party's letter or brief should address estimated costs of responding to the requests in relation to the breadth, complexity, or other considerations bearing upon the specific discovery at issue. Counsel's estimate must have a reasoned factual basis and the Court may require that any such basis be demonstrated by affidavit.

(g) **Motions for Summary Judgment**

(i) **Briefs**

All briefs in support of or in opposition to a summary judgment motion must comply with the requirements and limitations set forth in subsection 6(c) above. Each party's brief shall include specific citations to the record evidence relied upon; mere reference to the party's statement of undisputed (or disputed) material facts is insufficient.

With respect to depositions, the party should include in the brief, immediately following a deposition reference, a citation indicating the page and line numbers of the transcript where the referenced testimony can be found. The party should also include as an exhibit to the brief a copy of the specific pages of the deposition that are referenced in the brief. The party should not attach to the brief a copy of the entire deposition transcript. The entire deposition transcript is to be filed separately.

(ii) **Statement of Theories of Recovery and Material Facts**

Upon a motion for summary judgment pursuant to the Civil Practice Act, there shall be appended a separate, short, and concise statement of each theory of recovery and a statement of each of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact shall be numbered separately and supported by a citation to evidence in the record establishing such fact.

The response to a summary judgment motion shall include a separate statement with individually numbered, concise, and non-argumentative responses corresponding to each of the movant's numbered undisputed material facts, setting forth the material facts as to which the non-movant contends there exists a genuine issue to be tried. The non-movant may also include a statement of additional facts which it contends are material and present a genuine issue for trial. Each material fact shall be supported by a citation to evidence in the record establishing such fact.

(iii) **Timing of Filing**

Motions for summary judgment shall be filed sufficiently early so as not to delay the trial. No trial shall be continued because of the delayed filing of a motion for summary judgment.

(h) **Oral Argument**

The Court will notice parties to present oral argument when the Court deems it warranted but will consider any request for a hearing on a contested motion. All such requests (and any objection thereto) should be made in writing in a separate document bearing the caption of the case, filed with the motion or within five (5) days after the time for response.

Requests for oral argument will generally receive favorable consideration, but particularly so if the requesting party represents that a lawyer with less than seven (7) years of litigation experience will conduct the argument (or at least a majority of the argument), it being the Court's

belief that less experienced lawyers need more opportunities for court appearances than they usually receive.

7. PRE-TRIAL MATTERS

(a) Pre-Trial Order

Unless otherwise directed by the Court, within five (5) business days prior to the date of the pre-trial conference, counsel for each party shall have prepared and shall file with the Court a proposed, consolidated Pre-Trial Order that conforms to Appendix B.

(b) Pre-Trial Conference

The Court will normally conduct a pre-trial conference prior to trial. The purpose of the conference is to simplify the issues to be tried, to rule on evidentiary objections raised in the Pre-Trial Order, to resolve motions in limine and to determine whether expert testimony should be excluded. Parties should bring to the conference a copy of the consolidated Pre-Trial Order and the attachments thereto, as well as any outstanding motions.

The Court generally does not require the parties to bring to the pre-trial conference the exhibits to which there are objections. It is the Court's practice to consider the admissibility of exhibits during trial when the Court will have better context for ruling on the objections. If the parties identify an issue that would affect the admissibility of a number of related exhibits, such an issue may be raised and addressed at the pre-trial conference.

The parties are further directed to meet together by agreement, initiated by plaintiff(s) (or plaintiff(s)' counsel), no later than ten (10) days before the date of the pre-trial conference in order to (1) discuss settlement and (2) stipulate to as many facts and issues as possible. The Court will discuss settlement with the parties if the case is to be tried by jury.

(c) **Motions in Limine**

The parties are required to confer with each other prior to filing motions in limine so that only those issues to which the parties cannot agree are presented to the Court. Unless otherwise provided in the Case Management Order, all motions in limine shall be made in writing and filed at least fourteen (14) days before the pre-trial conference. Briefs in opposition to motions in limine should be filed at least seven (7) days before the pre-trial conference. Unless otherwise indicated, the Court will decide motions in limine prior to or at the pre-trial conference in an effort to give the parties adequate time to prepare their cases accordingly.

(d) ***Daubert* Motions**

Unless otherwise provided in the Case Management Order, *Daubert* motions must be filed no later than the date the proposed Pre-Trial Order is submitted. Briefs in opposition must be filed within fourteen (14) days following the *Daubert* motion and reply briefs must be filed within seven (7) days thereafter.

8. **TRIAL PROCEEDINGS**

(a) **Proposed Findings of Fact and Conclusions of Law**

Parties are required to submit proposed findings of fact and conclusions of law in bench trials and when otherwise directed by the Court. The parties should confer to provide the Court a single, unified set of proposed findings of fact and conclusions of law. In other words, the Court requires a consolidated set of proposed findings to which all parties agree. Following the agreed upon proposed findings, the parties should include their proposed findings to which the opposing party objects. Where a proposed finding is not agreed upon, the parties should indicate who is proposing the finding, the legal or factual basis for the proposed finding and the other party's objection to the proposed finding. The Court should be able to work out of one consolidated document rather than a myriad of filings on the docket.

In addition to e-filing the consolidated proposed findings, counsel should provide an electronic copy thereof (in Microsoft Word format) via email to Ms. Jimenez.

(b) **Jury Trial**

Opening statements are generally limited to twenty (20) minutes per side. Closing arguments are generally limited to thirty (30) minutes per side. Parties requesting more time for these presentations must seek leave of Court at the pre-trial conference.

Prior to trial, the parties must confer regarding any exhibits they plan to refer to or show the jury during opening statements. If there is any dispute as to the use of exhibits during opening statements, the parties must timely notify the Court so that the issue may be resolved without delaying trial.

When the jury is in the courtroom, it is the Court's and the litigants' joint responsibility to use the jury's time efficiently. If matters need to be taken up outside the presence of the jury, those matters should be raised during breaks or before the start of the trial day. It is each party's responsibility to have enough witnesses on hand for each day's proceedings.

(c) **Courtroom Communications**

To assist the Court Reporter or other methods of recording, all communications to the Court should be made before a microphone from a position at counsel table or from the lectern. During trial, a portable microphone may be used, if available, to allow counsel to move about the courtroom. Any witness not testifying from the witness stand, if applicable, must also use a portable microphone.

The parties and counsel should refrain from making disparaging remarks or displaying ill will toward other parties or counsel and from causing or encouraging any ill feeling among the parties. Counsel and the parties are to refrain from making gestures, facial expressions or audible

comments as manifestations of approval or disapproval of testimony, argument or rulings by the Court.

Only one attorney per party may object to the testimony of a witness being questioned by an opposing party. The objection must be made by the attorney who has conducted or is to conduct the examination of the witness. Only one attorney for each party may address the Court during the charge conference.

Examination of a witness should be limited to questions addressed to the witness. Counsel and witnesses are to refrain from making extraneous statements, comments, or remarks during examination.

Offers or requests for stipulations should be made privately and not within the hearing of the jury. Further, counsel should refrain from putting any matter before the jury in the form of a question that counsel knows or expects will be subject to an objection that is likely to be sustained. Such matters should be taken up with the Court outside the presence of the jury.

Counsel should not ordinarily make motions in the presence of the jury. Such matters may be raised at the first recess or at a sidebar. A motion for mistrial must be made immediately, but the Court may require argument at the next recess or excuse the jury. When making an objection, counsel shall state only the legal basis of the objection (*e.g.*, "leading" or "hearsay") and should not elaborate, argue or refer to other evidence unless asked to do so by the Court.

Counsel are prohibited from addressing comments or questions to each other. All arguments, objections, and motions should be addressed to the Court.

The Court expects five (5) to six (6) hours of testimony per day in jury trials and will not allow sidebar conferences or lengthy hearings outside the presence of the jury to disrupt the orderly presentation of evidence.

(d) **Jury Charges**

A single, unified set of requests to charge shall be electronically filed no later than seven (7) days before the start of trial, unless otherwise ordered by the Court. The parties must also email Ms. Jimenez an electronic copy of the proposed jury instructions in Microsoft Word format.

The Court requires a consolidated set of jury instructions to which all parties agree. Following the agreed upon jury instructions, the parties should include their instructions to which the opposing party objects. Where an instruction is not agreed upon, the parties should indicate who is proposing the instruction and the legal basis for the instruction and for the other party's objection.

Counsel must use the Georgia Suggested Pattern Jury Instructions for Civil Cases. If foreign state law applies, counsel shall present the appropriate pattern instruction from the applicable state.

The Court will not give duplicative charges and will generally defer to pattern, rather than non-pattern charges. The parties may request non-pattern charges only if there is no pattern charge that addresses the issue. All non-pattern requests to charge must be concise and must specifically identify the legal authority supporting each requested instruction or else the requested charge will not be considered.

(e) **Courtroom Technology and Security at the Nathan Deal Judicial Center**

The Court's courtroom has state-of-the-art equipment for use by counsel at trial. For more information on the equipment, or to schedule an opportunity to test the equipment, please contact Ms. Jimenez. It is the parties' responsibility to make sure they know how to use the available equipment, to have the cables necessary to hook up their equipment, and to ensure their equipment will interface with the Court's technology.

A court order is required to bring boxes of exhibits, projectors and laptops—virtually anything necessary for use at trial—into the courthouse. The parties should file a motion, with a proposed order, identifying the electronic equipment the party or counsel desires to bring and specifying the date(s) of the hearing or trial to which the party or counsel desires to bring the equipment. This should be done at least three (3) business days prior to the hearing or trial to allow for proper notification to the Georgia State Patrol, which provides security for the Judicial Center.

(f) **Technology and Security in Other Courtrooms**

With respect to proceedings held outside of the Nathan Deal Judicial Center, the Court will coordinate with staff from the local venue and with the parties to determine what technology is available for use at trial, hearings, and other proceedings.

IT IS SO ORDERED this 20th day of August, 2020.

WALTER W. DAVIS, JUDGE
Georgia State-wide Business Court

APPENDIX A: Case Management Report

IN THE GEORGIA STATE-WIDE BUSINESS COURT

, Plaintiff(s), v. , Defendant(s).	Case No. _____

CASE MANAGEMENT REPORT

The parties participated in a Case Management Meeting on [INSERT DATE(S)] and hereby submit this report on [INSERT DATE] as required by Standing Order, Section 4(b).

1. **SUMMARY OF THE CASE**

Each party (or group of parties represented by common counsel) should summarize the dispute from its (or their) perspective. No summary by any party or group of parties may exceed 250 words. The parties may also agree on a joint summary not to exceed 500 words.

a. The following is Plaintiff(s)' summary of the case:

_____

_____

b. The following is Defendant(s)' summary of the case:

_____

_____

2. INITIAL MOTIONS

Describe any initial motions that are anticipated (e.g., motion for emergency relief, motion for temporary restraining order or preliminary injunction, motion to dismiss), and propose deadlines for such early-stage motions and for amending pleadings and adding parties.

a. Plaintiff(s)' Initial Motions

Plaintiff(s) do ☐ do not ☐ plan to file any initial motions. Below is a brief explanation of the basis for the motion(s) (*if applicable*):

_____

_____

b. Defendant(s)' Initial Motions

Defendant(s) do ☐ do not ☐ plan to file any initial motions. Below is a brief explanation of the basis for the motion(s) (*if applicable*):

_____

_____

c. Proposed Deadlines Related to Early-Stage Motions

The parties' initial motions may be filed no later than (*if applicable*):

_____

Proposed modifications to the default briefing schedule and/or word limitations (*see* Standing Order, Section 6) are as follows (*if applicable*):

_____

Pleadings may be amended no later than (*if applicable*):

_____

Motions to add additional parties may be filed no later than (*if applicable*):

_____

3. **DISCOVERY**

Summarize the parties' agreement and/or competing proposals for discovery pursuant to Standing Order, Sections 4 and 5. With respect to discovery deadlines, if it is not possible to set specific due dates because of a motion that delays the start of the discovery process, the parties should state the number of months that discovery is expected to take and for any deadlines that follow.

a. **General Discovery Management**

The parties should state whether they have completed their full discussion of discovery management or whether they have scheduled a second discovery-management meeting. If a second meeting is scheduled, they must indicate what topics remain for discussion and identify the time by which a further report must be filed with the Court. Parties should also identify any discovery related issues or concerns impacting case management, including but not limited to whether discovery should be delayed pending resolution of initial motions, whether discovery should be phased given the number or nature of the parties and claims, etc.

_____

_____

_____

b. **Written Discovery and Depositions**

The parties propose the following limitations on written discovery and depositions (*describe if applicable*):

_____

_____

c. **Confidentiality Issues and Privilege**

The parties do ☐ do not ☐ intend to submit a proposed, stipulated Confidentiality and Protective Order that will govern the disclosure of confidential information during discovery.

The parties' proposed, stipulated Confidentiality and Protective Order will be submitted to the Court by (*if applicable*): _____

The parties propose the following with respect to the assertion of privilege and the submission of privilege logs during discovery (*describe any anticipated privilege issues and time limits for providing a privilege log upon the assertion of such privilege*):

_____

_____

If information protected from disclosure by attorney-client privilege or attorney work-product doctrine is inadvertently disclosed during this litigation, the parties propose the following protocol (*if any*):

_____

_____

d. **Electronically Stored Information (ESI)**

This case will ☐ will not ☐ require discovery of ESI.

The parties have conferred regarding the need for ESI and propose the following (*If applicable, indicate whether the parties intend to execute an ESI agreement and describe the parties' ESI protocol including, e.g., how and what evidence will be preserved, identified data repositories, custodians, keyword searches, formatting requirements, metadata that should be included, etc., or provide a date by which the parties' ESI agreement and protocol will be finalized. Include other information listed in the Standing Order, Section 5(b)(iv) as appropriate*):

_____

_____

e. **Expert Discovery**

This case will ☐ will not ☐ require expert discovery.

The parties anticipate expert discovery will be necessary with respect to the following issues, claims, or topics (*if applicable*):

_____

_____

The parties propose the following deadlines with respect to expert discovery:

(i) Expert(s) on claims or issues regarding which the parties have the burden of proof will be identified by: _____

(ii) Such expert(s)' disclosures and report will be provided by: _____

(iii) Depositions of such expert(s) shall be taken by: _____

(iv) Rebuttal expert(s) shall be identified by: _____

(v) Rebuttal expert(s) disclosures and report will be provided by: _____

(vi) Depositions of such rebuttal expert(s) shall be taken by: _____

(vii) *Daubert* motions shall be filed by: _____

4. DISPOSITIVE MOTIONS

Describe whether dispositive motions are anticipated and whether the presentation and resolution of any such motions should be sequenced or otherwise coordinated among the parties (e.g., to address targeted issues that may better inform settlement discussions, mediation, etc.):

_____

_____

Dispositive motions shall be filed no later than:

_____

5. MEDIATION

a. Early Mediation

The parties do ☐ do not ☐ agree to participate in early mediation. Such early mediation shall take place by the following date and subject to the following terms (*describe if applicable*):

_____

_____

b. General Case Mediation

Identify a proposed deadline by which mediation must occur (or competing proposals) and the name of an agreed-up mediator. If the parties cannot agree on a mediator, each party should identify his or her mediator of choice.

_____

_____

6. SPECIAL CIRCUMSTANCES

a. Putative Class Allegations

If the complaint includes class action allegations, summarize the parties' agreement and/or competing proposals for the timing, nature, and extent of class certification discovery, how and/or whether class and merits discovery should be bifurcated or sequenced, and a proposed deadline for the plaintiff(s) to move for class certification. In the event that multiple related class actions are pending, the parties must report their views on special efforts that should be undertaken and the time for doing so, such as the appointment of lead counsel, consolidation, or coordination with proceedings in other jurisdictions.

_____

_____

_____

b. Derivative Claims

If the complaint or counterclaim includes derivative claims, summarize the parties' positions on whether proper demand was made and describe any agreement and/or competing proposals on any special committee investigation, any stay of proceedings, or other issues regarding derivative claims.

_____

_____

_____

c. Related Proceedings

If there are multiple related proceedings, describe what efforts, including but not limited to consolidation or shared discovery, should be undertaken.

_____

_____

_____

7. REFEREES AND SPECIAL MASTERS

Identify any matter(s) that might be appropriate for reference to a referee or special master. The parties are specifically encouraged to think creatively about how the use of a referee or special master might expedite the resolution of the case.

_____

_____

_____

8. POTENTIAL COST AND TIME REQUIREMENTS OF LITIGATION

If parties are represented, counsel should certify that they have conferred with their respective clients and have given their clients a good faith estimate of the potential cost and time requirements of litigation.

9. OTHER MATTERS

Summarize any other matters significant to case management.

_____

_____

_____

10. PROPOSED CASE DEADLINES

Summarize any case deadlines (or competing proposals) outlined above as applicable and include any additional proposed case management deadlines. Once approved by the Court, case deadlines will not be amended absent good cause.

(a) Initial motion(s) shall be filed by: _____
(b) Motion(s) to amend pleadings shall be filed by: _____
(c) Motion(s) to add parties shall be filed by: _____
(d) The parties will execute a Discovery Agreement by: _____
(e) A proposed Confidentiality/Protective Order shall be submitted by: _____
(f) The parties will finalize their agreed upon ESI protocol by: _____
(g) Fact discovery shall conclude on: _____
(h) Fact depositions shall be taken no later than: _____

(i) Expert(s) on claims or issues regarding which the parties have the burden of proof will be identified by: _____

(j) Such expert(s)' disclosures and report will be provided by: _____

(k) Depositions of such expert(s) shall be taken by: _____

(l) Rebuttal expert(s) shall be identified by: _____

(m) Rebuttal expert(s) disclosures and report will be provided by: _____

(n) Depositions of such rebuttal expert(s) shall be taken by: _____

(o) Expert discovery shall conclude on: _____

(p) Dispositive motions shall be filed by: _____

(q) The consolidated pre-trial order shall be submitted by: _____

(r) Proposed trial date(s): _____

11. CASE MANAGEMENT CONFERENCE

(a) The parties do ☐ do not ☐ wish to participate in a Case Management Conference.

(b) The parties do ☐ do not ☐ want the Case Management Conference taken down (*if applicable*). The parties are responsible for securing court reporting services for all Court proceedings.

(c) The parties do ☐ do not ☐ believe client attendance at the Case Management Conference will be beneficial. Explain, if necessary.

Submitted on:

_____

Submitted by:

_____ _____

APPENDIX B: Pre-Trial Order

IN THE GEORGIA STATE-WIDE BUSINESS COURT

, Plaintiff(s), v. , Defendant(s).	Case No. _____

PRE-TRIAL ORDER

Pursuant to Business Court Standing Order Section 7(a), the parties participated in a pre-trial meeting on [INSERT DATE] and now submit this pre-trial order.

1. **GENERAL INFORMATION**

(a) The name, address, and phone number of the attorneys or parties who will conduct the trial are as follows:

Plaintiff(s): _____

Defendant(s): _____

(b) Unless otherwise noted, the names of the parties as shown are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

2. STIPULATIONS

List any stipulations as to facts, subject matter jurisdiction, personal jurisdiction, joinder of parties, and any other material legal and/or procedural issues on which the parties agree.

The following matters are stipulated:

---

3. MOTIONS

List any outstanding motions and any motions the parties expect to file before or during trial. The list should include pending or anticipated motions in limine.

The following motions are currently outstanding or are anticipated:

---

4. STATEMENT OF THE CASE

Provide a succinct statement of the case, summarizing the issues and contentions of the parties, noting which issues are to be decided by the Court or the jury, as applicable, and describing any disagreement related to those matters.

(a) Plaintiff(s)' summary of issues and contentions are as follows:

(b) Defendant(s)' summary of issues and contentions are as follows:

(c) The issues for determination for the Court (or jury) are as follows:

(d) If the case is based on a contract, either oral or written, the terms of the contract are as follows (or, the contract is attached as an exhibit to this order):

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5. EXHIBITS

Attached as Exhibit _____ is a list of all documentary and physical evidence that Plaintiff(s) expect will be tendered at trial.

Attached as Exhibit _____ is a list of all documentary and physical evidence that Defendants expect will be tendered at trial.

All exhibits shall be marked by the parties prior to trial.

The parties should also cover at least the following topics related to the foregoing exhibits:

a. *Whether any party objects to the admission of any exhibit(s);*
b. *Whether any party objects to the authenticity of any exhibit(s); and*
c. *The timing and manner of the exchange of demonstrative exhibits including whether demonstrative exhibits will be used in opening statements.*

If the parties identify an issue that would affect the admissibility of several related exhibits, they should identify the issue so that it may be addressed at the pre-trial conference.

6. WITNESSES AND DEPOSITION DESIGNATIONS

(a) Plaintiff(s)' witnesses

Plaintiff(s) will have present at trial: _____

Plaintiff(s) may have present at trial: _____

Listed below are witnesses whose testimony Plaintiff(s) will present by deposition and attached as Exhibit(s) _____ are deposition designations, counter-designations, and related objections:

_____

(b) Defendant(s)' witnesses

Defendant(s) will have present at trial: _____

Defendant(s) may have present at trial: _____

Listed below are witnesses whose testimony Plaintiff(s) will present by deposition and attached as Exhibit(s) _____ are deposition designations, counter-designations, and related objections:

_____

Opposing counsel may rely on a representation that the designated party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

7. COURTROOM TECHNOLOGY AND ACCOMMODATIONS

(a) Below is a description of the technology the parties intend to use during trial and as to each, whether the parties or the Court will provide the technology and, if applicable, how the parties will apportion the cost of the technology:

(b) The parties require the following case-specific accommodations for trial (*if applicable*):

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8. LENGTH AND READINESS

(a) The parties have conferred and estimate the total time required for trial, excluding time for deliberation, is: _____.

(If the parties disagree on the estimate, each party should give its own estimate.)

(b) The parties affirm that:

i. They have conferred with all potential trial witnesses and have confirmed they are available for trial.

ii. All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery, except for good cause shown.

iii. The case is trial-ready.

9. VERDICT

The parties' proposed verdict form, which includes all possible verdicts to be considered by the jury, is attached as Exhibit _____.

If the parties cannot agree on a proposed verdict form, they shall each attach their proposed verdict form.

10. **SETTLEMENT**

(a) The parties certify they have engaged in a meaningful settlement discussion, including the exchange of potential settlement terms.

(b) The possibilities of settling the case are: _____.

(c) The parties will immediately notify the Court in the event of a material change in settlement prospects.

11. **TRIAL TRANSCRIPT**

(a) The parties do ☐ do not ☐ want the trial proceedings reported.

(b) The cost of take down will be paid by: _____.

12. **OTHER MATTERS**

Identify any other matters relevant to the trial of this matter.

Submitted on:

_____

Submitted by:

_____ _____

It is hereby ordered that the foregoing, including the attachments thereto, constitutes the Pre-Trial Order in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

IT IS SO ORDERED this _____ day of _____, 20___.

_____

WALTER W. DAVIS, JUDGE
Georgia State-wide Business Court