

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Shannon Miller, Jen Banford and
Annette Wiles,

Plaintiff,

vs.

PRETRIAL SCHEDULING ORDER

The Board of Regents of the
University of Minnesota,

Defendant.

Court File No. 15-cv-3740 (RHK/LIB)

* * * * *

Pursuant to Pretrial Conference convened on January 25, 2016, and in accordance with provisions of Rule 16, Federal Rules of Civil Procedure, and the Local Rules of this Court, to administer the course of this litigation in a manner which promotes the interests of justice, economy and judicial efficiency, the following Pretrial Schedule will govern these proceedings.¹ **The Schedule may be modified only upon formal Motion and a showing of good cause as required by Local Rules 7.1 and 16.3.²**

Counsel shall also comply with the Electronic Case Filing Procedures For The District of Minnesota, pursuant to Order Adopting Electronic Case Filing, dated May 13, 2004.

THEREFORE, It is --

¹Pursuant to the directive of the Honorable Richard H. Kyle, all deadlines are to be the 1st day of the month, even if the 1st falls on a weekend or Holiday.

²As the parties were advised at the Rule 16 scheduling conference, the Pretrial Schedule set forth herein may not be amended by Stipulation.

ORDERED:

I.

That all pre-discovery disclosures required by Rule 26(a)(1) shall be completed on or before **March 1, 2016**. The period during which the parties must conduct all discovery (whether fact or expert) shall terminate on **March 1, 2017**.³ Disputes with regard to pre-discovery disclosures or discovery shall be called immediately to the Court's attention by the making of an appropriate Motion, and shall not be relied upon by any party as a justification for not adhering to this Pretrial Scheduling Order. No further or additional discovery shall be permitted after the above date except upon motion and by leave of the Court for good cause shown, and any independent Stipulations or agreements between counsel which contravene the provisions of this Order will not be recognized. However, upon agreement of counsel, or with leave of the Court, depositions in lieu of in-Court testimony may be taken after the close of discovery.

II.

That all Motions which seek to amend the pleadings or add parties must be filed and the Hearing thereon completed on or before **June 1, 2016**.⁴

³See, Local Rule 16.2(d)(3) of the United States District Court For the District of Minnesota Local Rules. Once a discovery deadline is established, parties must have a valid reason to change it. Contact Judge Richard H. Kyle's Chambers before changing dispositive or trial dates.

⁴This deadline does not apply to motions to amend pleadings to assert a claim for punitive damages. Motions which seek to assert claims for punitive damages must be filed and the Hearing thereon completed prior to the discovery deadline in Paragraph I.

III.

That all other nondispositive Motions shall be filed and the Hearing thereon completed prior to **April 1, 2017**, by calling Victoria L. Miller at 218-529-3520, Courtroom Deputy for Magistrate Judge Leo I. Brisbois. All nondispositive Motions shall be scheduled, filed and served in compliance with Local Rule 7.1(a) and (b) and the Electronic Case Filing Procedures For The District of Minnesota. No discovery Motion shall be heard unless the moving party complies with the requirements of Local Rule 37.1.

IV.

A Settlement Conference pursuant to Local Rule 16.5(b) in the above-entitled matter is set before Magistrate Judge Leo I. Brisbois, for **sometime in May of 2017, at 9:30 a.m.**, in Courtroom No. 3, Gerald W. Heaney Federal Building and U.S. Courthouse, 515 W. First St., Duluth, Minnesota. A separate Notice of this Settlement Conference shall be issued outlining the parties' obligations for preparation and for appearance of the Conference.

V.

That (a) no more than **10** Interrogatories per Plaintiff and no more than **20** collectively by Plaintiffs, and (b) no more than **50** total Interrogatories for the University (counted in accordance with Rule 33(a), Federal Rules of Civil Procedure), shall be served.

That (a) no more than **10** Requests for Admission per Plaintiff and no more than **20** collectively by Plaintiffs, and (b) no more than **50** total Requests for Admission for the University shall be served.

That no more than **45** Document Requests shall be served by each side.

That no more than **one (1)** Rule 35 medical examination may be taken of each Plaintiff. IMEs shall be completed and the reports disclosed no later than the applicable deadline in Paragraph VII.

VI.

That no more than **20** depositions (excluding expert depositions) shall be taken by each side without prior Order of the Court.

VII.

That within the foregoing period allotted for discovery, but no later than the dates set forth below, the parties shall retain and disclose to opposing counsel all persons they intend to call as expert witnesses at trial.⁵ Each party's disclosure shall identify each expert and state the subject matter on which the expert is expected to testify. The Plaintiffs' disclosures of identity and areas of expected testimony shall be made on or before **October 1, 2016**. The Defendant's disclosures of identity and areas of expected testimony shall be made on or before **November 1, 2016**.

For each expert, the parties shall disclose a written report prepared and signed by the expert witness.⁶ As required by Rule 26(a)(2)(B), Federal Rules of Civil Procedure, the report shall contain:

- a. The qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years;

⁵This includes any witnesses who were retained for purposes of conducting an examination pursuant to Rule 35.

⁶If no written report is required by Rule 26(a)(2)(B), the disclosures shall still comply with Rule 26(a)(2)(C).

- b. The compensation to be paid for the study and testimony;
- c. A listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years;
- d. A complete statement of all opinions to be expressed and the basis and reasons therefor;
- e. The data or other information considered by the witness in forming the opinions; and
- f. Any exhibits to be used as a summary of or support for the opinions.

The Plaintiff's disclosures of their expert reports shall be made on or before **December 1, 2016**. The Defendant's disclosures of its expert reports shall be made on or before **January 1, 2017**.

VIII.

That the parties currently contemplate taking expert depositions. No disclosed expert may be deposed more than once without leave of the Court.

IX.

That each party shall fully supplement all discovery responses according to Rule 26(e), Federal Rules of Civil Procedure. Any evidence responsive to a discovery request which has not been disclosed on or before the discovery cutoff or other dates established herein, except for good cause shown, shall be excluded from evidence at trial.

X.

That all dispositive Motions shall be served, filed and **HEARD** on or before **May 1, 2017**.⁷

Notwithstanding the provisions of Local Rules 7.1(c)-(d), the following procedures shall apply to the dispositive-motion⁸ practice in this case:

1. The moving party shall first contact the Court's Courtroom Deputy, Kathy Thobe, at (651) 848-1166, to secure a hearing date at least 42 days in the future. Once the moving party has secured a hearing date, it shall promptly file a notice of motion informing all parties of the nature of the motion and the date, time, and location of the hearing;
2. The moving party shall serve and file the following documents at least 42 days before the scheduled hearing: (a) motion; (b) memorandum of law; and (c) affidavits and exhibits;⁹

⁷The parties should attempt to schedule dispositive motions after all discovery has been completed and to schedule all dispositive motions for the same hearing and should strive to avoid duplication in their briefing. If the parties believe early or piecemeal dispositive motion practice is necessary, they should seek permission of the District Judge.

⁶The following are deemed dispositive motions under this Order: motions for preliminary or permanent injunctive relief, including motions for temporary restraining orders; motions to dismiss, for judgment on the pleadings, or for summary judgment; motions to certify a class action; motions to exclude expert testimony under Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and/or Federal Rule of Evidence 702; motions to remand or transfer; and motions to compel arbitration. A party moving for a temporary restraining order must file and serve its motion papers, in addition to the Summons and Complaint, on the proposed-enjoined party before the Court will entertain the motion. In addition, a motion for a temporary restraining order is not subject to the 42-day rule set forth below; rather, the calendar clerk will advise the parties of the hearing date and briefing schedule. All motions for injunctive relief and motions to exclude expert testimony will be handled without live witness testimony absent advance permission from the Court.

⁹Parties need not submit proposed orders with Motions.

3. The responding party shall serve and file the following documents at least 21 days before the hearing: (a) memorandum of law; and (b) affidavits and exhibits;

4. The moving party may serve and file a reply memorandum of law at least 14 days before the hearing. A reply memorandum shall not raise new grounds for relief or present matters that do not relate to the response;

5. If the Court *sua sponte* cancels the hearing or continues the hearing date, all subsequently filed motion papers must be served as if the original hearing date were still in effect, unless otherwise directed by the Court; and

6. Parties need not meet and confer, as required under Local Rule 7.1(a), in advance of filing a dispositive motion, although they are encouraged to do so to attempt to narrow the issues presented to the Court.

All other provisions in Local Rule 7.1 are unaffected by this Order and remain applicable, including the word limitations in Rule 7.1(f).

XI.

That this case shall be ready for Trial on **August 1, 2017¹⁰**, or 30 days after the Court renders its Order on any dispositive Motion (whichever is later), at which time the case will be placed on the

¹⁰**THIS DATE IS NOT A TRIAL SETTING DATE.** The parties will be notified by the Calendar Clerk of the assigned Judge to a case by way of a Notice of Trial as to when this case will be placed on the Trial Calendar. The above date is merely a notice to all parties to consider the case ready for trial as of this date. **DO NOT PREPARE FOR TRIAL UNTIL NOTIFIED.**

Court's **Jury** Trial calendar. That the anticipated length of Trial is **15 days**.

BY THE COURT:

DATED: February 1, 2016

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE