

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

DYLAN BRANDT, et al.,

PLAINTIFFS

v.

CASE NO. 4:21-CV-00450-JM

LESLIE RUTLEDGE, et al.,

DEFENDANTS

PLAINTIFFS' MOTION FOR SCHEDULING ORDER

Plaintiffs, by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16.1, hereby move the Court to enter Plaintiffs' Proposed Final Scheduling Order, attached hereto as Exhibit A (the "Proposed Final Scheduling Order"), or, in the alternative, to issue an Initial Scheduling Order in this matter.

1. At the hearing on July 21, 2021, the Court instructed the parties to meet and confer about how long they would need to prepare for a final hearing and how much time they would need to argue this case on the merits. (*See* Tr. at 86:23-69: 18; Federal Rule of Civil Procedure 16(b)(2).)
2. On August 23, 2021, Plaintiffs' counsel sent Defendants' counsel the Proposed Final Scheduling Order and asked for a meet and confer to discuss. On August 30, 2021, Defendants' counsel suggested that instead of filing any proposed scheduling order, the parties should stipulate to stay all

District Court proceedings pending resolution of Defendants' interlocutory appeal. On August 31, 2021, Plaintiff's counsel responded to Defendants' proposal that because there is no good cause for a stay, Plaintiffs would submit the Proposed Final Scheduling Order to the Court.

3. The Proposed Final Scheduling Order provides reasonable pretrial deadlines that will prepare the case for trial by July 2022. Defendants refused to discuss the proposed deadlines or provide any alternative proposed deadlines. During the pendency of an interlocutory appeal, the default is for the court to enter a scheduling order and for the case to proceed to final judgment. *Janousek v. Doyle*, 313 F.2d 916, 920 (8th Cir. 1963) (“[W]here [] the appeal is from an interlocutory order denying a motion for preliminary injunction . . . the filing of the notice of appeal from such an order does not ipso facto divest the district court of jurisdiction to proceed with the cause with respect to any matter not involved in the appeal, or operate to automatically stay other proceedings in the cause pending the appeal.”); *W. Pub. Co. v. Mead Data Cent., Inc.*, 799 F.2d 1219, 1229 (8th Cir. 1986) (“[T]he pendency of an interlocutory appeal from an order granting or denying a preliminary injunction does not wholly divest the District Court of jurisdiction over the entire case.”); § 2962 Appeals From Orders in Actions Involving Injunctive Relief, 11A Fed. Prac. & Proc. Civ. § 2962 (3d ed.)

(“An appeal from the grant or denial of a preliminary injunction does not divest the trial court of jurisdiction or prevent it from taking other steps in the litigation while the appeal is pending. According to Rule 62(a) there is no automatic stay of the judgment in an injunction suit pending an interlocutory appeal.”).

4. The Court should therefore enter the Proposed Final Scheduling Order so this action can proceed to trial without unnecessary delay.
5. Local Rule 16.1 provides “[i]n all civil actions except those exempted by Local Rule 16.2, an Initial Scheduling Order will issue setting forth the date by which the parties must hold their Fed. R. Civ. P. 26(f) conference, the date by which the parties must submit their Fed. R. Civ. P. 26(f) report, a tentative date for a Fed. R. Civ. P. 16(b) conference, and a proposed trial date.”
6. If the Court does not enter the Proposed Final Scheduling Order, it may enter an Initial Scheduling Order setting forth the date by which the parties must hold their Fed. R. Civ. P. 26(f) conference, the date by which the parties must submit their Fed. R. Civ. P. 26(f) report, a tentative date for a Fed. R. Civ. P. 16(b) conference, and a proposed trial date.

WHEREFORE, for the reasons detailed herein, Plaintiffs respectfully move the Court to enter the Proposed Final Scheduling Order, or in the alternative to enter an Initial Scheduling Order in this matter.

Dated: September 9, 2021

Respectfully submitted,

/s/ Leslie Cooper

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PROPOSED

FINAL SCHEDULING ORDER

Pursuant to Rule 16(d) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED:

1. **TRIAL DATE** This case is scheduled for a **BENCH TRIAL** before Judge James M. Moody Jr. commencing at 9:15 a.m. sometime during the week of **July 11, 2022**, in Courtroom #4A, Richard Sheppard Arnold United States Courthouse, 500 West Capitol, Little Rock, Arkansas.
2. **ADDITION OF PARTIES/AMENDMENT OF PLEADINGS** The deadline for seeking to add additional parties and amend pleadings shall be as soon as practicable, but in any event, no later than **December 1, 2021**.
3. **DISCOVERY** All non-expert discovery will be completed no later than **December 17, 2021**. All discovery requests and motions must be filed sufficiently in advance of that date to allow for a timely response. Witnesses and exhibits not identified in response to appropriate discovery may not be used at trial except in extraordinary circumstances. The parties may conduct discovery beyond this date if all parties are in agreement to do so; but, the Court will not resolve any disputes in the course of this extended discovery. A discovery motion should not be filed until counsel make a good faith effort to resolve the discovery dispute. Upon the filing of such motion, a response shall be filed promptly. A conference call will thereafter be scheduled to resolve such matters if the Court deems it necessary. The Court will not grant a continuance because a party does not have time in which to depose a witness, expert or otherwise.

Expert Witness Disclosures and Reports will be provided no later than **December 10, 2022**.

Rebuttal Expert Witness Disclosures and Reports will be provided no later than **February 11, 2022**.

All Expert Discovery and Depositions will be completed by no later than **March 31, 2022**.



4. **MOTION DEADLINE** All motions, with the exception of motions in limine, shall be filed on or before **April 22, 2022**. The parties are directed to provide the Court with a paper copy, indexed and bound, of all motions, responses, replies, briefs, and supporting exhibits which exceed thirty (30) pages. Motions in limine shall be filed on or before **May 6, 2022**, and responses thereto shall be filed seven (7) days thereafter. Any motions submitted after this deadline may be denied solely on the basis of having been untimely filed. Daubert related motions must be filed by the motion deadline and shall not be filed as motions in limine.
5. **STATUS REPORT** A status report will be filed with the Clerk's Office on or before **April 29, 2022**. The report shall include the date of any mediation conducted or scheduled, the present settlement prospects, and an estimate of the length of trial. If both parties desire to participate in a settlement conference before the Magistrate Judge they should inform the Court in this report.
6. **PRETRIAL DISCLOSURE SHEET [FED.R.CIV.P. 26(a)(3)]** Please file the information requested in the pretrial disclosure sheet with the Clerk with copies to opposing counsel no later than **April 29, 2022**. The pretrial disclosure sheets are to be filed simultaneously by the parties according to the outline contained in Local Rule 26.2. The Court's requirement that witnesses and exhibits be listed on the pretrial disclosure sheet does not relieve a party of the obligation to provide the names of witnesses and exhibits in a timely manner pursuant to outstanding interrogatories or admissions.
7. **EVIDENTIARY DEPOSITIONS** The proffering party must designate the pertinent portions of an evidentiary deposition by **April 29, 2022**. Counter-designations must be made by **May 6, 2022**. Designations and Counter-designations are not to be filed with the Clerk's office, instead the documents should be mailed to Chambers or by e-mail to jmchambers@ared.uscourts.gov. Objections to any deposition or video tapes which will be used at trial must be made by written motion indicating the specific objection and its legal basis by **May 13, 2022**, with the response due **May 20, 2022**. Depositions to be read at trial shall be marked as exhibits.
8. **TRIAL BRIEF** The parties shall simultaneously submit to the Court on or before **June 3, 2022**, trial briefs summarizing the anticipated factual and legal issues in the case. In the briefs, the parties shall suggest to the Court any evidentiary issues that are expected to arise during trial and brief the law concerning the proper resolution to those issues. Trial briefs are not to be filed with the Clerk's office, instead the documents should be mailed to Chambers or by e-mail to jmchambers@ared.uscourts.gov
9. **STIPULATIONS** The Court directs that all parties stipulate in writing the facts not in controversy on **July 1, 2022**.
10. **INTRODUCTION OF EXHIBITS** So that the introduction of exhibits may be handled expeditiously, the Court directs that all exhibits are to be listed in numerical sequence and completed before the trial date. Exhibits are to be made available to all parties and reviewed by counsel prior to the trial date. The lists shall be submitted to the Courtroom Deputy prior to the trial commencing with notations made on the Court's copy as to which

exhibits there is an objection. The Court will receive all stipulated exhibits at the beginning of trial.