**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF KANSAS**

**PRETRIAL ORDER FORM**

**CAREFULLY REVIEW FED. R. CIV. P. 16 AND D. KAN. RULE 16.2,**

**AND FOLLOW ALL BRACKETED INSTRUCTIONS.**

**The parties and counsel must confer in good faith, draft, and timely submit a proposed pretrial order to the court in accordance with the scheduling order and D. Kan. Rule 16.2. The proposed pretrial order must be a joint effort. The parties have an equal obligation to cooperate fully in drafting the pretrial order and to submit an agreed order that the judge can sign at the pretrial conference. It’s essential that each party’s factual contentions, legal claims, and defenses be clearly stated. If the parties disagree on any particulars, they must submit a single proposed order with bracketed notations revealing the nature of the disagreement in sufficient detail to enable the court to resolve the dispute at the conference; submission of separate orders is unacceptable. Don’t precede the title of the proposed order with words such as “Plaintiff’s,” “Defendant’s” or “Proposed.”**

**By the date set in the scheduling order, defense counsel must submit the parties’ proposed pretrial order (formatted in Word) as an attachment to an e-mail sent to the chambers of the judge who will conduct the pretrial conference, as listed in paragraph II(E)(2)(c) of the** [**Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases.**](https://ksd.uscourts.gov/file/341) **The proposed pretrial order must not be filed with the Clerk’s Office. The proposed pretrial order must be in the form attached to this cover memorandum. Counsel and all unrepresented parties must affix their signatures according to the procedures governing multiple signatures set forth in paragraphs II(C)(2)(a) & (b) of the administrative procedures guide.**

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Plaintiff(s),

v. Case No. \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Defendant(s).

**PRETRIAL ORDER**

On \_\_\_\_\_\_\_\_\_, 20\_\_, U.S. Magistrate Judge Gwynne E. Birzer conducted a pretrial conference in this case [(*if not in person*) [by videoconference] [by phone]]. Plaintiff(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ appeared through counsel \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Defendant(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ appeared through counsel \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This pretrial order supersedes all pleadings and controls the subsequent course of this case. It will not be modified except by consent of the parties and the court’s approval, or by order of the court to prevent manifest injustice. Fed. R. Civ. P. 16(d) & (e); D. Kan. Rule 16.2(a).

1. **PRELIMINARY MATTERS.**

*[If subject-matter jurisdiction, personal jurisdiction, or venue are disputed, briefly state the nature of the dispute in the pertinent subparagraph below. Also, state whether the parties timely filed a motion raising the issue and explain the court’s ruling on that motion, if any.]*

1. **Subject-Matter Jurisdiction.** Subject-matter jurisdiction is invoked under 28 U.S.C. [§ 1331] [§ 1332] [§ 1441] [§ 1367, etc.], and [is] [is not] disputed.
2. **Personal Jurisdiction.** The court’s personal jurisdiction over the parties [is] [is not] disputed.
3. **Venue.** Venue in this court [is] [is not] disputed.
4. **Governing Law.** Subject to the court’s determination of the law that applies to the case, the parties believe and agree that the substantive issues in this case are governed by the following law:
5. **STIPULATIONS.**

*[Insert lists below for stipulated facts and exhibits. Counsel must confer in good faith and try to make these lists as comprehensive as possible—at a minimum, to streamline the presentation of the summary judgment record. If the parties are not prepared to stipulate to certain facts or to the admissibility of certain exhibits for trial (such as because the court’s summary-judgment ruling might impact what would be relevant at trial), then the pretrial order should suggest a separate deadline (e.g., 5 days before trial) for the parties to first meet and confer, and to then file a stipulation of facts and exhibits to streamline the presentation of evidence at trial. Even if the court does not grant all of the relief requested on summary judgment, the court may enter an order stating any material facts that are not in dispute and treating those facts as established for trial purposes. See Fed. R. Civ. P. 56(g).]*

1. The following facts are stipulated:
3. The parties have stipulated to the admissibility of the following exhibits for purposes of summary judgment [and trial]:
4. **FACTUAL CONTENTIONS.**

*[One of the primary objectives of the pretrial order, as made clear by Fed. R. Civ. P. 16(c)(2)(A), is to formulate and simplify the issues. In the District of Kansas, a detailed pretrial order is usually filed after discovery closes and before summary-judgment motions are filed. The rationale for doing this is to clarify the claims and defenses that remain in the case (from among those previously pleaded) and to crystallize the parties’ factual contentions supporting those theories after they have had an opportunity to conduct discovery. The District of Kansas judges look closely at the pretrial order to construe the parties’ claims and defenses, as well as the proper scope of the evidence—both in deciding summary-judgment motions and in presiding at trial.*

*As such, here, each party should provide a concise statement of the factual contentions that they believe support their respective theories of the case. It is not necessary nor appropriate to recite every factual nuance and identify every item of evidence. But the factual contentions must provide a sufficiently specific narrative that, if supported by the evidence, each claim and defense asserted in Paragraph 4 below could withstand a dispositive motion, such as a motion for summary judgment, judgment as a matter of law (in a jury case), or judgment on partial findings (in a non-jury case). See, e.g., Fed. R. Civ. P. 50(a), 52(c), 56(a). Furthermore, the factual contentions must be sufficiently detailed to support each claim or defense against each party against which the claim or defense is asserted.*

*Add subheadings as appropriate to clarify which contentions support which claims and defenses asserted against which parties, particularly when the case involves multiple claims, counterclaims, crossclaims, third-party claims, or in complex and multi-party cases.*

*In simple cases, each party’s contentions typically should be no more than 1-2 pages. Even in complex cases, they should be no more than 4-5 pages.]*

1. **Plaintiff(s)’ Factual Contentions.**
2. **Defendant(s)’ Factual Contentions.**
3. **LEGAL CLAIMS AND DEFENSES.**

*[To avoid wasteful summary-judgment briefing and inefficient trials, the court strongly encourages the parties to pare down their claims and defenses as much as possible. Indicate here which claims or defenses have been or are being abandoned at this procedural juncture (as should occur in most cases) or have already been dismissed by the court.*

*Once the parties have pared down their claims and defenses, provide a complete but concise list of each claimant’s theory of recovery correlated to a particular count of the complaint, counterclaim, crossclaim, or third-party complaint, e.g., “Defendant terminated plaintiff’s employment in violation of Title VII, specifically, by discriminating against her based on race (Count 1 of complaint) and sex (Count 2 of complaint).”*

*Likewise, provide a complete but concise list of all defenses, regardless of whether the defense is affirmative in nature.*

*To the extent applicable as to any particular theory of recovery, identify all persons or entities whose fault is to be compared and specify the nature of the fault claimed.*

*In cases involving multiple claims and/or multiple parties, specify which parties are asserting which claims against which adverse parties. The same level of specificity is required for defenses. Add subheadings as appropriate to make this clear.]*

1. **Plaintiff(s)’ Claims.**

Plaintiff asserts that [he] [she] [it] is entitled to recover upon the following theory(ies):

1. **Defendant(s)’ Defenses.**

Defendant asserts the following defenses:

1. **DAMAGES AND NON-MONETARY RELIEF REQUESTED.**

*[State the nature and dollar amount of the damages allegedly sustained by each party making such a claim, including a computation of those damages. These damages must be precisely stated on a claim-by-claim basis, and it must be clear which damages are being sought from which party(ies). In addition, if any non-monetary relief is sought (e.g., declaratory or injunctive relief, specific performance, or rescission), briefly explain the statutory and other basis for the requested relief. Finally, state the extent to which any party claims attorneys’ fees and, if so, the specific statutory or other basis for same.]*

1. **AMENDMENTS TO PLEADINGS.**

*[State “None” in the usual case. Otherwise, provide a concise statement of any currently proposed amendments beyond any abandoned claims and defenses previously noted. Also, state whether a motion to amend has been filed.]*

1. **DISCOVERY.**

*[In the usual case, simply state that “discovery is complete.” However, if discovery is incomplete and one or more parties seeks to extend discovery generally or for limited purposes, state specifically what further discovery remains to be completed and whether any party objects to such discovery. In addition, state when that discovery can be completed and why, in the exercise of due diligence, the proposed discovery could not have been completed by the deadline earlier set by the court.]*

Under the scheduling order and any amendments, all discovery was to have been completed by \_\_\_\_\_\_ \_\_, 20\_\_. Discovery is [complete] [incomplete, in that \_\_\_\_\_\_\_\_\_\_].

Unopposed discovery may continue after the deadline to complete discovery so long as it does not delay briefing or ruling on dispositive motions or other pretrial preparations. Although discovery may be conducted beyond the deadline to complete discovery if all parties agree to do so, under these circumstances the court will not be available to resolve any disputes that arise during the course of such extended discovery.

1. **MOTIONS.**
2. **Pending Motions.**

*[List any pending motions, including the date of filing and the ECF document number.]*

1. **Additional Pretrial Motions.**

After the pretrial conference, the parties intend to file the following motions:

*[List all motions that the parties reasonably expect to file after the pretrial conference and before trial.]*

The dispositive-motion deadline, as established in the scheduling order and any amendments, is **\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_**. The parties should follow the summary-judgment guidelines on the court’s website:

[*http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf*](http://ksd.uscourts.gov/wp-content/uploads/2015/10/Summary-Judgment-Guidelines.pdf)

Principal briefs in support of, or in response to, summary judgment [and class certification] motions must not exceed 40 pages and replies must not exceed 15 pages. *See* D. Kan. Rule 7.1(d)(2). Any motion to exceed these page limits or for an extension of briefing deadlines must be filed at least three days before the brief’s filing deadline. *See* D. Kan. Rule 6.1(a), 7.1(d)(4).

1. **Motions Regarding Expert Testimony.** *[Choose one of the following.]* [Not applicable, i.e., the parties have stipulated that no expert testimony will be used in this case (or the parties have stipulated that no motions will be filed challenging the propriety of expert testimony in this case).] OR [All motions to exclude the testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, must be filed [[no later than \_\_\_ days before trial] OR [in accordance with the dispositive-motion deadline stated above].]
2. **TRIAL.**

The trial docket setting, as established in the scheduling order and any amendments, is **\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_\_\_ \_.m., in \_\_\_\_\_\_, Kansas**. This case will be tried [by jury] [by the court sitting without a jury]. Trial is expected to take approximately \_\_\_ days. The court will attempt to decide any timely filed dispositive motions approximately 60 days before trial *[or as otherwise stated in the scheduling order]*. If no dispositive motions are timely filed, or if the case remains at issue after timely dispositive motions have been decided, then the trial judge may enter an order or convene another pretrial conference to set deadlines for filing final witness and exhibit disclosures, exchanging and marking trial exhibits, designating deposition testimony for presentation at trial, motions in limine, proposed instructions in jury trials, and proposed findings of fact and conclusions of law in bench trials.

1. **ALTERNATIVE DISPUTE RESOLUTION (ADR).**

The status of settlement negotiations is as follows: \_\_\_\_\_\_\_\_\_. The parties currently believe the prospects for settlement of this case are \_\_\_\_\_\_\_\_ [e.g., good, fair, or poor] and they [do] [do not] believe that further court-ordered ADR would be helpful. [OPTIONAL: The parties believe that it would be helpful to participate in [e.g., private mediation with a certain mediator, a settlement conference conducted by a magistrate judge, etc.] and that the most productive time for this would be [e.g., by a specified date, after the court has decided summary-judgment motions, etc.].]

The parties are reminded that, under D. Kan. Rule 40.3, they must immediately notify the court if they reach an agreement that resolves the litigation as to any or all parties. Jury costs may be assessed under this rule if the parties do not provide notice of settlement to the court’s jury coordinator at least one full business day before the scheduled trial date.

IT IS SO ORDERED.

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_, at Wichita, Kansas.

GWYNNE E. BIRZER

U. S. Magistrate Judge