**IN THE SUPERIOR COURT OF FULTON COUNTY**

**BUSINESS CASE DIVISION**

**STATE OF GEORGIA**

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,Plaintiff(s),v.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Defendant(s). |  | CIVIL ACTION FILE NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Bus. Case Div. \_\_\_\_\_ |

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# **CASE MANAGEMENT ORDER**

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Counsel in the above-styled action appeared before the Court for a case management conference on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_p.m., pursuant to Atlanta Judicial Circuit Rule 1004, Paragraph 16. After discussion with counsel, the Court **ORDERS** that the following deadlines, policies and procedures govern this case:

# **SECTION 1: GENERAL INFORMATION**

 The Court is to be immediately notified via telephone or email of any problem or dispute (*e.g.,* disagreements about discovery, scheduling difficulties, unavailability of a witness, illness, the late addition of parties or claims, etc.) that could delay the deadlines, hearing dates or trial of this case. Modification of any deadline or hearing date contained herein **requires approval of the Court** – even if all parties consent to the change. Requests that the Court extend a deadline or hearing date should be made as early as the need becomes apparent. The Court may be contacted via phone at (404) 612-4570 or by email, businesscourt@fultoncountyga.gov.

# **SECTION 2: E-FILING AND E-SERVICE**

Pursuant to the Superior Court of Fulton County Standing Order Regarding Electronic Filing for Civil Cases, Administrative Order 2018-EX-00001350, revised October 12, 2018 and available at <http://www.fultoncourt.org/efile/>, the parties must file all documents electronically through eFileGA unless expressly exempted under the governing rules. All orders and notices from the Court will be electronically filed and served through eFileGA. The parties must register for an eFileGA account, link their service contact information with the case and the party represented, and take whatever steps are necessary (*e.g.,* listing as “trusted sender”) to ensure that correspondence from eFileGA (no-reply@tylerhost.net) timely reaches the parties’ inboxes. To access eFileGA, please go to <http://www.odysseyefilega.com/>.

# **SECTION 3: COURTESY COPIES**

Parties should deliver or mail paper courtesy copies of any pleading over fifty (50) pages in length including exhibits to: Lynette Jimenez, Metro Atlanta Business Case Division, 136 Pryor Street, Suite C-956, Atlanta, Georgia 30303. Otherwise, please send a courtesy copy of all motions, requests, and briefs via email to businesscourt@fultoncountyga.gov.

# **SECTION 4: COURT REPORTER**

[**If the Business Case Division Judge has a dedicated Court Reporter**]

Should the parties or counsel require the services of a court reporter for any court proceeding in this matter, contact the Court’s dedicated Court Reporter, (*insert Court Reporter’s name*), at (*insert Court Reporter’s phone and/or email*). A take down fee will apply to transcribe any proceeding.

**[If the Business Case Division Judge does not have a dedicated Court Reporter]**

The Business Case Division generally does not have a dedicated court reporter. Unless instructed otherwise by the Court, if the parties would like a hearing or any other court proceeding (including trial) taken down, they must confer and make arrangements to engage a private court reporter.

# **SECTION 5: CONFIDENTIALITY & FILING MATTERS UNDER SEAL**

If they have not already done so, the parties are directed to confer and, within **thirty (30) days** of the entry of this Order, submit a proposed Consent Confidentiality/Protective Order setting forth procedures to govern the exchange of any confidential, proprietary or otherwise sensitive information in order to expedite the flow of discovery materials and to facilitate the prompt resolution of disputes over the confidentiality of such materials.

 The parties are reminded that any motion to file documents under seal must substantially comply with the requirements of Uniform Superior Court Rule 21 *et seq.*, including specifically identifying all materials sought to be filed under seal and making a sufficient showing that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public’s interest in accessing the Court’s records. Prior to filing a motion to file under seal, the requesting party must confer with the opposing party(ies) and in the motion shall expressly state whether the motion is opposed. All motions to file under seal must be accompanied by a proposed order that specifically identifies the documents authorized to be filed under seal. *See also* Section 9(B), *supra*. If a motion to file under seal is granted, it is incumbent upon the movant to:

* Enclose the document(s) being filed under seal in a sealed envelope/container, attach/affix on the front of the envelope/container the signed order authorizing the filing under seal, and manually file the sealed document(s) directly with the Clerk of the Court.
* Prepare and electronically file a “Notice of Filing \_\_\_\_\_\_\_\_\_\_\_\_ Under Seal” which clearly shows the case styling and identifies the document(s) that were manually filed under seal with the Clerk of the Court.
* Provide the Court with an electronic and physical courtesy copy of the document(s) filed under seal.

# **SECTION 6: ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

 The parties are encouraged to utilize alternative dispute resolution (“ADR”) procedures to resolve the issue(s) of this case. The parties may utilize the Judicially-Hosted Settlement Conference available through the Superior Court of Fulton County (for additional information visit <https://www.fultoncourt.org/adr/>), or may hire an independent third party to serve as a mediator, arbitrator, etc. Any such efforts shall be completed before the start of trial. The failure to timely complete ADR efforts shall not merit an extension of discovery or a continuance from trial.

# **SECTION 7: PRELIMINARY ISSUES**

All objections and preliminary motions regarding the defenses of jurisdiction, insufficiency of service, insufficiency of service of process, venue, failure to state a claim or failure to join a party pursuant to O.C.G.A. § 9-11-19, and motions seeking severance shall be filed no later than **thirty (30) days** after the entry of this Order. Otherwise the Court will deem such defenses to be waived.

# **SECTION 8: DISCOVERY**

1. **Discovery Disputes**

If a discovery problem arises, the parties/counsel are required to confer in good faith in accordance with Uniform Superior Court Rule 6.4 to attempt to resolve or narrow the issues before seeking assistance from the Court. If a discovery dispute remains following the foregoing good faith conferral, the parties/counsel shall notify the Court via email including a short summary of the dispute and a proposed method for addressing the dispute (*e.g.,* conference call, letter briefs, formal motion, etc.). Upon receipt of same, the Court will instruct counsel as to the appropriate next steps. Should a party wish to file a formal motion seeking resolution of a discovery dispute, any such motion shall be filed **within 90 days** from the date of the response or event (*e.g.,* deposition) that is the subject of the motion, and in no event later than the close of discovery absent Court Order.

1. **Requests to Extend Deadlines**

Any request to extend discovery or any case management deadline should be made as soon as the need arises and before the deadline expires. The Court will only grant an extension of the discovery period for good cause shown. The request for a discovery extension shall include all current deadlines and all proposed corresponding extensions, including the new proposed deadline(s) for filing dispositive and *Daubert* motions. All such requests shall also include a list of discovery conducted thus far and a schedule of outstanding discovery to be completed during the requested extension. Without such detail, the request may not be considered.

1. **Discovery Requests**

All discovery requests must be served early enough that the responses thereto are due on or before the last day of the applicable discovery period or else the request(s) will be deemed untimely. Untimely discovery requests need not be responded to unless the parties otherwise agree or upon order of the Court.

The parties are limited to a total of 100 Interrogatories and 100 Requests for Production of Documents to any opposing party absent further Order of Court. Parties whose interests are aligned and who are represented by the same counsel are limited to propounding a *combined* total of 100 Interrogatories and 100 Requests for Production of Documents to any opposing party or parties whose interests are aligned and who are represented by the same counsel. Similarly, parties are required to respond only to the first 100 Interrogatories and 100 Requests for Production of Documents from an opposing party or opposing parties whose interests are aligned and who are represented by the same counsel.

1. **Discovery Responses and Objections**

The parties are directed to file only those objections to discovery requests for which they have a good faith basis to believe such objections apply. The assertion of an objection to a discovery request without a good faith basis therefor may be subject to sanctions.

Boilerplate objections in response to discovery requests are strongly discouraged. Parties should not carelessly invoke rote objections (*e.g.,* attorney-client privilege, work-product immunity from discovery, overly broad/unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence) unless the party has a valid basis for asserting the objection.

General objections are disfavored; *i.e.,* a party should avoid including in its response to a discovery request an introductory or “General Objections” section stating that the party objects to the discovery request “to the extent that” it violates a general rule pertaining to discovery (*e.g.,* the attorney-client privilege, the work-product immunity from discovery, and the prohibition against discovery requests that are vague, ambiguous, overly broad, or unduly burdensome). Instead, each individual discovery request should include every specific objection that applies to that particular request. All general objections may be disregarded by the Court.

A party who objects to a discovery request but then responds to the request must indicate whether the response is complete. 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). At trial, evidence which was requested but not disclosed during the discovery period will not be admitted.

In the case of objections to the production of documents, communications, and any other requested materials on the basis of any asserted privilege, the objecting party shall prepare and submit a privilege log clearly identifying all responsive materials for which the asserted objections apply. The privilege log shall describe the nature of all materials withheld or redacted and shall “do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess such claim.” *See* Uniform Superior Court Rule 5.5. For example, the privilege log must clearly identify all materials being withheld or redacted (*e.g.,* through Bates numbering or other numbering system) and should include, as applicable, a date, sender, recipient, subject, description of the material without revealing the privileged or protected information, and the specific basis for the objection.

1. **Discovery Deadlines**

The following discovery deadlines shall apply:

* **[Optional]** The parties shall submit a proposed deposition schedule to the Court on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* Written Discovery shall expire on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**. All discovery requests must be served early enough so that the responses thereto are due on or before the last day of the discovery period.
* Deposition Discovery (lay witnesses) shall expire on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.  **[OR]** The parties shall identify fact witnesses on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, and shall conclude deposition of such witnesses by **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* **[Optional]** The parties shall identify additional witnesses on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, and shall conclude deposition of such witnesses by **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* The parties shall identify expert witnesses they intend to have testify on any issue for which the party bears the burden of proof on or before 5:00 p.m. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In doing so the party shall provide a summary of the expert’s opinions and any additional discoverable information another party shall request by interrogatory. The depositions of any such identified expert shall conclude on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at 5:00 p.m.
* **[Optional]** The parties shall identify any expert they intend to have testify on any issue for which an opposing party bears the burden of proof on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at 5:00 p.m. In doing so the party shall provide a summary of the expert’s opinions and any additional discoverable information another party shall request by interrogatory. The depositions of any such identified expert shall conclude on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at 5:00 p.m.
1. **Electronic Discovery**

**[NOTE: If the parties anticipate the use of electronic discovery in this case, please confer and utilize the following section]**

* The parties shall by 5:00 p.m. on \_\_\_\_\_\_\_\_\_\_\_\_\_ exchange a list of

all repositories in which potentially discoverable electronic communications, documents or other electronically stored information (“ESI”) may be stored.

* The parties shall identify data custodians on or before 5:00 p.m. on \_\_\_\_\_\_\_\_\_\_.
* The parties shall exchange a list of all keyword searches that the parties desire to conduct on the identified repositories by 5:00 p.m. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
* The parties shall complete keyword searches on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* The parties shall make all privilege or non-responsive claims within \_\_\_\_ days after the initial database review is completed. For any claim of privilege, the party asserting the claim must provide complete and appropriate information that supports the assertion of said privilege and produce a privilege log to the opposing party.
* The following procedures, if applicable, shall be utilized to address privilege issues related to the disclosure of ESI (*i.e.*, “clawback,” “quick peek” or testing & sampling procedures):

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

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* The parties shall produce the ESI retrieved by the keyword searches and any privilege log on or before 5:00 p.m. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
* The ESI shall be provided in the following format (*i.e.*, Meta-Data, Native File, Static Image or other searchable or non-searchable format) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# **SECTION 9: MOTIONS AND HEARINGS**

1. **Length of Briefs**

Absent prior permission, briefs filed in support of or in response to a motion are limited in length to thirty (30) pages (excluding exhibits).

1. **Number of Briefs**

The parties shall submit briefs supporting motions, response briefs and, if deemed appropriate by the affected party, reply briefs. Any reply briefs are due thirty (30) days after response briefs. The Court will not consider any additional briefing (*e.g*., sur-reply brief, sur-sur-reply briefs) absent further permission of Court which permission must be sought prior to filing of the additional requested briefing.

1. **Proposed Orders**

All procedural/ministerial motions (*e.g.,* motions for admission *pro hac vice*, to extend deadlines, to exceed page limits, to withdraw as counsel, etc.) shall be accompanied by a proposed order. Proposed orders may be efiled or emailed to the Court. If the proposed order is efiled, it must contain the signature (electronic or ink) of the counsel who prepared the proposed order and must contain the word “PROPOSED” in the title.

1. **Oral Argument**

 It is within the Court’s discretion whether to allow oral argument on most motions. *See* Uniform Superior Court Rule 6.3. If any party would like to present oral argument on a motion, the party should promptly request the hearing in writing at the time the motion is filed or when a response to the motion is submitted.

1. **Motions Deadlines**

 The following motions deadlines shall apply:

* As noted in Section 7, *supra*, preliminary motions and motions seeking severance shall be filed within **thirty (30) days** of the entry of this Order. If the parties timely request a hearing on any preliminary motion and at the Court’s discretion, a hearing may be scheduled on a date and time to be determined later by the Court.
* All dispositive motions, including motions for summary judgment, shall be filed on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* If the parties timely request a hearing on any dispositive motion, a hearing shall be scheduled on a date and time to be determined later by the Court.
* **[Optional]** All “secondary” dispositive motions, if issues are bifurcated, shall be filed on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* **[Optional]** If the parties timely request a hearing on any “secondary” dispositive motion, a hearing shall be scheduled on a date and time to be determined later by the Court.
* **[Optional]** The parties shall file *Daubert* motions on or before 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.
* **[Optional]** If the parties timely request a hearing on any *Daubert* motion and at the Court’s discretion, a hearing may be scheduled on a date and time to be determined later by the Court.

# **SECTION 10: CONSOLIDATED PRE-TRIAL ORDER**

 A proposed, fully consolidated pre-trial order that substantially complies with Uniform Superior Court Rule 7.2 shall be submitted to the Court’s Chambers no later than5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_**. (Please do not present pre-trial orders to the Clerk of Court for filing unless they have been signed by the Court). At the time of submitting the pre-trial order the parties shall also advise the Court if a pretrial conference is requested.

 Plaintiff(s) shall be responsible for consolidating the pre-trial order. All other parties shall provide their portions of the consolidated pre-trial order to the Plaintiff(s) no later than two (2) business days prior to the due date above. No party shall submit their own individual portion of a pre-trial order to the Court without written certification detailing their good faith efforts to present the Court with a fully consolidated pre-trial order. Extensions for submitting proposed pre-trial orders will be granted only for good cause shown.

**SECTION 11: TRIAL**

 Counsel have conferred and estimated that the trial of this case will take no more than \_\_\_\_ days. The trial and, if appropriate, a pre-trial conference will be specially set on a date and time to be determined later by the Court.

1. **Motions in Limine**

 All motions in limine shall be made in writing and filed no later than 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_**. Counsel 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 raised in a motion in limine.

1. **Requests to Charge**

 The parties’ requests to charge shall be filed no later than 5:00 p.m. on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_**. The parties should provide the Court a physical courtesy copy of their requests to charge and should also email them to the Court in Microsoft Word format.

 The Court will not give duplicative charges and will defer to pattern, rather than non-pattern charges. The parties may request non-pattern charges only if there is no pattern charge that covers the issue. Absent prior permission from the Court, non-pattern requests to charge are limited to twenty-five (25) per side. 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. Any non-pattern requests which cite to different legal authority to support different sentences or paragraphs of the request will be counted as separate charges to which the twenty-five (25) charge limit shall apply.

1. **Depositions Used at Trial**

 If the parties intend to introduce deposition testimony and/or to play any video deposition at trial (other than for impeachment purposes), the parties are instructed to confer prior to trial and attempt to agree on the testimony to be presented. If the parties cannot agree on any portions of the deposition testimony that should be excluded, the parties are instructed to prepare a list of the page(s) and line number(s) at issue and provide it to Court along with the relevant text from the deposition no later than the first day of trial.

1. **Use of Audio/Visual Technology**

 If the parties intend to use any audio/visual (A/V) equipment during the trial, they should timely coordinate with the Court to view the courtroom where the trial will be held to assess the available equipment, ensure any necessary media players, drivers, and accessories are available, and/or to make arrangements for the parties to bring in necessary equipment not already in the courtroom. Whenever possible the parties and their A/V vendors/consultants should confer and coordinate to minimize the additional equipment brought into the courtroom. Questions regarding the specifications of courtroom equipment or how to use such equipment should be directed to Court Technology Services at (404) 612-2770.

 Motions and Rule 22 requests to bring special equipment (*e.g.,* speakers, monitors, screens, computers, projectors, scanners, printers, etc.) into the courthouse must include a proposed order and should be submitted to the Court at least three (3) days prior to the start of trial or, if the equipment will be installed prior to trial, at least three (3) days before the scheduled installation date as coordinated with the Court. Any individual bringing equipment into the courthouse pursuant to Court order must have a paper copy of the signed and file stamped order in his/her possession when going through security at any courthouse entrance.

1. **Exhibits and Demonstrative Evidence**

 All exhibits and demonstrative evidence shall be pre-marked with exhibit labels and exchanged among the parties prior to the beginning of trial. The parties are instructed to work together and agree, at least as to authenticity, on all such exhibits where possible.

1. **Digital Submission of Exhibits**

Counsel is required to mark with exhibit labels and provide all documentary evidence to the Court Reporter in digital format at the time of tender, unless otherwise ordered by the Court. Due to the size limits of eFileGa, counsel is required to: (1) scan all exhibits individually and email them to the Court Reporter; or (2) scan all exhibits individually and place them on a disc for the Court Reporter. For oversized or non-paper exhibits, *e.g.,* poster boards, etc., you may submit a digital photograph of the object marked with an exhibit sticker. If no photograph is submitted, then a piece of paper describing the exhibit, *e.g.,* poster board, etc., will be inserted by the Court Reporter in its place as the exhibit attached to the transcript. Regarding DVDs/CDs exhibits, provide the Court Reporter with the original and one copy. They will need to be contained in a hard case (*e.g.,* jewel case).

# **SECTION 12: SANCTIONS**

The parties should note that sanctions for the failure to abide by the deadlines set out in this or any other Order, or for failing to timely supplement discovery responses as required by O.C.G.A. § 9-11-26(e) and this Order, may include, but are not necessarily limited to, the striking of pleadings, entry of default, exclusion of evidence, and charging of costs against the offending party. See Lee v. Smith, S18G1549, 2020 WL 609660, at \*5 (Ga. Sup. Ct. Feb. 10, 2020); Doherty v. Brown, 339 Ga. App. 567, 575-76 (2016), *rev'd sub nom*. Southeast Pain Specialists, P.C. v. Brown, 303 Ga. 265 (2018), and *vacated on other grounds*, 347 Ga. App. 187 (2018). A party’s failure to respond to a discovery request to identify anyone with knowledge during the discovery period or the failure to identify experts as ordered above will not be cause to continue a trial on behalf of the offending party and, unless good cause is shown for the omission, may cause the undisclosed witness’ testimony to be excluded, striking of pleadings or other sanctions. Id.

Further, the Court may choose to consider motions filed outside of the deadlines set in this Case Management Order to prevent manifest injustice. See Velasco v. Chambless, 295 Ga. App. 376, 377 (2008).

**IT IS SO ORDERED** this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020.

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

HON. KELLY LEE ELLERBE, JUDGE

Superior Court of Fulton County

Business Case Division

Atlanta Judicial Circuit

**Electronically served upon registered service contacts through eFileGA:**

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| --- | --- |
| **Attorneys for Plaintiff(s)** | **Attorneys for Defendant(s)** |
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