Docket #0019 Date Filed: 10/13/2020

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS

In re	§	
	§	Bankr. Case No. 20-32564-DRJ
STAGE STORES, INC., et al.	§	Chapter 11
	§	Jointly Administered
Debtor(s).	§	
AMY STUMPF, et al.	§	
	§	
Plaintiff(s),	§	
	§	
v.	§	Adv. Proc. No. 20-03303
	§	
STAGE STORES, INC., et al.	§	
	§	
Defendant(s).	§	

JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER RULE 26(f)
FEDERAL RULES OF CIVIL PROCEDURE

Please restate the instruction before furnishing the information.

1. State where and when the meeting of the parties required by Rule 26(f) was held, and identify the counsel who attended for each party.

   The meeting of the parties required by Rule 26(f) was held by telephone on October 12, 2020. Curt Hesse attended for the Plaintiffs, and Jonathan Fombonne attended for the Defendants.

2. List the cases related to this one that are pending in any state or federal court with the case number and court.

   N/A

3. Briefly describe what this case is about.

   Stumpf and the other Plaintiffs claim that Stage Stores, Inc. and Specialty Retailers, Inc. violated the Worker Adjustment Retraining and Notification Act, 29 U.S.C. §§ 2101-2109 ("WARN Act") by failing to provide advance written notice of a plant closing or mass layoff in connection with Defendants' layoffs of certain employees.

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Defendants contend that they were not required to provide advance written notice of the layoffs under the WARN Act.

4. Specify the allegation of federal jurisdiction.

The Court has federal-question jurisdiction over this case under 28 U.S.C. § 1331. *See also*, 29 U.S.C. § 2104(a)(5). The Court also has bankruptcy jurisdiction over this case under 28 U.S.C. § 1334 because this is a core proceeding. *See*, 28 U.S.C. §§ 157(b)(2)(A)-(B), (O).

5. Name the parties who disagree and the reasons.

Defendants agree that the Court has federal question jurisdiction over WARN Act claims. However, Defendants note that class members signed mandatory arbitration agreements as a condition of employment with Defendants.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

See *infra* paragraph 8 regarding class-action issues.

7. List anticipated interventions.

N/A

8. Describe class-action issues.

Stumpf seeks to certify a class of similarly situated employees of Stage Stores, Inc. and Specialty Retailers, Inc. who did not receive advance written notice of a plant closing or mass layoff as required by the WARN Act during 2020. (*See*, Pls.' Am. Compl. (Doc. 14) ¶¶ 64-74.) *See*, Fed. R. Bankr. P. 7023; Fed. R. Civ. P. 23. Based on preliminary research, she believes that the class is comprised of approximately 1,400 former employees who worked in Nebraska, Ohio and Texas but may be larger. Absent an agreement on the issue, Stumpf intends on moving for class certification on or before December 11, 2020. *See*, Fed. R. Civ P. 23(c)(1)(A) ("At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.").

Defendants assert that certain members of the proposed class have signed class action waivers and may not be included in the class. Defendants also believe that the class definition includes a legal conclusion and thus may not be certified as drafted.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

The parties agree to complete the disclosures required by Rule 26(a) by November 2, 2020. *See*, Fed. R. Civ. P. 26(a)(1)(C).

10. Describe the proposed agreed discovery plan, including:

A. Responses to all the matters raised in Rule 26(f).

(1) changes to the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

The parties do not believe that any changes should be made in the timing, form, or requirement for disclosures under Rule 26(a) except where expressly stated in this plan. The parties will make initial disclosures by November 2, 2020. *See*, Fed. R. Civ. P. 26(a)(1)(C).

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

The parties agree that discovery be bifurcated between certification issues and merits issues. *See*, Manual for Complex Litigation (Fourth) § 21.14 (2011); *see also*, *id*. ("Discovery relevant only to the merits delays the certification decision and may ultimately be unnecessary."); *Larson v. Burlington Northern & Santa Fe Ry. Co.*, 210 F.R.D. 663, 666-67 (D. Minn. 2002); *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570-71 (11th Cir. 1992); 5 Moore's Federal Practice & Procedure § 23.85 (Matthew Bender 3d ed. 2009) (court should limit discovery in order to assure that the class certification motion does not become a pretext for a partial trial on the merits). However, considering the nature of the claims involved, Stumpf believes that certification discovery can be completed by December 11, 2020. Merits discovery will be conducted after the Court's decision on the certification issue.

(3) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

The parties anticipate requesting information that they reasonably believe will be stored electronically. They agree that that any such information be produced in both its native format, in text-searchable portable document format, Microsoft PowerPoint format, and in Microsoft Excel format, if applicable and possible. Alternatively, they request that electronically stored information be produced in a reasonably usable form. The parties agree to confer on an acceptable ESI protocol as soon as practicable.

(4) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the court to include their agreement in an order under Fed. R. Evid. 502;

The parties request that the Court enter an order under Fed. R. Evid. 502(d) substantial in form to the one promulgated by the United States Judicial Conference Advisory Committee on Evidence Rules. *See* Symposium Participants, *Model Draft of a Rule 502(d) Order*, 81 Fordham L. Rev. 1587

(2013) (available at, https://ir.lawnet.fordham.edu/flr/vol81/iss4/15). A proposed order is attached for the Court's consideration.

(5) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

The parties do not believe that any changes should be made with respect to the limitations on discovery imposed under the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure or by local rule or that any other limitations should be imposed.

(6) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

Except where expressly stated in this plan, the parties do not believe that the Court need enter any other orders under Rule 16(b) or (c). The parties do request, though, that the Court enter an order under Fed. R. Civ. P. 26(c). A proposed order is attached for the Court's consideration.

B. When and to whom the plaintiff anticipates it may send interrogatories.

Stumpf anticipates sending interrogatories related to certification issues to the defendants before the close of certification discovery. She anticipates sending additional interrogatories related to merits issues to defendants before the close of merits discovery.

C. When and to whom the defendant anticipates it may send interrogatories.

Defendants anticipate sending interrogatories related to certification issues to the named plaintiffs. If applicable, additional interrogatories on merits issues will be sent before the close of merits discovery.

D. Of whom and by when the plaintiff anticipates taking oral depositions.

Stumpf does not anticipate taking any oral depositions during certification discovery. The Plaintiffs anticipate deposing a corporate representative of each defendant, Michael Glazer, Elaine Crowley, and any other witnesses identified through disclosures or discovery before the close of merits discovery.

E. Of whom and by when the defendant anticipates taking oral depositions.

Defendants do not anticipate taking, but reserve the right to take, oral depositions during certification discovery. Defendants anticipate taking oral depositions on merits issues, including depositions of one or more of the named plaintiffs and any of the named plaintiffs' experts.

F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when

the opposing party will be able to designate responsive experts and provide their reports.

A party with the burden of proof on an issue will be able to designate expert witnesses by ninety (90) days before the date set for trial or for the case to be ready for trial. *See* Fed. R. Civ. P. 26(a)(2)(D)(i). The opposing party will be able to designate expert witnesses by sixty (60) days before the date set for trial or for the case to be ready for trial.

G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

The Plaintiffs anticipate deposing any expert identified by Defendants by the close of discovery.

H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

The Defendants anticipate deposing any expert identified by Defendants by the close of discovery.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

N/A

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

None.

13. State the date the planned discovery can reasonably be completed.

Certification discovery can reasonably be completed by December 11, 2020. Merits discovery can reasonably be completed by six (6) months following the close of the opt-out period (assuming the case is certified as class action) or six (6) months after the date on which the court's decision on class certification becomes final (assuming the case is not certified as a class action).

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

Plaintiffs believe that some initial discovery and resolution of the certification issue are necessary before settlement or resolution of the case will be possible.

Defendants believe that prompt settlement of the case is possible based on the parties' current understanding of the facts.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

The parties have agreed to discuss attending mediation after some initial discovery and resolution of the certification issue.

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

The parties believe that mediation may be appropriate after some initial discovery and resolution of the certification issue.

17. Indicate whether each party consents to trial by jury by a bankruptcy judge and entry of final orders or judgment by the bankruptcy court.

The Plaintiffs do not consent to trial by jury by a bankruptcy judge or entry of final orders or judgment by the bankruptcy court.

The Defendants do not believe that Plaintiffs have a right to trial by jury under the WARN Act. Accordingly, Defendants will move to strike the jury demand. Defendants consent to trial by a bankruptcy judge and entry of final orders or judgment by the bankruptcy court.

18. State whether a jury demand has been made and if it was made on time.

Stumpf timely demanded a trial by jury on all issues triable to a jury under and Fed. R. Bankr. P. 9015(a) and Fed. R. Civ. P. 38(b). (Pl.'s Jury Demand (Doc. 9).) She also timely demanded a triable jury on all issues related to the arbitrability of her claims under the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"). (Pl.'s FAA Jury Demand (Doc. 10).)

19. Specify the number of hours it will take to present the evidence in this case.

It is difficult to estimate the number of hours it will take to try this case until resolution of the certification issue. For scheduling purposes, the parties estimate that this case (in its present form) could be tried in fifteen (15) hours (or three (3) days). If the case is certified as a class action, the parties estimate that this case could be tried in twenty-five (25) hours (or five (5) days).

20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

N/A

21. List other motions pending.

N/A

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

Stumpf intends on filing a motion to withdraw the reference on or before November 6, 2020. *See*, 28 U.S.C. § 157(d); Fed R. Bankr. P. 5011(a); S.D. Tex. Bankr. L. R. 5011-1. And absent an agreement on the issue, Stumpf intends on moving for class certification on or before December 11, 2020. *See*, Fed. R. Civ P. 23(c)(1)(A) ("At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.").

Defendants intend to oppose the motion to withdraw the reference when filed.

23. List the names, bar numbers, addresses and telephone numbers of all counsel.

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For the Defendant(s):

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Counsel for Plaintiff(s)	Date 10/13/2020
s/ Jonathan Fombonne w/p CH Counsel for Defendant(s)	Date 10/13/2020

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS

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Plaintiff(s),	§	
	§	
v.	§	Adv. Proc. No. 20-03303
	§	
STAGE STORES, INC., et al.	§	
	§	
Defendant(s).	§	

AGREED ORDER
REGARDING THE DISCLOSURE OF PRIVILEGED INFORMATION

1. No Waiver by Disclosure. This order is entered pursuant to Rule 502(d) of the Federal Rules of Evidence. Subject to the provisions of this Order, if a party (the "Disclosing Party") discloses information in connection with the pending litigation that the Disclosing Party thereafter claims to be privileged or protected by the attorney-client privilege or work-product protection ("Protected Information"), the disclosure of that Protected Information will not constitute or be deemed a waiver or forfeiture—in this or any other action—of any claim of privilege or work-product protection that the Disclosing Party would otherwise be entitled to assert with respect to the Protected Information and its subject matter.

2. Notification Requirements; Best Efforts of Receiving Party. A Disclosing Party must promptly notify the party receiving the Protected Information ("the Receiving Party"), in writing, that it has disclosed that Protected Information without intending a waiver by the disclosure. Upon such notification, the Receiving Party must—unless it contests the claim of attorney-client privilege or work-product protection in accordance with paragraph 3—promptly (i) notify the Disclosing Party that it will make best efforts to identify and return, sequester or destroy (or in the case of electronically stored information, delete) the Protected Information and any reasonably accessible copies it has and (ii) provide a certification that it will cease further review, dissemination, and use of the Protected Information. Within five (5) business days of receipt of the notification from the Receiving Party, the Disclosing Party must explain as specifically as possible why the Protected Information is privileged. For purposes of this Order, Protected Information that has been stored on a source of electronically stored information that is not

reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete or sequester the restored protected information.

3. Contesting Claim of Privilege or Work-Product Protection. If the Receiving Party contests the claim of attorney-client privilege or work-product protection, the Receiving Party must—within five (5) business days of receipt of the notice of disclosure—move the Court for an Order compelling disclosure of the information claimed as unprotected (a "Disclosure Motion"). The Disclosure Motion must be filed under seal and must not assert as a ground for compelling disclosure the fact or circumstances of the disclosure. Pending resolution of the Disclosure Motion, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed Disclosure Motion.

4. Stipulated Time Periods. The parties may stipulate to extend the time periods set forth in paragraphs 2 and 3.

5. Attorney's Ethical Responsibilities. Nothing in this order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Disclosing Party that such materials have been produced.

6. Burden of Proving Privilege or Work-Product Protection. The Disclosing Party retains the burden—upon challenge pursuant to paragraph 3—of establishing the privileged or protected nature of the Protected Information.

7. In camera Review. Nothing in this Order limits the right of any party to petition the Court for an *in camera* review of the Protected Information.

8. Voluntary and Subject-Matter Waiver. This Order does not preclude a party from voluntarily waiving the attorney-client privilege or work-product protection. The provisions of Federal Rule 502(a) apply when the Disclosing Party uses or indicates that it may use information produced under this Order to support a claim or defense.

9. Rule 502(b)(2). The provisions of Federal Rule of Evidence 502(b)(2) are inapplicable to the production of Protected Information under this Order.

It is so ordered.

Date: _____

_____
David R. Jones
United States Bankruptcy Judge

Approved as to form and substance:

Date: 10/13/2020

Counsel for the Plaintiff(s)

Date: 10/13/2020

s/ Jonathan Fombonne w/p CH

Counsel for the Defendant(s)

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	§	
STAGE STORES, INC., et al.	§	
	§	
Defendant(s).	§	

AGREED PROTECTIVE ORDER

1. This Protective Order shall apply to information, documents, excerpts from documents, and other materials produced in this action pursuant to the Federal Rules of Bankruptcy and/or the Federal Rules of Civil Procedure governing disclosure and discovery.

2. Information, documents, and other materials may be designated by the producing party in the manner permitted ("the Designating Person"). All such information, documents, excerpts from documents, and other materials will constitute "Designated Material" under this Order. The designation shall be either (a) "**CONFIDENTIAL**" or (b) "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**." This Order shall apply to Designated Material produced by any party or third-party in this action.

3. "**CONFIDENTIAL**" information means information, documents, or things that have not been made public by the disclosing party and that the disclosing party reasonably and in good faith believes contains or comprises (a) trade secrets, (b) proprietary business information, or (c) information implicating an individual's legitimate expectation of privacy.

4. "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**" means **CONFIDENTIAL** information that the disclosing party reasonably and in good faith believes is so highly sensitive that its disclosure to a competitor could result in significant competitive or commercial disadvantage to the designating party.

5. Designated Material shall not be used or disclosed for any purpose other than the litigation of this action and may be disclosed only as follows:

a. Parties: Material designated "**CONFIDENTIAL**" may be disclosed to parties to this action or directors, officers and employees of parties to this action, who have a legitimate need to see the information in connection with their responsibilities for overseeing the litigation or assisting counsel in preparing the action for trial or settlement. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order by signing a document substantially in the form of Exhibit A.

b. Witnesses or Prospective Witnesses: Designated Material, including material designated "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**," may be disclosed to a witness or prospective witness in this action, but only for purposes of testimony or preparation of testimony in this case, whether at trial, hearing, or deposition, but it may not be retained by the witness or prospective witness. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order, by signing a document substantially in the form of Exhibit A.

c. Outside Experts: Designated Material, including material designated "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**," may be disclosed to an outside expert for the purpose of obtaining the expert's assistance in the litigation. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order, by signing a document substantially in the form of Exhibit A.

d. Counsel: Designated Material, including material designated "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**," may be disclosed to counsel of record and in-house counsel for parties to this action and their associates, paralegals, and regularly employed office staff.

e. Other Persons: Designated Material, including material designated "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**," may be provided as necessary to copying services, translators, and litigation support firms. Before Designated Material is disclosed to such third parties, each such person must agree to be bound by this Order by signing a document substantially in the form of Exhibit A.

6. Prior to disclosing or displaying any Designated Material to any person, counsel shall:

a. inform the person of the confidential nature of the Designated Material; and

b. Inform the person that this Court has enjoined the use of the Designated Material by him/her for any purpose other than this litigation and has enjoined the disclosure of that information or documents to any other person.

7. The confidential information may be displayed to and discussed with the persons identified in Paragraphs 5(b) and (c) only on the condition that, prior to any such display or discussion, each such person shall be asked to sign an agreement to be bound by this Order in the form attached hereto as Exhibit A. In the event such person refuses to sign an agreement in substantially the form attached as Exhibit A, the party desiring to disclose the confidential information may seek appropriate relief from the Court.

8. A person having custody of Designated Material shall maintain it in a manner that limits access to the Designated Material to persons permitted such access under this Order.

9. Counsel shall maintain a collection of all signed documents by which persons have agreed to be bound by this Order.

10. Documents shall be designated by stamping or otherwise marking the documents with the words "**CONFIDENTIAL**" or "**CONFIDENTIAL—ATTORNEY'S EYES ONLY**" thus clearly identifying the category of Designated Material for which protection is sought under the terms of this Order. Designated Material not reduced to documentary form shall be designated by the producing party in a reasonably equivalent way.

11. The parties will use reasonable care to avoid designating as confidential documents or information that does not need to be designated as such.

12. A party may submit a request in writing to the party who produced Designated Material that the designation be modified or withdrawn. If the Designating Person does not agree to the redesignation within fifteen (15) business days, the objecting party may apply to the Court for relief. Upon any such application, the burden shall be on the Designating Person to show why the designation is proper. Before serving a written challenge, the objecting party must attempt in good faith to meet and confer with the Designating Person in an effort to resolve the matter. The Court may award sanctions if it finds that a party's position was taken without substantial justification.

13. Deposition transcripts or portions thereof may be designated either (a) when the testimony is recorded or (b) by written notice to all counsel of record, given within ten (10) business days after the Designating Person's receipt of the transcript in which case all counsel receiving such notice shall be responsible for marking the copies of the designated transcript or portion thereof in their possession or control as directed by the Designating Person. Pending expiration of the ten (10) business days, the deposition transcript shall be treated as designated. When testimony is designated at a deposition, the Designating Person may exclude from the deposition all persons other than those to whom the Designated Material may be disclosed under paragraph 5 of this Order. Any party may mark Designated Material as a deposition exhibit, provided the deposition witness is one to whom the exhibit may be disclosed under paragraph 5 of this Order and the exhibit and related transcript pages receive the same confidentiality designation as the original Designated Material.

14. Any Designated Material which becomes part of an official judicial proceeding or which is filed with the Court is public. Such Designated Material will be sealed by the Court only upon motion and in accordance with applicable law. This Protective Order does not provide for

the automatic sealing of such Designated Material. If it becomes necessary to file Designated Material with the Court, a party must move to file the Designated Material under seal.

15. Filing pleadings or other papers disclosing or containing Designated Material does not waive the designated status of the material. The Court will determine how Designated Material will be treated during trial and other proceedings as it deems appropriate.

16. Upon final termination of this action, all Designated Material and copies thereof shall be returned promptly (and in no event later than forty-five (45) days after entry of final judgment) to the producing party or certified as destroyed to counsel of record for the party that produced the Designated Material or, in the case of deposition testimony regarding designated exhibits, counsel of record for the Designating Person. Alternatively, the receiving party shall provide to the Designating Person a certification that all such materials have been destroyed.

17. Inadvertent production of confidential material prior to its designation as such in accordance with this Order shall not be deemed a waiver of a claim of confidentiality. Any such error shall be corrected within a reasonable time.

18. Nothing in this Order shall require disclosure of information protected by the attorney-client privilege, or other privilege or immunity, and the inadvertent production of such information shall not operate as a waiver. If a Designating Party becomes aware that it has inadvertently produced information protected by the attorney-client privilege, or other privilege or immunity, the Designating Party will promptly notify each receiving party in writing of the inadvertent production. When a party receives notice of such inadvertent production, it shall return all copies of inadvertently produced material within three (3) business days. Any notes or summaries referring or relating to any such inadvertently produced material subject to claim of privilege or immunity shall be destroyed forthwith. Nothing herein shall prevent the receiving party from challenging the propriety of the attorney-client privilege or work-product protection or other applicable privilege designation by submitting a challenge to the Court. The Designating Party bears the burden of establishing the privileged nature of any inadvertently produced information or material. Each receiving party shall refrain from distributing or otherwise using the inadvertently disclosed information or material for any purpose until any issue of privilege is resolved by agreement of the parties or by the Court. Notwithstanding the foregoing, a receiving party may use the inadvertently produced information or materials to respond to a motion by the Designating Party seeking return or destruction of such information or materials. If a receiving party becomes aware that it is in receipt of information or materials which it knows or reasonably should know is privileged, Counsel for the receiving party shall immediately take steps to (i) stop reading such information or materials; (ii) notify Counsel for the Designating Party of such information or materials; (iii) collect all copies of such information or materials; (iv) return such information or materials to the Designating Party and (v) comport themselves with the applicable provisions of the Rules of Professional Conduct.

19. The foregoing is entirely without prejudice to the right of any party to (i) apply to the Court for any further Protective Order relating to Designated Material; (ii) object to the production of Designated Material; (iii) apply to the Court for an order compelling production of Designated Material or for modification of this Order or (iv) seek any other relief from the Court.

20. The restrictions imposed by this Order may be modified or terminated only by further order of the Court.

It is so ordered.

Date: _____

David R. Jones
United States Bankruptcy Judge

Approved as to form and substance:

Date: 10/13/2020

Counsel for the Plaintiff(s)

Date: 10/13/2020

s/ Jonathan Fombonne w/p CH
Counsel for the Defendant(s)

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COMPREHENSIVE SCHEDULING, PRETRIAL & TRIAL ORDER

A pretrial conference was held on _____ (*date*). The parties submitted a Rule 26 Report:

A. ☐ which is attached and is accepted by the Court except as modified by this order; or

B. ☐ which is filed at docket # _____ (*docket entry number*) and is accepted by the Court except as modified by this order.

Under authority of Fed. R. Bankr. P. 7016 and Fed. R. Civ. P. 16, it is hereby **ORDERED** that the following deadlines and settings shall apply in the above referenced adversary:

1. All discovery in this case must be completed on or before _____ (*date*).

2. The party with the burden of proof on an issue must serve its expert reports no later than _____ (*date*). Rebuttal expert reports must be served no later than _____ (*date*).

3. Dispositive motions may not be filed after _____ (*date*). Any responses to dispositive motions must be filed within twenty (20) days after a dispositive motion is filed. The Court additionally orders:

A. ☐ Courtesy copies of dispositive motions and responses must be mailed or delivered to the Court's chambers when they are filed with the Clerk.

B. ☐ Dispositive motions may not be filed until discovery is completed.

4. Witness and Exhibit Lists must be exchanged at least two (2) working days prior to the face to face meeting required in the following paragraph. Copies of the exhibits shall be attached to the Exhibit List.

5. Counsel must meet face to face to attempt to resolve these issues amicably, to attempt to stipulate to as many facts and issues as possible, and to prepare the pretrial order. This face to face meeting must occur prior to _____ (*date*). The court intends that this will be a substantive, good faith effort to resolve issues. Therefore trial counsel (lead counsel) are required to attend this meeting in person. Counsel who are not present at this meeting may not be permitted to participate in the trial.

6. The parties must jointly prepare and file a proposed form of pretrial statement not later than _____ (*date*). The proposed form of statement must be signed by counsel for both parties and must be in the form set forth as Appendix C on the Court's website.

7. Copies of exhibits must be attached to the pretrial statement. Relevant portions of lengthy exhibits must be highlighted. Counsel must also attach succinct memoranda on disputed issues of law. A courtesy copy of the pretrial order must be delivered to chambers when the pretrial order is filed with the clerk.

8. A Pre-Trial Conference will:

A. ☐ not be held.

B. ☐ be held on _____ (*date*) at ___:_____ ___.m. (*time*). Attendance by all parties is required, either in proper person (if not represented by counsel) or by an attorney who has authority to bind the party. Each party must have a representative present with full settlement authority.

9. Trial of this adversary proceeding will commence on _____ (*date*) at ___:_____ ___.m. (*time*). It is estimated that trial can be completed in ___ hours of trial time.

It is further:

ORDERED that changes to this Scheduling Order may only be made by further order of this Court. A motion to extend any deadline and/or alter any hearing date will only be granted for good cause shown beyond the control of the lawyers and/or parties and only in very limited circumstances.

Date: _____

_____
David R. Jones
United States Bankruptcy Judge