

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

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In Re:

Administrative Order 2022-02

**Amendment of Local Rules 7004-2,
7016-1, 7026-1(A), 7026-2(B), and 7090-1,
to Reflect Amendments to Orders Used
in Adversary Proceedings**

The Court, after having reviewed procedures and Local Rules for administering adversary proceedings, has revised forms “Order Setting Scheduling Conference and Establishing Procedures and Deadlines” and “Order Setting Filing and Disclosure Requirements for Pretrial and Trial” [see attached as Exhibit A and Exhibit B].

The Court has also determined that, for conformity, Local Rules 7004-2, 7016-1, 7026-1(A), 7026-2(B), 7090-1, and 9014-1 shall be amended effective **June 6, 2022**, to reflect the revisions to these form orders. Accordingly, it is **ORDERED** as follows:

1. Local Rule 7004-2 is amended by substituting the following as Interim Local Rule 7004-2:
 - (A) **General.** *The clerk will electronically generate and docket the summons or, if applicable, an alias summons or pluries, and “Order Setting Scheduling Conference and Establishing Procedures and Deadlines” and transmit it to the plaintiff, who must serve it together with the complaint, on all defendants in accordance with the federal and local rules. The electronic summons is a valid summons, signed, sealed and issued by the clerk. The clerk shall issue an alias or pluries summons upon receipt of a notice of non-service and request for issuance of alias summons, and a third-party summons, when applicable. Requests for issuance of an alias or pluries summons that will require resetting a new scheduling conference date will be considered in accordance with subdivision (B) of this Rule.*
 - (B) **Alias or Pluries Summons.** *A request for issuance of an alias or pluries summons that would provide for an answer deadline of less than 30 days prior to the date of the original scheduling conference must be accompanied by a motion to continue the scheduling conference to a date such that the answer shall be due not later than 30 days prior to the proposed date of the new scheduling conference. The court shall either set the motion for hearing or enter an order directing the clerk to issue an alias or pluries summons which shall include a new scheduling conference date that provides for an answer deadline of no later than 30 days before the date of the scheduling conference.*

2. Local Rule 7016-1 is amended by substituting the following as Interim Local Rule 7016-1:

***Scheduling Conference Order.** The clerk will electronically generate and docket the “Order Setting Scheduling Conference and Establishing Procedures and Deadlines” in an adversary proceeding and transmit it to the plaintiff who must serve the order together with the summons and complaint on all defendants in accordance with the federal and local rules.*

3. Local Rule 7026-1(A) is amended by substituting the following as Interim Local Rule 7026-1(A):

Local Rule Number 7026-1 Discovery – General

- (A) *Affirmative Disclosure Requirements.* Except as otherwise ordered by the court, the provisions of Fed. R. Civ. P. 26(a), (d) and (f) apply to cases and proceedings in this court only to the extent set forth in the “Order Setting Scheduling Conference and Establishing Procedures and Deadlines,” and “Order Setting Filing and Disclosure Requirements for Pretrial and Trial”.
4. Local Rule 7026-2(B) is amended by substituting the following as Interim Local Rule 7026-2(B):

(B) *Preservation.* A party has a duty to retain ESI that may be relevant to pending or reasonably anticipated litigation. The scope of a party’s preservation obligation is determined on a case-by-case basis. Preservation issues, to include each party’s records management policies and procedures, ideally should occur before suit is filed but certainly no later than the conference required by the Court’s “Order Setting Scheduling Conference and Establishing Procedures and Deadlines” (and, with respect to any contested matters where application of Fed. R. Civ. P. 26(f) is ordered by the Court pursuant to Fed. R. Bankr. P. 9014(c)) (the “Rule 26(f) Conference”). On the topic of preservation, counsel should be informed and otherwise prepared to articulate both good cause for the preservation of ESI and the costs and burdens of maintaining ESI.

5. Local Rule 7090-1(A) is amended by substituting the following as Interim Local Rule 7090-1(A):

(A) *Continuance of Adversary Proceeding Scheduling Conference.* Except for brief continuances sought pursuant to Local Rule 7004-2(B) or to accommodate the schedules of counsel (or the parties, if unrepresented), the Court will continue the scheduling conference only in extraordinary circumstance. Any request to continue an adversary proceeding scheduling conference or any deadlines set forth in the “Order Setting Scheduling Conference and Establishing Procedures and Deadlines” must: (1) be presented by written motion filed no later than the earlier of two business days before the scheduling

conference, or as soon as a scheduling conflict is identified; (2) set forth the status of service of process, the pleadings, and the pendency of any potentially dispositive motions; and (3) state the reasons why the party or parties seek a continuance.

6. The Clerk is directed to provide notice of entry of this Order and update the electronic version of the Local Rules, form orders and Clerk's Filing Instructions as published by this Court.

ORDERED in the Southern District of Florida, this 24th day of May, 2022.



Laurel Myerson Isicoff
Chief United States Bankruptcy Judge

c: All SD Bankruptcy Judges
Joe Falzone, Clerk of Court

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

In re:

Name of Debtor(s):

Case Number:

-----/

Plaintiff(s)

vs.

Adversary Number:

Defendant(s)

-----/

ORDER SETTING **STATUS SCHEDULING**
CONFERENCE AND ESTABLISHING
PROCEDURES AND DEADLINES

To secure the just, speedy, and inexpensive determination of this adversary proceeding, it is

ORDERED as follows:

1. **STATUS SCHEDULING CONFERENCE.** Consistent with Fed. R. Civ. P. 16, ~~made applicable here in this case by Fed. R. Bankr. P. 7016,~~ the Court will conduct a ~~status-scheduling~~ conference at the date and time set forth in the Summons issued in this adversary proceeding. The parties may not introduce testimony or documentary evidence at the ~~status scheduling~~ conference. The Court may, however, consider relevant undisputed facts, judicial notice items, and admissions made during the ~~status scheduling~~ conference by parties either directly or through counsel.
2. **RIGHT TO JURY TRIAL; WAIVER.** Unless each party has timely filed a statement of consent under Local Rule 9015-1(B), and unless otherwise ordered by the Court, not later than **4:00 p.m. two business days fourteen days** before ~~the date first set for~~ the ~~status scheduling~~ conference, each party requesting a jury trial on any issue in this proceeding must file with this Court a motion for withdrawal of the reference pursuant to Local Rule 5011-1. **FAILURE OF ANY PARTY TO FILE A MOTION TO WITHDRAW THE REFERENCE ON OR BEFORE THE DEADLINE PROVIDED IN THIS PARAGRAPH CONSTITUTES WAIVER BY SUCH PARTY OF ANY RIGHT TO TRIAL BY JURY IN THIS PROCEEDING.**

[Exhibit A]

- 3. OBJECTION TO ENTRY OF FINAL ORDERS AND JUDGMENTS BY THE BANKRUPTCY COURT; CONSENT.** Unless otherwise ordered by the Court, not later than **4:00 p.m. two business days fourteen days** before ~~the date first set for~~ the **status scheduling** conference, each party objecting to the entry of final orders or judgments by this Court on any issue in this proceeding must file with this Court a motion pursuant to ~~Rule 7016(b)~~, Fed. R. Bankr. P. **7016(b)**, requesting that this Court determine whether this proceeding is subject to the entry of final orders or judgments by this Court. Any such motion will be treated as an objection to the entry of final orders or judgments by this Court. **FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THIS PARAGRAPH CONSTITUTES CONSENT BY SUCH PARTY TO THIS COURT ENTERING ALL APPROPRIATE FINAL ORDERS AND JUDGMENTS IN THIS PROCEEDING.** Nothing in this paragraph limits this Court's ability to determine whether this proceeding is subject to entry of final orders or judgments by this Court.
- 4. ~~FED. R. BANKR. P. FRBP 7026 AND APPLICABILITY OF RULE 26, FED. R. CIV. P. 26~~** Except as otherwise ordered by the Court, ~~Rules Fed. R. Civ. P. 26(d)(1) and 26(d)(2), Fed. R. Civ. P.,~~ do not apply to this adversary proceeding, and ~~Rule 26(f)~~, Fed. R. Civ. P. **26(f)** applies only to the extent set forth in this Order.
- 5. MEETING OF PARTIES.** At least 14 days before the **status scheduling** conference, the attorneys for the parties (or, if a party is not represented by an attorney, the party) must meet (in person, if geographically feasible, and otherwise by video conference or by telephone) to discuss:
- a. the parties' claims and defenses;
 - b. the possibility of settlement;
 - c. the initial disclosures required by ~~Rule 26(a)(1)~~, Fed. R. Civ. P. **26(a)(1)**;
 - d. a discovery plan as required by ~~Rule 26(a)(1)~~, Fed. R. Civ. P. **26(f)**;
 - e. any e-discovery issues in accordance with Local Rule 7026-2; and
 - f. proposed dates and deadlines to be set forth in a pretrial scheduling order, including dates and deadlines for:
 - (1) making the initial disclosures required by ~~Rule 26(a)(1)~~, Fed. R. Civ. P. **26(a)(1)**;
 - (2) completion of discovery;
 - (3) expert disclosures as required by ~~Rule 26(a)(1)~~, Fed. R. Civ. P. **26(a)(2)**, and completion of expert discovery (if applicable);
 - (4) **filing motions to join additional parties and motions to amend the pleadings;**
 - (5) filing motions for judgment on the pleadings, **motions for or summary judgment, motions in limine, and Fed. R. Evid. 702 motions;**

- (6) conducting mediation;
- (7) pretrial disclosures as required by ~~Rule 26(a)(3)(A)~~, Fed. R. Civ. P. ~~26(a)(3)(A)~~; and
- (8) a final pretrial conference.

- 6. PRETRIAL SCHEDULING ORDER.** At the ~~status scheduling~~ conference, the parties must announce the proposed dates and deadlines as required in paragraph 5.f. above, to be set forth in a proposed form of pretrial scheduling order, which will be entered after the conclusion of the ~~status scheduling~~ conference. Unless otherwise permitted by the Court, the pretrial scheduling order must be in substantially the form of this Court's standard form Order Setting Filing and Disclosure Requirements for Pretrial and Trial, with the only material variations being the agreed-upon dates and deadlines required in paragraph 5.f. above. If the parties fail to agree on a pretrial scheduling order by the time of the ~~status scheduling~~ conference, the Court will select a date for the pretrial conference and enter the Court's standard form of Order Setting Filing and Disclosure Requirements for Pretrial and Trial with the default dates and deadlines set forth therein (unless the Court determines otherwise).
- 7. DISCOVERY DISPUTES.** If a discovery dispute occurs, the parties must first, as required by Fed. R. Civ. P. 37(a)(1), as incorporated by Fed. R. Bankr. P. 7037, confer in good faith to attempt to resolve the issues, before filing a motion with the Court.
- 8. DISPOSITIVE MOTIONS.** Absent prior permission of the Court, no party may file any motion to dismiss, motion for judgment on the pleadings, motion for summary judgment, or response thereto, exceeding **twenty pages** in length, and no party may file any reply exceeding **ten pages** in length. Title pages preceding the first page of text, signature pages, and certificates of service are not counted as pages for purposes of this paragraph.

If a party submits affidavits, declarations, or other materials in support of or in opposition to a motion for summary judgment, then: (A) the movant must serve with the motion all such materials; and (B) the opposing party must serve with the response all such materials in opposition to the motion. Any reply must be strictly limited to rebuttal of matters raised in the response. Absent prior permission of the Court, in connection with any motion for summary judgment no party may file affidavits or declarations that exceed **twenty pages** in the aggregate.

Filing multiple motions for summary judgment is prohibited, absent prior permission of the Court. This prohibition is not triggered when, as permitted by ~~Rule 12(d)~~, Fed. R. Civ. P. ~~12(d)~~, the Court elects to treat a motion filed pursuant to ~~Rule 12(b) or 12(c)~~, Fed. R. Civ. P. ~~12(b)(6) or 12(c)~~, as a summary judgment motion.

- 9. COMPLIANCE WITH FEDERAL JUDICIARY PRIVACY POLICY.** All papers, including exhibits, submitted to the Court must comply with the federal judiciary privacy policy as referenced under Local Rule 5005-1(A)(2).
- 10. MEDIATION.** Pursuant to Local Rule 9019-2, the Court may order the assignment of this proceeding to mediation at the ~~status scheduling~~ conference or at any other time, upon the request of a party or sua sponte.

- 11. SETTLEMENT.** If the adversary proceeding is settled, the parties must submit to the Court a stipulation or proposed judgment approved by all parties before the date of trial. If a judgment or stipulation is not submitted to the Court, all parties must be prepared to go to trial in accordance with the pretrial scheduling order. If the adversary proceeding is removed from the trial calendar based upon the announcement of a settlement, the adversary proceeding will not be reset for trial if the parties fail to consummate the settlement. In such event, the Court will consider only a motion to enforce the settlement, unless the sole reason the settlement is not consummated is that the Court did not approve the settlement, in which case the matter will be reset for trial at a later date.
- 12. DEFAULT.** If any defendant fails to answer or otherwise respond to the complaint in a timely manner, the plaintiff(s) must promptly seek entry of a clerk's default pursuant to Fed. R. Bankr. P. 7055(a), and Local Rule 7055-1, and must promptly move for default judgment. Unless judgment has been entered or the Court advises the plaintiff(s) that the **status scheduling** conference has been continued or canceled, the plaintiff(s) must appear at the **status scheduling** conference.
- 13. SANCTIONS.** Failure to comply with any provision of this order or failure to appear at the **status scheduling** conference may result in appropriate sanctions, including the award of attorney's fees, striking of pleadings, dismissal of the action, or entry of default judgment.
- 14. CONTINUANCES.** Except for brief continuances sought pursuant to Local Rule 7004-2(B) or to accommodate the schedules of counsel (or the parties, if unrepresented), the Court will continue the **status scheduling** conference only in extraordinary circumstances. Any request to continue the **status scheduling** conference or any deadlines set forth in this order must be presented by written motion, and must set forth the status of service of process, the pleadings, and the pendency of any potentially dispositive motions, and must state the reasons why the party or parties seek a continuance.
- 15. SERVICE.** Plaintiff('s)(s') counsel must serve a copy of this order on the defendant(s) with the summons and complaint.

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A copy of this order was furnished to _____ on behalf of the Plaintiff on _____, 2022.

By:

Deputy Clerk

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

www.flsb.uscourts.gov

In re:

Case Number:

Name of Debtor(s)

_____ /

Adversary Number:

Plaintiff(s)

vs.

Defendant(s)

_____ /

**ORDER SETTING FILING AND DISCLOSURE
REQUIREMENTS FOR PRETRIAL AND TRIAL**

To expedite and facilitate the trial of this adversary proceeding, **in accordance with Fed. R. Civ. P. 16, made applicable here by Fed. R. Bankr. P. 7016, after having held a scheduling conference,** it is **ORDERED** as follows:

1. **ATTENDANCE AT PRETRIAL CONFERENCE.** Unless judgment has been entered or the Court advises the parties that the pretrial conference has been continued or canceled, counsel for all parties (or the parties themselves, if unrepresented) must appear at the pretrial conference.
2. **PRETRIAL CONFERENCE DATE AND TRIAL DATE.** The pretrial conference will be held at:

Date:

Time:

Location:

At the pretrial conference, the Court will set the trial of this adversary proceeding.

[Exhibit B]

3. **CONTINUANCES**. Continuances of the pretrial conference or trial or any deadlines set forth in this order must be requested by written motion. Any request for continuance or amendment to this order must set forth the status of discovery, including exchange of disclosures required under this order, must state the reasons why the party or parties seek a continuance, and must state whether the client and other parties consent to a continuance. The stipulation of all parties is not sufficient grounds, standing alone, for a continuance.
4. **DEADLINES TO JOIN ADDITIONAL PARTIES AND TO MOVE TO AMEND PLEADINGS**. Unless otherwise ordered by the Court, the deadlines to join additional parties and to file motions to amend the pleadings are **14 days*** before the pretrial conference.
5. **DEADLINES FOR DISPOSITIVE AND OTHER PRETRIAL MOTIONS**. The deadlines for filing motions for judgment on the pleadings, ~~or~~ motions for summary judgment, ~~motions in limine~~, and Fed. R. Evid. 702 motions are ~~is~~ **14 days*** before the pretrial conference. Absent good cause, failure to file and serve such a motion in a timely manner constitutes waiver of the right to do so. All dispositive motions, responses, and replies must comply with the page limits set forth in the **Order Setting Scheduling Conference and Establishing Procedures and Deadlines**. ~~Order~~. Any motion for summary judgment must also comply with Local Rule 7056-1, if applicable.
6. **DISCLOSURES**. The disclosures required by ~~Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A)~~, Fed. R. Civ. P. **Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A)** must be made by the following deadlines:
 - a. The initial disclosures required by ~~Rule 26(a)(1)~~, Fed. R. Civ. P. **26(a)(1)**, must be made not later than **14 days*** after entry of this Order.
 - b. The disclosures of expert testimony under ~~Rule 26(a)(2)~~, Fed. R. Civ. P. **26(a)(2)**, must be made (i) at least **60 days*** before the pretrial conference or (ii) within **14 days*** after an opposing party's disclosure of evidence that gives rise to the need for the expert, whichever is later. The party disclosing an expert witness must, within **14 days*** of the disclosure, provide to each opposing party a written report prepared and signed by the witness as required by ~~Rule 26(a)(2)(B)~~, Fed. R. Civ. P. **26(a)(2)(B)**.
 - c. The pretrial disclosures under ~~Rule 26(a)(3)(A)~~, Fed. R. Civ. P. **26(a)(3)(A)**, must be made not later than **one business day** before the pretrial conference.
 - d. All disclosures under ~~Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A)~~, Fed. R. Civ. P. **26(a)(1), 26(a)(2), and 26(a)(3)(A)**, must be made in writing, signed, served, and, except for copies of exhibits and expert witness reports, ~~be~~ filed with the Court.

* This deadline is the default and minimum deadline required by the Court, however the parties are free to agree to and propose any other reasonable deadline, subject to Court approval at the **Status Scheduling** Conference.

7. **SUMMARIES TO PROVE CONTENT.** If any party intends to offer in evidence at trial a summary, chart or calculation to prove content as permitted by **Federal Rule of Evidence Fed. R. Evid. 1006**, that party must provide to the other parties a notice of the location(s) of the books, records, and the like, from which each summary has been made, and the reasonable times when they may be inspected and copied by adverse parties, as soon as practicable but in no event later than **seven days** before the pretrial conference.
8. **DISCOVERY.** The parties must complete discovery not later than **14 days*** before the pretrial conference, except that any previously scheduled depositions may be completed up to one business day before the pretrial conference. The Court will allow discovery after the pretrial conference only upon a showing of good cause.
9. **JOINT PRETRIAL STIPULATION WHERE ALL PARTIES REPRESENTED BY COUNSEL.** If any party is not represented by counsel in this proceeding as of the date of entry of this Order, this paragraph will not apply. All parties to this proceeding must meet (in person, if geographically feasible, and otherwise by video conference or by telephone) not later than **14 days** before the pretrial conference to confer on the preparation of a Joint Pretrial Stipulation in substantially the form of Local Form 63C. The plaintiff must file the fully executed Joint Pretrial Stipulation no later than **one business day** before the pretrial conference. The Court will not accept unilateral statements and will strike sua sponte any such submissions. Should any of the parties fail to cooperate in the preparation of the Joint Pretrial Stipulation, any other party may file a motion requesting an order to show cause why such party or parties (and/or their counsel) should not be held in contempt and sanctioned for failure to comply with this order.
10. **SUBMISSION AND EXCHANGE OF EXHIBITS.**
 - a. ~~All parties must comply with the requirements regarding exhibits set forth in Local Rule 9070-1. **SUBMISSION AND EXCHANGE OF EXHIBITS.** All exhibits must be submitted and exchanged pursuant to the requirements of Local Rule 9070-1.~~
 - b. **OBJECTIONS TO EXHIBITS.** Any objection to the admissibility of any proposed exhibit must be filed and served, so as to be received **not later than 4:00 p.m. two business days** before trial. Objections to any deposition transcripts, including a recording (audio or video) or summary thereof, must follow the procedure specified in this paragraph:
 - (1) The objection must: (a) identify the exhibit, (b) state the grounds for the objection, and (c) provide citations to case law and other authority in support of the objection.
 - (2) An objection not so made – except for one under **Federal Rule of Evidence Fed. R. Evid. 402 or 403** – is waived unless excused by the Court for good cause.

~~(3) All parties must comply with the requirements regarding exhibits set forth in Local Rule 9070-1.~~

11. **PRESENTATION OF EXHIBITS TO BE USED DURING TRIAL.** The parties are strongly encouraged to use the Court's information technology equipment to show exhibits at trial. The parties are further encouraged to contact the courtroom deputy in advance of the trial for access to the equipment to ensure counsel can properly use the equipment at trial. Unless otherwise ordered, each party must bring at least one paper copy of its exhibit register for the Court's use, and at least two hard-copy books of all its exhibits, for witnesses and the Court.

12. **FINAL ARGUMENT.** At the conclusion of the trial, in lieu of final argument, the Court may request that each party file with the Court (a) a written closing statement with supporting legal argument or (b) a proposed memorandum opinion with findings of fact and conclusions of law with a separate proposed final judgment. Each submission must contain individually numbered paragraphs and follow the formatting requirements set forth in Part Two of the Court's Guidelines for Preparing, Submitting, and Serving Orders. Each proposed finding of fact must be supported by a citation to the record, or it will be disregarded. Each proposed conclusion of law must be supported by a citation to applicable law, or it will be disregarded. Absent prior permission of the Court, submissions may not exceed a total of **twenty pages**. If specifically requested, the Court may *also* direct the parties to submit a copy of the proposed memorandum opinion with findings of fact and conclusions of law, along with a copy of the separate proposed final judgment, in word processing format to an electronic mailbox designated by the Court. The filer must include in the "subject" line of the email the case name and number and the date of the relevant hearing.

13. **FAILURE TO ATTEND PRETRIAL CONFERENCE; SANCTIONS.** Failure to comply with any provision of this order or failure to appear at the pretrial conference may result in appropriate sanctions, including the award of attorney's fees, striking of pleadings, dismissal of the action, or entry of default judgment.

14. **SERVICE.** Plaintiff('s)(s') counsel must serve a copy of this Order on the defendant(s) and file an appropriate certificate of service in accordance with Local Rule 5005-1(G)(2).

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