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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

|            |   |                         |
|------------|---|-------------------------|
|            | ) | No. CV PHX-ROS          |
| Plaintiff, | ) | <b>RULE 16</b>          |
| vs.        | ) | <b>SCHEDULING ORDER</b> |
|            | ) |                         |
| Defendant. | ) |                         |

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[Choose option [1] if you wish to delay your Rule 16 Conference, or [2] if you wish to hold the Conference as scheduled. Under either option, you must prepare the Rule 16 Scheduling Order in accordance with this form and your Case Management Plan and file both for review and approval. Call the Court if you have any questions.]

[1.] Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure (FRCP), a Scheduling Conference is deferred until after the first notice of the status of settlement and discovery is due in accordance with this Order. Pursuant to the terms of their Case Management Plan all parties shall comply with deadlines established in this Order.

[2.] Pursuant to the terms of the Case Management Plan and the representations made by the parties at the Rule 16 Scheduling Conference, all parties shall comply with the deadlines established in this Order.

A. The Federal Rules of Civil Procedure as amended and made effective December 1, 2002 by the Supreme Court of the United States shall apply to all proceedings concerning this case.

1 B. All Initial Disclosures as defined in FRCP 26(a)(1), if not already disclosed prior to  
2 the Scheduling Conference, shall be made **no later than five (5) days** after the date of the entry  
3 of this Order, or in the alternative, no later than \_\_\_\_\_.

4 C. To satisfy the requirements of FRCP 26(a)(1), the parties shall file with the Clerk  
5 of the Court a Notice of Initial Disclosure, rather than copies of the actual disclosures.

6 D. Procedural motions including Motions to Amend the Complaint or Answer, and  
7 Motions to Join Additional Parties shall be filed no later than \_\_\_\_\_.

8 All Motions to Amend shall attach a copy of the proposed complaint or answer

9 E. The Plaintiff(s) shall disclose the identity of all persons who may be used at trial to  
10 present evidence under Federal Rules of Evidence (FRE) 701, 702, 703, 704, and 705 no later  
11 than \_\_\_\_\_. The Defendant(s) shall disclose the identity of all persons who may be  
12 used at trial to present evidence under FRE 701, 702, 703, 704, or 705 no later than  
13 \_\_\_\_\_. No deposition of any expert witness shall occur before the disclosures  
14 concerning expert witnesses mandated by this Order have been made.

15 The disclosures of the identities of all persons who may be used at trial to present  
16 evidence under FRE 701, 702, 703, 704, or 705 shall also include all of the disclosures required  
17 by FRCP 26(a)(2)(B) if the witness is either (1) retained or specifically employed to provide  
18 expert testimony in the case, or (2) is an agent or employee of the party offering the testimony  
19 whose duties regularly involve giving expert testimony. **\*\*footnote 1 The parties are on notice**  
20 **that this Order requires disclosure different than that required by FRCP 26(a)(2).**

21 F. All discovery, including answers to interrogatories, production of documents,  
22 depositions and requests to admit shall be completed by \_\_\_\_\_.

23 G. The parties shall finally supplement all discovery, including material changes in  
24 expert witness opinions and material disclosures, pursuant to FRCP 26(a)(3), of all exhibits to  
25 be used and all witnesses to be called at trial, on or before \_\_\_\_\_. **\*\*\* footnote**  
26 **2 The parties are on notice that this order supercedes the “30 days before trial” disclosure**  
27 **deadline contained in FRCP 26(a)(3). Therefore, failure to timely supplement pursuant**  
28 **to Rule 26(e), including attempts to include witnesses and exhibits in the Proposed Final**

1 **Pretrial Order or at trial that were not previously disclosed in a timely manner may result**  
2 **in the exclusion of such evidence at trial or the imposition of other sanctions including**  
3 **dismissal and the imposition of default pursuant to FRCP 37, the Local Rules of the**  
4 **District Court, and the inherent power of the Court.\*\*\***

5 H. Discovery by interrogatory shall be governed by the national uniform requirements  
6 set forth in FRCP 33.

7 I. Depositions shall be limited by the national uniform requirements set forth in Rules  
8 30, 31, and 32 of the FRCP.

9 J. Motions on discovery matters are strongly discouraged. Parties are directed to Local  
10 Rule 1.10(j), which prohibits filing discovery motions unless parties have first met to resolve  
11 any discovery difficulties. If the parties cannot reach a resolution, they are directed to jointly  
12 arrange with the Court a conference call to resolve the matter orally in court in lieu of filing a  
13 formal motion. Once the call is made, the Court will provide further directions concerning  
14 preparations for the conference call.

15 K. This Order contemplates that each party will conduct discovery to permit completion  
16 within the deadline. Any discovery which results in insufficient time to undertake necessary  
17 additional discovery and which requires an extension of the discovery deadline will be met with  
18 disfavor, will only be granted for good cause or only to prevent manifest injustice pursuant to  
19 FRCP 16(b) and (e), and may result in denial of an extension, exclusion of evidence, or the  
20 imposition of other serious sanctions pursuant to FRCP 37(b),(c),(d).

21 L. All dispositive motions shall be filed no later than \_\_\_\_\_.  
22 Unless permitted by Order of the Court, only one dispositive motion is allowed to be filed by  
23 each party.

24 M. All parties are specifically admonished that pursuant to Local Rule 1.10(i), "[i]f a  
25 motion does not conform in all substantial respects with the requirements fo this Rule, or **if the**  
26 **opposing party does not serve and file the required answering memoranda, or if counsel**  
27 **for any party fails to appear at the time and place for oral argument, such non-compliance**  
28

1 **may be deemed a consent to the denial or granting of the motion and the Court may**  
2 **dispose of the motion summarily."**

3 N. The parties shall keep the Court apprized of settlement negotiations and the progress  
4 of discovery. A joint letter to the Court concerning the status of settlement discussions  
5 (containing no specific settlement terms or offers) and the progress of discovery shall be  
6 submitted by \_\_\_\_\_ and labeled 'FIRST NOTICE OF DISCOVERY AND  
7 SETTLEMENT,' and then every FOUR (4) months thereafter. If settlement is reached the  
8 parties shall file a Notice of Settlement with the Clerk of the Court with a copy to Judge Silver's  
9 Chambers.

10 O. **A Joint Proposed Pretrial Order and all Motions in Limine** shall be lodged and  
11 filed by \_\_\_\_\_. If dispositive motions have been filed, the Joint Proposed  
12 Pretrial Order and Motions in Limine shall be due either on the above date or 30 days following  
13 resolution of the Motions, whichever is later. The content of the Joint Proposed Pretrial Order  
14 shall include, but not be limited to, that prescribed in the Form of Joint Proposed Pretrial Order.  
15 Statements made shall not be in the form of a question, but should be a concise narrative  
16 statement of each party's contention regarding each uncontested and contested issue. Responses  
17 to Motions in Limine are due 15 days after the Motions are filed, and no Replies are permitted  
18 unless specifically ordered by the Court.

19 P. If the case will be tried to the Court, rather than to a jury, in addition to filing a **Joint**  
20 **Proposed Pretrial Order**, each party shall also submit **Proposed Findings of Fact and**  
21 **Conclusions of Law** on the same date the Joint Proposed Pretrial Order is due.

22 Q. The attorneys who will be trying the case for all the parties shall appear at the **Final**  
23 **Pretrial Conference**, that will be scheduled reasonably promptly after the filing of the Joint  
24 Proposed Pretrial Order, and the attorneys appearing at the conference shall be prepared to  
25 address the merits of all issues raised in the Joint Proposed Pretrial Order and fully briefed  
26 Motions in Limine. Unless one has already been established the Court will establish a firm trial  
27 date at the **Pretrial Conference**, and will issue the **Final Pretrial Order** with any additional  
28 instructions for trial preparation.

1 R. The parties shall file with the **Joint Proposed Pretrial Order** the following:

2 (1) A joint stipulated Statement of the Case to be read to the jury and included in the  
3 jury questionnaire. If the parties have any disagreement about the statement, the party  
4 proposing the statement will set it forth in the joint pleading and the party objecting shall set  
5 forth the reason for the objection below the statement and offer an alternative statement.

6 (2) A joint stipulated set of voir dire questions to be added to the Court's standard  
7 questionnaire and/or to be given by the Court. The parties are to designate whether the  
8 proposed questions are to be added to the questionnaire or are to be asked by the Court orally  
9 in court. The voir dire questions shall be drafted in a neutral manner. If the parties have any  
10 disagreements about a particular question, the party proposing the question shall set it forth in  
11 the joint pleading and the party objecting shall set forth the reason for their objection below the  
12 question and offer alternative questions.

13 (3) Joint stipulated jury instructions. The instructions shall be accompanied by  
14 citations to legal authority. If the parties have any disagreement about particular instructions,  
15 the party proposing the instruction will set it forth in the joint pleading and the party objecting  
16 shall set forth the reason for the objection and offer an alternate instruction.

17 (4) A joint stipulated form of verdict. If the parties have any disagreement about the  
18 form of verdict, the party proposing the form will set it forth in the joint pleading and the party  
19 objecting shall set forth the reason for the objection and offer an alternative form of verdict.

20 (5) A Trial Memorandum of Law for each party. The memorandum shall be brief  
21 but must address all questions of law, including evidentiary issues that the party anticipates will  
22 arise at trial.

23 (6) Motions in Limine in anticipation of the evidentiary issues to be raised at the  
24 trial. Responses are due within fifteen days and no Replies are allowed unless  
25 ordered by the Court.

26 (7) Any other final pretrial matters required pursuant to FRCP 26(a)(3) are due in  
27 accordance with this Order prior to the preparation and submission of the **Joint Proposed**  
28 **Pretrial Order**.

(8) The parties shall submit their proposed voir dire questionnaire and questions, statement of the case, jury instructions, and form of verdict on a 1.44K high density IBM-PC compatible computer disk in WordPerfect 9.0 format in addition to other written materials filed with the Clerk of the Court.

This Court views compliance with the provisions of this Order as critical to its case management responsibilities and the responsibilities of the parties under FRCP 1.

DATED: \_\_\_\_\_, 20\_\_\_\_\_.

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Roslyn O. Silver  
United States District Judge

copies to all counsel of record