PRETRIAL AGREEMENT

1. Discovery disputes will first be attempted to be resolved with a phone call between lead counsel.

2. Depositions will not be scheduled unilaterally but rather by agreement.

3. No objections at depositions All objections to relevance, lack of foundation, nonresponsiveness, speculation, or the form of the question will be reserved until trial. There is no reason for the defending lawyer to say anything other than to advise the client to assert a privilege and not answer a question based on the invocation of a privilege or to adjourn the deposition because the questioner is improperly harassing the witness. If counsel violates this "no objection" rule, the party taking the deposition can play counsel's comments and objections for the jury at trial.

4. The parties will share the same court reporter and videographer. The parties will jointly negotiate "case rates," which shall be monitored by lead counsel to ensure compliance throughout the litigation.

5. Exhibits will be numbered sequentially through all depositions in the case. Every effort will be made to avoid the introduction of duplicative exhibits.

6. The parties will share the expense of imaging deposition exhibits.

7. All papers will be served by email on all counsel of record. Counsel of record shall be as defined by the ECF list used by the Court.

8. Documents will be produced on a rolling basis. If copies are produced, the originals should be made available for inspection upon request.

9. Each side will pick ten custodians for production of electronically stored information ("ESI"). No relevance review prior to production is necessary. Only documents that have a lawyer's name on them can be withheld from production, and only then if they are actually privileged. After analyzing the initial production, each side can request electronic files from five additional custodians. Beyond that, good cause must be demonstrated and the parties may move the Court for electronically stored documents from more custodians.

10. Production does not waive the privilege. Production of a privileged document does not waive the privilege as to other privileged documents and privileged documents can be retrieved as soon as it is discovered they were produced and without any need to show that the production was inadvertent. Further the parties will request an order under Federal Rule of Evidence 502(d), which provides that "a Federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court in which event the disclosure is also not a waiver in any other Federal or State proceeding."

11. Each side may select up to 20 documents from the other side's privilege log for *in camera* inspection by the Court.

12. The parties will produce ESI in native, searchable format unless otherwise agreed. The parties will produce a Bates-numbered file listing of the file names and directory structure of the contents of any CDs or DVDs exchanged. Either side may use an email or

an attachment to an email from one of these previously produced disks by printing out the entire email (and the attachment, if using a file that came with an email) and marking it at the deposition or trial. In addition, either side may use application data (which was not an attachment to email so it stands alone on a CD or DVD) as long as the footer on the pages or a cover sheet indicates (1) the CD or DVD from which it came; (2) the directory or subdirectory where the file was located on the CD or DVD; and (3) the name of the file itself, including the file extension.

13. The parties agree to the entry of a protective order governing the use of confidential information. The parties agree to a 48-hour limit on protective order negotiations and will exchange protective order proposals at the start of that negotiation. If agreement cannot be reached on the form of a protective order within 48 hours after proposals are exchanged, both sides will write a letter to the Court stating each side's preferred version and, without argument, ask the Court to select one or the other as soon as possible.

14. Communications between experts and counsel, as well as draft expert reports, are not discoverable.

15. No expert depositions unless the expert report is incomprehensible or incomplete. Any party seeking clarification is required to establish its entitlement to an expert deposition through a motion filed with the Court.

16. Demonstrative exhibits need only be shown to the other side before they are shown to the jury and need not be listed in the pretrial order.

17. The parties will ask the Court to allow the jury to ask questions and keep notes.

18. The parties will provide the jurors with an agreed upon notebook containing a cast of characters, a list of witnesses (including their photos), a neutral time line, a glossary of special terms that will be heard at trial, any crucial or dispositive documents, and other information that the parties agree will help the jurors follow the trial and deliberate in a reasoned, informed way.