

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

LISA TORREY, et al.,

Plaintiffs,

v.

INFECTIOUS DISEASES SOCIETY OF  
AMERICA, et al.,

Defendants,

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Civil Action No. 5:17-cv-00190-RWS

**JOINT REPORT REGARDING CASE STATUS AND SCHEDULE**

On December 18, 2019, the Court entered an Order (Dkt. 265) granting the parties’ Joint Motion to Extend Stay of the Case (Dkt. 264) and ordering that the parties submit a Joint Report that would include the parties’ agreements and/or differences concerning the case schedule, the amount of time necessary to finish discovery, and trial timing and length. The Court also set a scheduling conference for February 5, 2020, at 10 a.m., to take up the matters addressed in the Joint Report so that a case schedule can be put in place.

Pursuant to the Court’s Order, the parties submit this Joint Report.<sup>1</sup>

**I. Case Schedule and Trial Time**

The Parties have met and conferred regarding a case schedule, time to complete discovery, and trial time. Defendants request that remaining discovery be bifurcated to focus first on certain limited issues that they believe will be dispositive on summary judgment and wish to discuss this with the Court at the scheduling conference. Attached hereto as Exhibit A is Defendants’ proposed schedule should the Court decide to bifurcate this matter. Plaintiffs

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<sup>1</sup> According to the Report of Mediation filed on November 26, 2019 (Dkt. 262), mediation resulted in a settlement between Plaintiffs and Defendant Kaiser Permanente, Inc. On January 29, 2020, Plaintiffs and Blue Cross and Blue Shield of Texas filed a Joint Sealed Motion to Stay All Deadlines and Notice of Settlement (Dkt. 266). The Court granted the Motion on January 30, 2020 (Dkt. 267). As such, Kaiser and Blue Cross Blue Shield of Texas are not signatories to this Joint Report.

oppose bifurcation. If the Court is not inclined to bifurcate discovery going forward, the parties have agreed on an amended case schedule that is attached hereto as Exhibit B. This proposed schedule includes new deadlines for the conclusion of fact and expert discovery, as well as a potential trial “time frame” subject to the Court’s availability and approval.

With respect to trial time, Plaintiffs anticipate the need for 15-20 trial days. Defendants believe 30 trial days are necessary.<sup>2</sup>

## **II. Other Issues for Consideration**

During the course of the meet and confer process, two additional issues have arisen that the parties wish to bring to the Court’s attention.

First, Dr. Allison Liddell, the physician appointed by the Court to conduct the IMEs of Plaintiffs, has indicated that she no longer has the time to participate in this matter. A substitute physician needs to be appointed. Plaintiffs have not agreed to the new IME physician that Defendants have proposed, and the parties therefore ask the Court for approval of the following briefing schedule:

- February 7, 2020: Motion
- February 18, 2020: Opposition
- February 24, 2020: Reply

Second, an issue has arisen with respect to one or more potential “non-retained experts” and whether an expert report is required prior to the taking of their depositions. The parties wish to discuss this issue at the scheduling conference as well.

## **III. Conclusion**

The parties look forward to discussing these matters with the Court at the scheduling conference on February 5, 2020.

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<sup>2</sup> Defendants’ estimated length of trial is based on the current roster of Plaintiffs. If, as a result of summary judgment practice or otherwise, the number of Plaintiffs in this action is reduced, the number of days that Defendants estimate will be necessary to try this case will be reduced accordingly.

Dated: January 31, 2020

Respectfully Submitted,

SHRADER & ASSOCIATES, LLP

RUSTY HARDIN & ASSOCIATES, LLP

By: /s/ Eugene Egdorf  
EUGENE EGDORF  
State Bar No. 06479570  
3900 Essex Lane, Suite 390,  
Houston, TX 77027  
(713) 782-0000 phone  
(713) 571-9605 fax  
gene@shraderlaw.com

By: /s/ Daniel R. Dutko  
RYAN HIGGINS  
State Bar No. 24007362  
1401 McKinney St., Suite 2250  
Houston, Texas 77010  
(713) 652-9000 phone  
(713) 652-9800 fax  
rhiggins@rustyhardin.com

By: /s/ Lance Lee  
LANCE LEE  
Texas Bar No. 24004762  
5511 Plaza Drive  
Texarkana, Texas 75503  
Telephone: 903.223.0276  
Fax: 903.223.0210  
wlancelee@gmail.com

DANIEL R. DUTKO  
State Bar No. 24054206  
1401 McKinney St., Suite 2250  
Houston, Texas 77010  
(713) 652-9000 phone  
(713) 652-9800 fax  
ddutko@rustyhardin.com

*Attorneys for Plaintiffs*

FOLEY & LARDNER LLP

By: /s/ Eileen R. Ridley

KIMBERLY A. KLINSPOUR  
Texas Bar No. 24096073  
555 South Flower Street, Suite 3500  
Los Angeles, CA 90071-2411  
Phone: (213) 972-4500  
Fax: (213) 486-0065  
kklinsport@foley.com

MICHAEL J. TUTEUR  
(Admitted to E.D. Tex.)  
111 Huntington Avenue, Suite 2500  
Boston, MA 02199-7610  
Phone: (617) 342-4000  
Fax: (617) 342-4001  
mtuteur@foley.com

EILEEN R. RIDLEY  
(Admitted to E.D. Tex.)  
555 California Street, Suite 1700  
San Francisco, CA 94104-1520  
Phone: (415) 434-4484  
Fax: (415) 434-4507  
eridley@foley.com

SARA ANN BROWN  
Texas Bar No. 24075773  
2021 McKinney Ave., Suite 1600  
Dallas, TX 75201  
Phone: (214) 999 – 4887  
Fax: (214) 999 – 3887  
sabrown@foley.com

MCDOWELL HETHERINGTON LLP

Thomas Hetherington  
1001 Fannin Street, Suite 2700  
Houston, TX 77002  
Phone: 713-337-5580  
Fax: 713-337-8850  
tom.hetherington@mhllp.com

*Attorneys for Defendant Anthem, Inc.*

BAKER BOTTS L.L.P.

KIRKLAND & ELLIS LLP

By: /s/ Earl B. Austin  
EARL B. AUSTIN - *Lead Attorney*  
Texas Bar No. 01437300  
30 Rockefeller Plaza  
New York, New York 10112  
Phone: (212) 408-2564  
Fax: (212) 259-2564  
earl.austin@bakerbotts.com

By: /s/ Sarah J. Donnell  
DANIEL E. LAYTIN, *pro hac vice*  
SARAH J. DONNELL, *pro hac vice*  
CAMERON GINDER, *pro hac vice*  
300 N. LaSalle  
Chicago, IL 6065  
Phone: (312) 862-2000  
Fax: (312) 862-2200  
dlaytin@kirkland.com  
sdonnell@kirkland.com

MATTHEW G. SHERIDAN  
Texas Bar No. 24088404  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002  
Phone: (713) 229-1568  
Fax: (713) 229-7968  
matthew.sheridan@bakerbotts.com

***Attorneys for Defendant Blue Cross and  
Blue Shield Association***

JOHN B. LAWRENCE  
Texas Bar No. 24055825  
2001 Ross Avenue, Suite 600  
Dallas, Texas 75201  
Phone: (214) 953-6873  
Fax: (214) 661-6873  
john.lawrence@bakerbotts.com

HALTOM & DOAN

JENNIFER H. DOAN  
Texas Bar No. 08809050  
JEFFREY RANDALL ROESER  
Texas Bar No. 24089377  
P.O. Box 6227  
Texarkana, TX 75505  
Phone: (903) 255-1000  
Fax: (903) 255-0800  
rroeser@holtomdoan.com  
jdoan@haltomdoan.com

***Attorneys for Defendant Aetna, Inc.***

MORGAN, LEWIS & BOCKIUS LLP

HOGAN LOVELLS US LLP

By: /s/ R. Brendan Fee

CRYSTAL R. AXELROD  
Texas Bar No. 24078170  
NICHOLAUS E. FLOYD  
Texas Bar No. 24087524  
ELIZABETH M. CHIAVIELLO  
Texas Bar No. 24088913  
1000 Louisiana Street, Suite 4000  
Houston, TX 77002  
Phone: (713) 890-5000  
Fax: (713) 890-5001  
crystal.axelrod@morganlewis.com  
nfloyd@morganlewis.com  
elizabeth.chiaviello@morganlewis.com

R. BRENDAN FEE, *pro hac vice*  
AMY M. DUDASH, *pro hac vice*  
1701 Market Street  
Philadelphia, PA 19103-2921  
Phone: (215) 963-5000  
Fax: (215) 963-5001  
brendan.fee@morganlewis.com  
amy.dudash@morganlewis.com

***Attorneys for Defendant Cigna Health and  
Life Insurance Company, improperly sued  
as Cigna Corporation***

By: /s/ Benjamin F. Holt

BENJAMIN F. HOLT, *pro hac vice*  
555 Thirteenth Street, NW  
Washington, DC 20004  
Phone: (202) 637-8845  
Fax: (202) 637-5910  
Benjamin.holt@hoganlovells.com

MATTHEW J. PIEHL, *pro hac vice*  
80 S. 8<sup>th</sup> Street, Suite 1225  
Minneapolis, MN 55044  
Phone: (612) 402-3000  
Fax: (612) 339-5167  
matthew.piehl@hoganlovells.com

POTTER MINTON, P.C.

MICHAEL E. JONES  
Texas Bar No. 10929400  
EARL G. THAMES, JR.  
Texas Bar No. 10929400  
PATRICK C. CLUTTER, IV  
Texas Bar No. 00785097  
110 North College, Ste. 500  
Tyler, Texas 75702  
Phone: (903) 597-8311  
Fax: (903) 593-0846  
mikejones@potterminton.com  
glennthames@potterminton.com  
patrickclutter@potterminton.com

***Attorneys for Defendants United  
HealthCare Services and UnitedHealth  
Group Incorporated***

PILLSBURY WINTHROP SHAW PITTMAN  
LLP

By: /s/ Ronald Casey Low

RONALD CASEY LOW  
State Bar No. 24041363  
401 Congress Avenue, Suite 1700  
Austin, TX 78701  
Phone: (512) 580-9616  
Fax: (512) 580-9601  
Email: casey.low@pillsburylaw.com

Alvin Dunn – *Lead Attorney*  
(Admitted Pro Hac Vice)  
Robert C. K. Boyd  
(Admitted Pro Hac Vice)  
1200 Seventeenth St. NW  
Washington, D.C. 20036  
Tel: (202) 663-8000  
Fax: (202) 663-8007  
Email: alvin.dunn@pillsburylaw.com

*Attorneys for Defendants Infectious  
Diseases Society of America, Dr. Gary P.  
Wormser, Dr. Raymond J. Dattwyler, Dr.  
Eugene Shapiro, Dr. John J. Halperin, Dr.  
Leonard Sigal, and Dr. Allen Steere*

# **EXHIBIT A**



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

LISA TORREY, et al.,

Plaintiffs,

vs.

INFECTIOUS DISEASES SOCIETY OF  
AMERICA, et al.,

Defendants.

Civil Action No. 17-cv-00190-RWS  
JURY DEMANDED

**DEFENDANTS’ PROPOSED DOCKET CONTROL ORDER (BIFURCATED PHASE I)**

Defendants respectfully request that the Court amend the Docket Control Order [Dkt. No. 250] as reflected in the chart below for the parties to conduct discovery and other pretrial proceedings focused on the issue of whether genuine disputes exist as to material facts regarding whether the 2006 IDSA Lyme disease guidelines were the product of an unlawful agreement, as alleged in Plaintiffs’ Amended Complaint:

<b>Deadline</b>	<b>Event</b>
	[If Defendants file a summary judgment motion on the agreement issue and the Court denies Defendants’ summary judgment motion on the agreement issue:] Twenty-one days after the Court issues its Order, the parties shall submit a Joint Report that includes the parties’ agreements and/or differences concerning the case schedule, the amount of time necessary to finish discovery and trial timing and length, along with a request for a scheduling conference for the Court to take up the matters addressed in the Joint Report so that a case schedule can be put in place.
<b>January 7, 2021, or as soon thereafter as the Court is available</b>	[If Defendants file a summary judgment motion on the agreement issue:] Status Conference.

<b>October 7, 2020, or as soon thereafter as the Court can hear the matter</b>	[If Defendants file a summary judgment motion on the agreement issue:] Hearing on Defendants' summary judgment motion on the agreement issue.
<b>September 10, 2020, or as soon thereafter as the Court can hear the matter</b>	[If Defendants do not file summary judgment motion on the agreement issue:] Scheduling conference for the Court to take up the matters addressed in the Joint Report so that a case schedule can be put in place.
<b>September 4, 2020</b>	[If Defendants do not file summary judgment motion on the agreement issue:] The parties shall submit a Joint Report that includes the parties' agreements and/or differences concerning the case schedule, the amount of time necessary to finish discovery and trial timing and length.
<b>August 21, 2020</b>	Defendants file summary judgment motion on the agreement issue or file Notice they will not be seeking summary judgment on the agreement issue.
<b>July 24, 2020</b>	Deadline for discovery related to the agreement issue.
<b>June 29, 2020</b>	Defendants designate rebuttal expert witnesses, if any, on the agreement issue; rebuttal expert witness reports on the agreement issue due. Refer to Local Rules for required information. If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances.
<b>May 29, 2020</b>	Plaintiffs designate expert witnesses, if any, on the agreement issue. Expert witness reports on the agreement issue due. Refer to Local Rules for required information.
<b>May 15, 2020</b>	Deadline to complete all nonparty depositions related to the agreement issue.
<b>April 30, 2020</b>	Deadline to complete all depositions of all Defendants and any Plaintiffs with evidence regarding the Agreement issue.
<b>February 28, 2020</b>	Document Production Deadline for all Defendants (not limited to the agreement issue).

In the event that any of these dates falls on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.”

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto. The Court does not hold telephonic hearings absent unusual circumstances.

**Other Limitations**

- (a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
  - (i) The fact that there are motions for summary judgment or motions to dismiss;
  - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (b) Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

LISA TORREY, et al.,

Plaintiffs

v.

INFECTIOUS DISEASES SOCIETY OF  
AMERICA, et al.,

Defendants

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Civil Action No. 5:17-cv-00190-RWS

**AMENDED DOCKET CONTROL ORDER**

It is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

<b>3 DAYS after conclusion of Trial</b>	Parties to file <b>Motion to Seal Trial Exhibits</b> , if they wish to seal any highly confidential exhibits.  <b>EXHIBITS: See Order below regarding exhibits.</b>
<b>Trial Date</b>  <b>No earlier than April 5, 2021</b>	<b>9:00 a.m. JURY TRIAL</b> before Judge Robert W. Schroeder III, Texarkana, Texas.  For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection.
<b>No earlier than April 5, 2021</b>	<b>9:00 a.m. JURY SELECTION</b> before Judge Robert W. Schroeder III, Texarkana, Texas.
<b>March 16, 2021</b>	<b>10:00 a.m. PRETRIAL CONFERENCE</b> before Judge Robert W. Schroeder III, Texarkana, Texas.  All pending motions will be heard. Lead trial counsel must attend the pretrial conference.
<b>March 8, 2021</b>	<b>File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.</b>
<b>March 8, 2021</b>	<b>File Responses to Motions <i>in Limine</i>.</b>

<b>February 19, 2021</b>	<p><b>File Motions <i>in Limine</i> and pretrial objections</b></p> <p>The parties are <b>ORDERED</b> to meet and confer to resolve any disputes before filing any motion <i>in limine</i> or objection to pretrial disclosures.</p>
<b>February 19, 2021</b>	<p><b>File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials.</b></p> <p>Parties shall use the pretrial order form on Judge Schroeder's website.</p> <p>Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.</p>
<b>February 12, 2021</b>	Exchange Objections to Rebuttal Deposition Testimony.
<b>February 8, 2021</b>	<p><b>Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due.</b></p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court.</p>
<b>February 5, 2021</b>	<p>Exchange Rebuttal Designations and Objections to Deposition Testimony.</p> <p>For rebuttal designations, cross examination line and page numbers to be included.</p> <p>In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.</p>
<b>January 22, 2021</b>	<p>Exchange Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List).</p> <p>Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered.</p>

<b>January 15, 2021</b>	<p><b>Any Remaining Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions).</b></p> <p>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances.</u></p> <p>For each motion filed, the moving party SHALL provide the Court with one (1) copy of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in a three-ring binder appropriately tabbed. All documents shall be double-sided and must include the CM/ECF header. These copies shall be delivered to Judge Schroeder's chambers in Texarkana as soon as briefing has completed.</p> <p><b>Respond to Amended Pleadings.</b></p>
<b>December 18, 2020</b>	Expert Discovery Deadline (Expert depositions to be completed)
<b>December 16, 2020</b>	Parties to Identify Rebuttal Trial Witnesses.
<b>December 9, 2020</b>	<p>Parties to Identify Trial Witnesses; Amend Pleadings.</p> <p>It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline.</p>
<b>November 16, 2020</b>	<p>Defendants designate rebuttal expert witnesses, rebuttal expert witness reports due. Refer to Local Rules for required information.</p> <p>If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances.</p>
<b>October 16, 2020</b>	Plaintiffs designate expert witnesses. Expert witness reports due. Refer to Local Rules for required information.
<b>September 15, 2020</b>	Fact Discovery Deadline.
<b>September 1, 2020</b>	Deadline for completion of all IMEs and production of reports on same.
<b>June 30, 2020</b>	Party Witness Deposition Deadline
<b>April 14, 2020</b>	Document Production Deadline

<i>Parties' estimated number of trial days</i>  <b>Plaintiffs: 15-20 Court Days</b>  <b>Defendants: 30 Court Days</b>	<b>EXPECTED LENGTH OF TRIAL</b>
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In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[a] party’s failure to oppose a motion in the manner prescribed herein creates a presumption that the party does not controvert the facts set out by movant and has no evidence to offer in opposition to the motion.”

A party may request an oral hearing on a motion filed with the Court. Any such request shall be included in the text or in a footnote on the first page of the motion or any responsive pleading thereto. The Court does not hold telephonic hearings absent unusual circumstances.

#### **Other Limitations**

- (a) The following excuses will not warrant a continuance or justify a failure to comply with the discovery deadline:
- (i) The fact that there are motions for summary judgment or motions to dismiss;
  - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
  - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.
- (b) Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion shall include a chart in the format of the DCO that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). The motion to amend the DCO shall also include a proposed DCO in traditional two-column format that incorporates the requested changes and that also lists all remaining dates. In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines rather than needing to also refer to an earlier version of the DCO.



- (c) Motions in Limine: Each side is limited to one (1) motion *in limine* addressing no more than ten (10) disputed issues. In addition, the parties may file a joint motion *in limine* addressing any agreed issues. The Court views motions *in limine* as appropriate for those things that will create the proverbial “skunk in the jury box,” e.g., that, if mentioned in front of the jury before an evidentiary ruling can be made, would be so prejudicial that the Court could not alleviate the prejudice with an appropriate instruction. Rulings on motions *in limine* do not exclude evidence, but prohibit the party from offering the disputed testimony prior to obtaining an evidentiary ruling during trial.
- (d) Exhibits: Each side is limited to designating 250 exhibits for trial absent a showing of good cause. The parties shall use the exhibit list sample form on Judge Schroeder’s website.
- (e) Deposition Designations: Each side is limited to designating no more than ten (10) hours of deposition testimony for use at trial absent a showing of good cause. As trial approaches, if either side needs to designate more than ten (10) hours, the party may file a motion for leave and show good cause. All depositions to be read into evidence as part of the parties’ case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.
- (f) Witness Lists: The parties shall use the witness list sample form on Judge Schroeder’s website.

**ORDER REGARDING EXHIBITS, EXHIBIT LISTS AND WITNESS LISTS:**

- A. On the first day of trial, each party is required to have:
  - (1) One copy of their respective original exhibits on hand. Each exhibit shall be properly labeled with the following information: Identified as either Plaintiff’s or Defendant’s Exhibit, the Exhibit Number and the Case Number.
  - (2) Three hard copies of each party’s exhibit list and witness list on hand.
  - (3) One copy of all exhibits on USB Flash Drive(s) or portable hard drive(s). This shall be tendered to the Courtroom Deputy at the beginning of trial.
- B. The parties shall follow the process below to admit exhibits.
  - (1) *On the first day of trial*, each party shall tender a preadmitted list of exhibits it plans to admit into evidence. This list shall include all exhibits which are NOT objected to or to which the Court has already overruled an objection. To the extent there are exhibits with outstanding objections for which the parties need a ruling from the Court, those exhibits should be separately included on the list and designated accordingly to reflect a pending objection. Parties shall entitle the list “[Plaintiff’s/Defendant’s] List of Preadmitted Exhibits.” If, during the course of the day’s testimony, a party wishes to offer an objected exhibit into evidence, the

party may move for admission at the time it wishes to use that exhibit with a witness. The Court will then hear the opposing party's objection and will rule on the objection at that time.

- (2) *On each subsequent day of trial*, the Court will commence by formally admitting all of the exhibits that were either unobjected to or allowed over objection and used during the previous day's trial. The Court will ask for these exhibits to be read into the record and formally admitted into evidence at the beginning of that trial day. These will be the exhibits deemed admitted at trial. The parties shall keep a separate running list of all exhibits admitted throughout the course of trial.
  - (3) *At the conclusion of evidence*, each party shall read into the record any exhibit that was used but not previously admitted during the course of trial and then tender its final list of every admitted exhibit, entitled "[Plaintiff's/Defendant's] Final List of All Admitted Exhibits." To the extent there are exhibits that were not admitted during the course of trial, but for which there is agreement that they should be provided to the jury, the parties must inform the Court of those exhibits at the conclusion of evidence. The Court will then determine whether those exhibits will be allowed into the jury room for deliberations.
- C. At the conclusion of evidence, each party shall be responsible for pulling those exhibits admitted at trial and shall tender those to the Courtroom Deputy, who will verify the exhibits and tender them to the jury for their deliberations. One representative from each side shall meet with the Courtroom Deputy to verify the exhibit list.
- D. At the conclusion of trial, all boxes of exhibits shall be returned to the respective parties and the parties are instructed to remove these exhibits from the courtroom.
- E. Within five business days of the conclusion of trial, each party shall submit to the Courtroom Deputy:
- (1) A Final Exhibit List of Exhibits Admitted During Trial in Word format.
  - (2) Two CDs containing admitted unsealed trial exhibits in PDF format. If the Court ordered any exhibits sealed during trial, the Sealed Exhibits shall be submitted on a separate CD. If tangible or over-sized exhibits were admitted, such exhibits shall be substituted with a photograph in PDF format.
  - (3) A disk containing the transcripts of Video Depositions played during trial, along with a copy of the actual video deposition.