

## **OUTLINE AND INSTRUCTIONS FOR THE JOINT RULE 26(f) REPORT**

### **To Be Used for Matters Pending Before Judge Brooks**

[The parties shall use the following outline and supplemental schedules to prepare their Fed. R. Civ. P. 26(f) Report. The instructions inside [brackets] should be omitted from the Report.]

**1. Plaintiff's Statement of the Case.** *[Within the body of the Report, Plaintiff shall provide a concise executive summary of the case—not to exceed one double-spaced page—explaining the essential facts, claims, and damages/remedies sought. If Plaintiff(s) has sued under multiple theories of recovery, then Plaintiff's Statement of the Case shall indicate the primary theory(ies) on which it presently contemplates proceeding.]*

**2. Defendant's Statement of the Case.** *[Within the body of the Report, Defendant(s) shall provide a concise executive summary of the case—not to exceed one double-spaced page—explaining disputed facts and defenses from its point of view. If Defendant(s) have asserted affirmative defenses without supporting factual allegations, then briefly describe the known facts and evidence relied upon in asserting such defenses.]*

**3. Are there any Objections pursuant to Rule 26(a)(1)(C) to providing required Initial Disclosures?** *[If "yes," the objecting party should provide a detailed explanation. The Court will rule on any such objections prior to or during the Case Management Hearing.]*

**4. Are there any Objections to the timing of Rule 26(a) Initial Disclosures?** *[If "Yes," please provide detailed explanation as to why Disclosures cannot or should not be provided by the deadline stated in the Initial Scheduling Order. As part of your response, verify that you are aware of the "Unacceptable Excuses" stated in Rule 26(a)(1)(E).]*

**5. Agreed Document Productions.** *[Please categorically describe the documents agreed to be produced by the parties as part of—or in addition to—the required Initial Disclosures. See paragraph 2 of the Initial Scheduling Order.]*

**6. Discovery.**

**6(a). How many months are reasonably necessary to complete discovery—as measured from the date of the Case Management Hearing?**

**6(b). Do the parties seek to alter (increase or decrease) the maximum number of written discovery requests allowed by the Rules? If so, please explain.**

**6(c).** Do the parties seek to increase the maximum number of depositions allowed per side? If yes, please explain the necessity and state how many depositions per side are proposed.

**6(d).** Please characterize the scope and extent of electronic discovery contemplated by the parties as follows: (i) none; (ii) fairly simple and routine; or (iii) complex. If your answer is “Complex,” then please complete and attach Schedule A.

**6(e).** Do you anticipate the use of Expert Witnesses at trial? If so, state proposed dates by which the parties will be in a position to provide initial and rebuttal expert disclosures pursuant Rule 26(a)(2).

**6(f).** Do the parties presently contemplate the need for a protective order prior to the exchange of documents or information? *[If so, the parties should provide the Court with an agreed order (via email in Word Perfect or Word format) at least two full business days prior to the Case Management Hearing. Such orders should contain the language specified in the Court’s policy on protective orders, which is available on the Court’s website under “Judge Brooks Forms”). If the parties cannot agree as to the need or form of an appropriate protective order, then formal relief must be promptly sought pursuant to Fed. R. Civ. P. 26(c).]*

**7.** State the parties’ best estimate as to the number of days reasonably necessary to fully try the case.

**8.** State whether 90 days—measured from the Case Management Hearing—is a sufficient amount of time to Add Parties and/or Amend Pleadings. *[If “No,” please explain why and suggest a proposed alternative deadline]*

**9. Settlement Prospects.** *[Provide a joint statement explaining prospects for settlement of the case. In most cases, the Court will order a settlement conference with the Magistrate Judge after completion of discovery. If you would like to request an “early” settlement conference—either now or after limited discovery and/or threshold legal rulings—then please so indicate in your statement.]*

**10. Special Issues and Schedules.** *[Please mark a “X” next to the following issues that may be applicable to your case. For each applicable issue, please complete and attach the corresponding Schedule(s) to your Joint Report.]*

\_\_\_ **Federal Jurisdiction is Disputed.** *[If so, please complete and attach Schedule B.]*

\_\_\_ **Action removed from state court and Plaintiff’s Complaint does not specifically allege damages in excess of \$75,000.00.** *[If so, please complete and attach Schedule C.]*

- \_\_\_\_\_ **Diversity Jurisdiction case where any party is a non-corporate entity (i.e. LLCs, LLPs, General Partnerships, Trusts, Estates, etc.).** *[If so, please complete and attach Schedule D.]*
- \_\_\_\_\_ **Original action filed in this Court based on Diversity Jurisdiction where Plaintiff has named one or more “John Doe” Defendant(s).** *[If so, please complete and attach Schedule E.]*
- \_\_\_\_\_ **Complaint contemplates certification of a Rule 23 Class Action and/or a Collective Action pursuant to the Fair Labor Standards Act.** *[If so, please complete and attach Schedule F.]*
- \_\_\_\_\_ **Complaint seeks recovery for personal injuries and/or wage loss.** *[If so, please complete and attach Schedule G.]*

**11. Have all corporate parties filed the disclosure statement contemplated by Fed. R. Civ. P. 7.1?** *[If not, please state when such filing will be made.]*

**12. Magistrate Judge Jurisdiction.** Counsel affirm they have discussed with their clients and each other the option of consenting to Magistrate Judge jurisdiction. *[Parties in civil actions have the option to consent to Magistrate Judge jurisdiction. If all parties consent, the Magistrate Judge will be assigned to the case for all purposes, including trial of the matter. See 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.]*

**The parties have conferred and report the following:**

- \_\_\_\_\_ **The parties, by their signatures below, stipulate and consent to Magistrate Judge jurisdiction.**
- \_\_\_\_\_ **The parties do not consent to Magistrate Judge jurisdiction.**

## **Schedule A**

### **“Complex” Electronic Discovery Anticipated**

1. The parties should explain and help the Court understand the extent to which the anticipated scope, cost and time required for disclosure or production of electronic data is beyond what is reasonably available and/or within the capability of the parties' normal and ordinary course of business.

2. The parties should affirmatively state and confirm that reasonable measures have been taken to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise.

3. The parties must acknowledge that they have conferred and reached agreement (or state the mutually established deadline in the near future by which they have agreed to confer) as to the following matters:

- (A) Categorical types of electronic data that will be searched/provided as part of discovery.
- (B) Whether the parties will need to formulate agreed search terms, and if so, date by which such terms will be agreed upon.
- (C) Whether third party vendors will be necessary to accommodate electronic discovery.
- (D) The format (*i.e.* pdf, searchable pdf, native or other) and the media (*i.e.* CD, hard drive, via email attachment, cloud upload, or other) contemplated for the exchange of electronic discovery.

4. The parties should state whether they know of and/or anticipate any objections, disputes, or issues involving electronic discovery that will or might require Court intervention.

## **Schedule B**

### **Federal Jurisdiction Disputed**

1. The parties shall jointly and concisely state the jurisdictional issue or dispute in a non-argumentative fashion.

2. The party raising a jurisdictional defect (resisting federal jurisdiction) shall provide a statement, not to exceed one double-spaced page, setting forth the factual and legal basis of its position.

3. The responding party (seeking to establish federal jurisdiction) shall provide a statement, not to exceed one double-spaced page, setting forth the factual and legal basis of its position.

## **Schedule C**

### **Action removed from state court and Plaintiff's Complaint does not specifically allege jurisdictional damages in excess of \$75,000.00**

1. Defendant (or the party who removed the action) shall attach a statement, not to exceed one double-spaced page, and including statutory citations and pertinent case law, demonstrating that the Court's diversity jurisdiction is properly founded.

2. Plaintiff shall provide a statement, not to exceed one double-spaced page, stating its position as to appropriateness of diversity jurisdiction, including a general statement as to the nature and character of the damages/remedies it anticipates seeking at trial, and specifically whether compensatory damages will be alleged in excess of \$75,000.00.

## **Schedule D**

### **Diversity jurisdiction where any party is a non-corporate entity (*i.e.* LLCs, LLPs, General Partnerships, Trusts, Estates, etc.)**

1. Each Non-Corporate entity shall state or diagram the citizenship as to each of its members/partners/trustees. Membership must be traced back to a human being or corporation.

## **Schedule E**

### **Original Diversity Action where Plaintiff has named one or more “John Doe” Defendant(s)**

1. The Plaintiff shall provide a statement of facts categorically describing the role and nature of liability attributed to any such fictitious Defendants, including why their identities are not reasonably known—and how long it will take to determine their identities during discovery. The statement should also focus on the relative likelihood that the citizenship of any fictitious Defendants, once known, will defeat diversity jurisdiction. In light of such facts, the statement should include legal argument and authorities as to the present appropriateness of federal diversity jurisdiction.



## **Schedule F**

### **Rule 23 Class Action and/or FLSA Collective Action**

1. The parties shall confer and provide a detailed statement of their joint recommendations and/or respective positions on how to structure the litigation. For example, should case management be bifurcated into pre- and post-certification phases—with discovery initially limited to certification issues? If so, the parties should discuss and report agreed deadlines (or each party's respective position on deadlines) typically associated with certification and merits phases, including a schedule for expert disclosures and depositions. Such considerations may be structurally different for FLSA cases—but the Court is in equal need of the parties' input and recommendations. In a "typical" Rule 23 class action, the Court's suggested deadline for filing certification motions is about 6 months from the Case Management Hearing, and pure merits discovery—if a class is certified—should last no more than about 6 to 8 months.

## **Schedule G**

### **Complaint for Personal Injuries and/or Wage Loss**

1. In personal injury cases, Plaintiff(s) shall sign and provide defense counsel with an appropriate medical release and list of treating medical providers (going back 5 years prior to the occurrence in question), by no later than the Initial Disclosure Deadline.

2. If wage loss and/or earning capacity is an issue, then the parties shall discuss the appropriateness of providing an employment records release, a list of current and prior employers, and other income verification documentation, such as tax returns, W-2s, etc. Ordinarily such documentation should be provided to defense counsel by no later than the Initial Disclosure Deadline.

3. Plaintiff shall provide a statement indicating its compliance with the provisions noted above. If these materials will not be provided by said deadline, then Plaintiff shall state an explanation as to why, including, if applicable, the parties' agreement to produce these materials by a particular date.

4. If Defendant has liability insurance, then it must provided a specimen copy of all such insurance policies and declaration pages by no later than the Initial Disclosure Deadline.