

DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO 1437 BANNOCK STREET, DENVER, CO 80202	DATE FILED: September 3, 2019 CASE NUMBER: 2019CV33315 COURT USE ONLY
Plaintiff: HARVEY SENDER, et al, v. Defendant: WBF/CT ASSOCIATES, LLC.	
<u>PRE - TRIAL ORDER</u>	

A. **ALTERNATIVE DISPUTE RESOLUTION.** A separate ADR order will not be issued by the Court at this time but parties may contact the Court Clerk, at any time, if they wish to have an ADR order entered.

B. MOTIONS.

1. The trial date shall be stated in the first sentence of *each and every motion*.
2. Motions pursuant to C.R.C.P. 56 shall be filed at least **91 days** (13 weeks) before trial.
3. Motions challenging expert testimony pursuant to C.R.E. 702 must be filed at least **70 days** (10 weeks) before trial unless a different time is permitted by court order.
4. Motions *in limine* shall not exceed 5 pages and must be filed at least **28 days** before the Pre-trial Conference unless a different time is permitted by court order. If no Pre-trial Conference is scheduled, motions *in limine* must be filed at least **35 days** prior to trial unless a different time is permitted by court order. Responses shall be filed no more than **7 days** after the Motion is filed, unless a different time is permitted by Court Order. No replies shall be allowed.
5. Other pretrial motions must be filed at least **42 days** before trial unless a different time is permitted by court order. Responses shall be filed **14 days** after the filing of the motion unless a different time is permitted by court order. No replies shall be allowed.
6. Extensions of these deadlines are strongly discouraged because they make it unlikely that the motions will be ruled on in advance of trial. So, do not procrastinate in the preparation of your case.
7. Motions shall be accompanied by a brief recitation of authority. There will then be a response, and a reply, unless this Court has eliminated a reply or other pleading pursuant to C.R.C.P. 121. No other pleadings relating to a given motion will be accepted for filing unless permitted by court order.
8. DO NOT, UNDER ANY CIRCUMSTANCES, COMBINE PLEADINGS (i.e., Defendant's Motion for Summary Judgment and Response to Plaintiff's Motion for Summary Judgment). IF YOU DO YOUR PLEADING MAY BE STRICKEN SUA SPONTE.

9. The requirements of C.R.C.P. 121 § 1-15 concerning the time for filing motions, and the content of briefs will be strictly enforced. The Court may expedite the briefing schedule. Briefs may not exceed ten pages in length without court approval.
10. Once motions are at issue, I will rule on them promptly, usually without a hearing. Motions hearings will be set so as not to interfere with the conduct of other trials.

C. DISCOVERY.

1. Failure to disclose or insufficient/untimely disclosure of any document, exhibit or opinion is undertaken at your own risk. Similarly, delaying discovery until the eve of deadlines and/or trial is undertaken at your own risk. Do not procrastinate in the preparation of your case.
2. NO WRITTEN DISCOVERY MOTIONS WILL BE ACCEPTED. The Court will address *ALL* discovery disputes with a discovery hearing (in-person) instead of by formal written motions. The purpose of this procedure is to ensure an expedited and inexpensive resolution of discovery disputes. The following procedures will be in effect in this case:
 - a. If there is a discovery dispute, counsel are expected to confer in a meaningful way to try to resolve it. An email sent the night before does not qualify.
 - b. If counsel cannot resolve the dispute, they shall contact one of the clerks for this court during setting times (Tuesday, Wednesday & Thursday from 10 am – 12 noon) at 720-865-8307. If counsel cannot agree on a date the Court will set the hearing date.
 - c. The dispute will be argued and resolved at the hearing, or taken under advisement with a prompt ruling by the Court. The parties shall file a one page, concise identification of the discovery issues in dispute (with citations) and provide a copy of any legal authority that might be helpful to the Court, at least 2 days before the hearing. This shall be done in lieu of filing a written motion and response. DO NOT file any written motion, attachments, etc. unless the Court requests it.
 - d. If a dispute occurs during a deposition, please call the clerk of this courtroom at the above number and advise them about the nature of the dispute. The Court will address the dispute as quickly as possible.
3. For additional detail and clarification, please see the last pages of this order following the signature page.

D. EXPERTS.

1. Disclosure of expert opinions must comply with C.R.C.P. 26(a)(2).
2. Experts shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written expert disclosures.
3. Treating expert's opinions that go beyond the four corners of his/her records or reasonable inferences therefrom must be fully and fairly disclosed.

E. CASE MANAGEMENT ORDER.

1. The recently amended provisions of C.R.C.P. 16 and 16.1 concerning presumptive and modified case management orders will apply. *See* Colo. Supreme Court, Colorado Supreme Court Recent Rule Changes (2015),
2. At the same time as the notice to set trial, the Responsible Attorney shall file a notice to set a Case Management Conference as required in C.R.C.P. 16(d)(1), to be held no later than 49 days after the case is at issue, and shall provide notice of the conference to all parties.
3. Not later than 42 days after the case is at issue and at least 7 days before the Case Management Conference, the parties shall file, in editable format, a proposed Case Management Order consisting of the matters set forth in C.R.C.P. 16(b)(1)-(17) and take all necessary actions to comply with those subsections.
4. If all parties are represented by counsel, no later than 35 days after the case is at issue, counsel may file a proposed Case Management Order in compliance with C.R.C.P. 16(b) and may jointly request the Court to dispense with a Case Management Conference.
5. If the parties cannot agree on a modified case management order, they shall submit a draft order identifying the areas of disagreement. The Court will decide the disputed matters and will issue a Modified Case Management Order promptly.
6. The parties shall contact the clerk of this court at (720) 865-8307 during setting times (Tuesday, Wednesday & Thursday from 10 am – 12 noon) to schedule a case management conference if they think one will be helpful.
7. Cases Filed Under C.R.C.P. 16.1: Not later than 49 days after the case is at issue, the Plaintiff (or Responsible Attorney) shall file a Certificate of Compliance as required under C.R.C.P. 16.1(h). No Case Management Order or Case Management Conference is required.

- F. TRIAL SETTING.** Continuances will NOT be granted as a matter of course, even if stipulated. Continuances will be granted only for good cause shown. Contested motions for continuance will likely be decided on the first day of trial unless ripe at least **5 days** before trial.

G. TRIAL MANAGEMENT ORDER.

1. Plaintiff's counsel shall prepare and submit a signed Trial Management Order ("TMO") no later than **28 days** before the date of trial.
2. In the event that a Pre-trial Conference is scheduled, the TMO must be filed no later than the Pre-trial Conference.
3. The TMO must comply strictly with the requirements of C.R.C.P. 16 as amended. The Court requires a TMO for ALL cases.

H. TRIAL PREPARATION.

1. A Pre-trial Conference is not currently scheduled but parties may contact the clerk of this Court at any time, if they wish to schedule a Pre-trial Conference in this matter. Unless good cause is shown to hold the conference closer to trial, the Pre-trial Conference shall be held no later than **7 days** before trial.
2. The FTR shall be the official record in this case, absent an agreement to use a freelance court reporter. Counsel and any party appearing *pro se* shall decide if a retained court reporter will be used. Review and comply with the 2nd Judicial District Chief Judge Directive 2011-1 and attached policy regarding Court Reporters.
3. Trial Briefs must be filed no later than **7 days** before trial and shall not exceed 5 pages. In lieu of a trial brief you may file a list of case and statutory authority upon which you intend to rely.
4. Exhibits.
 - a. The parties must prepare a comprehensive Index of Exhibits and note those exhibits which are stipulated. Authenticity of exhibits shall be deemed stipulated to unless an objection is filed **14 days** before trial.
 - b. Counsel shall stipulate to admissibility of exhibits where appropriate to reduce use of Court and, if applicable, jury time. Each exhibit in the index should be accompanied by a number, Plaintiffs shall use numbers 1-999 and Defendants shall use numbers 1,000- 1,999. If there are multiple Plaintiffs or multiple Defendants the parties shall designate the exhibit number range each party will use.
 - c. All exhibits must be pre-marked with the number or letter identification, along with the case number. On the day of trial, counsel shall have in their possession at least four complete sets of all exhibits (either paper or electronic): one copy for the judge, one copy for witnesses, and copies for counsel.
 - d. The parties shall exchange a photograph of any demonstrative exhibits **7 days** before the first day of trial. Photographs shall be no larger than 8.5"x11" and counsel should agree that the items are accurately represented.
 - e. Unless the Court orders otherwise, on or before the trial date, the parties must submit ALL of their exhibits, and/or images of large or demonstrative exhibits, through the

E-Filing system. Parties should anticipate that there are exhibits such as negotiable instruments where the original paper document may need to be tendered to the Court. Images of these exhibits shall also be filed through the E-Filing system. *See* CJD 11-01 ¶ VI. Submission of exhibits shall be in substantial compliance with Paragraph V, of Chief Justice Directive 11-01. *See id.* ¶ V. Any violation of this Order regarding the submission of exhibits will be subject to sanctions including contempt of Court under C.R.C.P. 107.

f. Copies of a draft of lists of exhibits and witnesses must be exchanged at least **42 days** before trial, as required by C.R.C.P. 16. Other orders concerning exhibits may be entered as necessary.

5. Depositions

a. If any party wishes to use depositions in place of live testimony, all designations must be made and exchanged at least **14 days** before trial. All cross designations shall be exchanged **7 days** before trial.

b. The parties must provide the Court with a single copy of the deposition transcript with the designations and cross designations indicated, **3 days** before trial.

c. All objections shall be filed with the designations and shall include a specific Rule of Evidence supporting the objection.

d. The same rules apply to written, videotape, and DVD depositions alike.

6. If you need an overhead projector, a VCR, a DVD player, a monitor or any other form of audio/visual equipment, you must provide it. You must also provide your own extension cords and power surge strips.

7. Plan ahead. Forthwith matters are discouraged. Your emergency may not be considered my emergency.

I. INSTRUCTIONS

1. Attorneys are required to meet and confer in good faith, preferably in person, regarding jury instructions. The Court has already prepared the following instructions: 3:1, 3:4, 3:8, 3:9, 3:12, 3:14, 3:15, 3:16, 4:1, 4:2, 4:2A, 5:1 and 5:6. Counsel for the plaintiff is required to submit a joint proposed initial draft of the final jury instructions directly to the court via e-mail to the Court's law clerk (gregory.carter@judicial.state.co.us) no later than **7 days prior to the scheduled trial**. By initial draft, the Court means a single document that includes the instructions the Court has already prepared; the instructions to which all parties have stipulated; and any additional or disputed instructions of any party, as discussed below. Please note: the Court **does not** need, nor will it accept, basic introductory or closing instructions, oaths, admonitions, lengthy annotations, or like instructions.

2. Counsel shall submit instructions using the following order: opening instructions (the Court has already selected those); 2:1 claims and defenses; basic evidentiary instructions

(the Court has already selected those); instructions relating to the plaintiff's claims; instructions relating to defenses; damages; definitions; closing instructions (the Court has already selected those). An example of the instructions used by the Court may be found, in editable Word format, on the Colorado Judicial Branch website [www.courts.state.co.us] under the following links: *Courts*; *Second Judicial District*; *Judges and Staff*; *Kandace C. Gerdes*; *view more*. **COUNSEL ARE STRONGLY ENCOURAGED TO USE THE INSTRUCTIONS ON THE WEBSITE AS A TEMPLATE WHEN PREPARING THE INITIAL DRAFT**; the initial draft submitted pursuant to this order shall be in substantial compliance with that format.

3. Unless a stipulation can be reached, counsel for both parties shall be responsible for submitting their own version of a proposed 2:1 instruction under the "Claims of the Parties" instruction, and the Court will either choose between those submitted instructions or prepare its own. If counsel cannot agree on the wording of other instructions then both counsel shall submit instructions defining applicable stipulations, claims, standards of proof, affirmative defenses, damages, and special definitions under the appropriate sections.
 4. Additional instructions may be submitted. However the Court **does not** favor, and rarely gives, special instructions patterned after caselaw; any such instructions shall be submitted separately **via e-mail**, accompanied by a *brief* statement of authority, in compliance with the requirements for the initial draft. All proposed instructions must be organized in substantial compliance with the format utilized by the Court. If either counsel has an objection to a submitted instruction, the nature of the objection shall be *briefly* stated on the initial draft submitted to the Court, along with a *brief* statement of authority.
 5. Counsel shall also submit proposed verdict forms that conform to the proposed instructions.
 6. All instructions must be submitted through the E-Filing system in editable format. *See* CJD 11-01 ¶ VII. Accordingly, two editable documents comprising the proposed jury instructions must be E-Filed **7 days before trial**: (1) one document of stipulated instructions (without CJI and/or case citations), and (2) one document of disputed instructions (with CJI and/or case citations). The set of instructions provided to the jury as well as a party's tendered instructions that have been rejected by the Court shall be uploaded in the E-Filing system.
 7. The Court will conduct a conference on the instructions during breaks, over the lunch hour, or at the end of the day. Counsel and/or parties shall be prepared, with case citations, to discuss the disputed instructions at this time. The goal is to have a completed set of instructions ready for the jury as soon as the presentation of evidence is concluded.
- J. JUROR NOTEBOOKS (If Applicable)**. Each trial juror will be provided with a juror notebook. We will provide the notebooks, unless an oversize notebook is needed, in which case the parties must provide them. We will prepare general information and juror

question forms, but the parties must prepare the remainder of the contents. Each page must be three-hole punched in advance so it can be placed in a notebook. Each party must file its materials with courtroom staff in person no later than 3:00 p.m. on the Thursday before the first day of trial. The person bringing the materials to court must be prepared to place the material into the notebooks. Each party must supply an original and eight copies of the following:

1. **Witness Lists.** A correctly spelled list of the probable witnesses who may be called. In addition to listing the names of the witnesses, the list shall also specify the witnesses' title or degree and employment (e.g., Dr. John Smith, M.D., Children's Hospital), if applicable. Additionally, counsel **shall confer** and prepare a joint order of proof which identifies each counsel's good-faith estimate of the order in which witnesses will be presented and the time required for direct and cross-examination of each witness. **The witness lists and order of proof shall be filed no later than 7 days before the commencement of trial.**
2. **Exhibit Lists.** A list of exhibits whose admissibility is stipulated or not subject to reasonable dispute.
3. **Exhibits or Excerpts of Exhibits.** Copies of stipulated exhibits may be put in the juror notebooks. If exhibits are lengthy, stipulated excerpts may be used with my permission. The parties should bring to trial eight (three hole-punched) copies of any exhibit not stipulated to; copies will be placed in the notebook if and when the exhibit is admitted.
4. **Glossary of Terms.** If there are any scientific or other specialized terms which will be used repeatedly, those should be set forth, with an agreed-upon definition. If the parties have a legitimate dispute about the definition of any term, just the term should be listed.

K. JURY SELECTION (If Applicable)

1. Each side will have a maximum of 20 minutes for *voir dire*, unless additional time is requested and permitted in advance of the first day of trial. In multi-party cases, time must be divided between all parties on one side of the case.
2. I will ask some basic questions before counsel's *voir dire*. If there are questions all parties believe I should ask during my *voir dire*, such questions should be submitted to me for consideration before trial.
3. *Voir dire* will be conducted from the lectern.
4. Typically, we will seat an alternate juror. I will advise counsel on the first day of trial how the alternate will be designated. My preference is that the alternate be allowed to deliberate, but we will determine this before the end of the trial.
5. I allow peremptory challenges to be made against the entire panel.
6. Typically, challenges for cause will be exercised at the bench upon the conclusion of all parties' *voir dire*. Peremptory challenges will be announced orally in open Court and indicated on the list of jurors remaining.

L. CONDUCT OF TRIAL.

1. Scheduling/Use of Time

- a. The trial day will start at 8:30 a.m. and end at 5:00 p.m. We will take a morning and an afternoon break of 15 to 20 minutes each. Lunch will run from approximately noon to 1:30 p.m. Adjustments to this schedule may be made for good cause shown.
- b. Counsel and parties will be in court by 8:00 a.m. on each day of trial. This allows time for setup and preparation before beginning each trial day. It also provides an opportunity for counsel to discuss anything with me that needs to be dealt with before we begin the trial day.
- c. Jurors (if applicable) are the most important people in the decision-making process; their time is more valuable than ours. Witnesses must be scheduled so that no lengthy gaps occur in testimony. If there is a lengthy delay in one side's presentation of evidence, I am likely to require the other side to begin the presentation of evidence. Proper concern for the jury's time is generally more important than the order in which evidence is presented.
- d. Counsel and I will spend a few minutes at the end of each trial day discussing what will occur the next day, including what witnesses are scheduled and how much time each witness is expected to take.

2. Opening Statements. Each side will have a maximum of 20 minutes for its opening statement. In multiple-party cases, this time must be divided between the parties. Additional time may be permitted for good cause shown.

3. Questioning Witnesses.

- a. Generally, questioning will be done from the podium unless permission is granted to approach the witness or the bench.
- b. Redirect and re-cross examination may be limited or disallowed. The Court and the great majority of its juries have found these examinations to be repetitive, ineffective and unnecessarily time consuming. No examination will be permitted beyond re-cross. Therefore, counsel should object to any question asked on re-cross that exceeds the scope of the direct.
- c. Juror questions will be permitted when all other questions have been asked. Jurors will submit written questions on forms which we will place in the juror notebooks. As required, I will make a determination on whether the question will be asked. Counsel may ask *brief* follow-up questions after juror questions have been asked, but only as to issues raised by the juror's questions.

4. Objections.

- a. Make objections professionally: be brief, concise and specific.
- b. Speaking objections are not permitted.
- c. Do not automatically respond to an objection; if I want a response to an objection before ruling on it, I will ask for one.

5. **Closing Arguments.** Each side will have 20 minutes for closing argument. In multiple-party cases, this time must be divided between the parties. Additional time may be permitted for good cause shown.
6. **Miscellaneous.**
 - a. Parties must remain at counsel table while court is in session.
 - b. Counsel must use surnames.
 - c. No food is permitted in the courtroom; water, coffee, soda, etc. are permitted at counsel table.
 - d. Please turn off all cellular phones, pagers, etc., before coming into court.

M. GENERAL RULES.

1. If this Order conflicts with any Pre-Trial Order that was issued previously THIS ORDER will supersede.
2. Any reference in this Order to “counsel” includes *pro se* parties.
3. The parties are to **notify the Court within 24 hours of settlement or resolution of the case. All documents confirming settlement shall be filed not later than 14 days from the date of settlement,** unless otherwise ordered by the Court.
4. Unless all parties agree on the record that exhibits need not be maintained, the following procedure will be followed:
 - a. When the trial or hearing is concluded, each party will withdraw any exhibits or depositions which that party marked or admitted.
 - b. Each party will maintain in its custody the withdrawn exhibits and depositions without modification of any kind until 63 days after the time for the need of such exhibits for appellate or other review purposes has expired, unless all parties stipulate otherwise on the record or in writing. It will be the responsibility of the withdrawing parties to determine when the appropriate time period has expired.
5. This is a **CIVIL** division. Counsel will treat jurors, parties, witnesses, me, my staff, and each other with professionalism, courtesy and respect at all times. This applies not only to the actual trial, but to all aspects of the case, including discovery and motions practice, and includes what is written as well as what is said.

DATED this 3rd day of September, 2019

BY THE COURT:



Kandace C. Gerdes
District Court Judge

DISCOVERY PROTOCOL

Counsel are reminded that all discovery responses shall be made in the spirit and with the understanding that the purpose of discovery is to elicit facts and to get to the truth. The Rules of Civil Procedure are directed toward securing a just, speedy and inexpensive determination of every action. The discovery process shall not be employed to hinder or obstruct these goals nor to harass, unduly delay or needlessly increase the cost of litigation.

WRITTEN DISCOVERY

These discovery protocols shall be considered as part of the responsibility of parties and counsel to comply with the Rules of Civil Procedure relating to discovery.

1. The parties should refrain from interposing repeated boilerplate type objections such as “overbroad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence” and other similar objections. In the event any such objections are made, they shall be followed by a clear and precise explanation of the legal and factual justification for raising such an objection. Additionally, if the objecting party otherwise responds to the discovery request but does so subject to or without waiving such an objection, that party shall describe with reasonable specificity the information which may be available but which is not being provided as a result of the objection raised.
2. When a responding party claims not to understand either a discovery request or the meaning of any words or terms used in a discovery request, that party shall, within fourteen (14) days of receiving the discovery request, seek clarification of the meaning from counsel who served the discovery. A failure to seek such clarification shall be considered a violation of this Order for Discovery Protocol.
3. A discovery response which does not provide the information or material requested but promises to do so at some point in the future will be treated as the equivalent of no response unless the party so responding provides a specific reason for the information not being produced as required by the Rules of Civil Procedure, and also provides a specific date by which such information will be produced.
4. A response to a discovery request that does not provide the information or material requested but rather states that the party is continuing to look for or search for such information or material will be treated as the same as no response unless that party provides a clear description of where such information or material is normally located, who is normally in custody of such information or material, where the party has searched, the results of the search, as well as the identity of all persons who have engaged in such a search. The responding party shall also provide a clear explanation of the ongoing search and a specific date by which the search will be complete.

5. Whenever a party objects to discovery based upon a claim of attorney/client privilege, work product protection or any other privilege or protection, that party shall produce a detailed privilege/protection log that includes at least the following for each such item for which privilege is claimed:
 - a. The information required by C.R.C.P. 26(b)(5);
 - b. The date of the information or material;
 - c. All authors and recipients; and
 - d. The specific privilege or protection which is claimed.

The proponent of the privilege has the burden of establishing that privilege. Failure to comply with this paragraph 5 and Order for Discovery Protocol will constitute a waiver of the claimed privilege.

DEPOSITIONS

1. Depositions shall be conducted in compliance with the Colorado Rules of Civil Procedure.
2. During all depositions, counsel shall adhere strictly to C.R.C.P. 30(d) (1) and (3). No objections may be made, except those which would be waived if not made under C.R.C.P. 32(d)(3)(B) (errors, irregularities), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the Court, or to present a C.R.C.P. 30(d)(3) motion (to terminate a bad faith deposition). Objections to form shall be stated: "Objection as to form." Any further explanation is inappropriate and prohibited unless specifically requested by the attorney asking the question.
3. There shall be no speaking objections. It is inappropriate and prohibited for an attorney, during the course of questioning, to advise a witness to answer "if you know," or "if you remember." It is similarly prohibited for an attorney during questioning to advise a witness not to speculate. All such questions shall be considered speaking objections. All deponent preparation shall be conducted prior to the commencement of the deposition and shall not take place during the course of the deposition.
4. It is appropriate for the deponent to request clarification of a question. However, it is not appropriate for counsel to do so.
5. A deponent and an attorney may not confer during the deposition while questions are pending. Similarly, neither a deponent nor counsel for a deponent may interrupt a deposition when a question is pending or a document is being reviewed, except as permitted by C.R.C.P. 30(d) (1).
6. Counsel shall refrain from excessive objections that have the purpose or effect of disrupting the flow of questioning or the elicitation of testimony.
7. Counsel may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion

under paragraph 3 of C.R.C.P. 30(d). Whenever counsel instructs a witness not to answer a question, counsel shall state on the record the specific reason for such an instruction, the specific question, part of a question or manner of asking the question upon which counsel is basing the instruction not to answer the question.

8. Violations of these Discovery Protocols will result in the Court limiting or prohibiting additional discovery in the case.