

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

R.J. ZAYED,  
*in his capacity as*  
*Court Appointed Receiver,*

CIVIL NO. 13-232 (DSD/JSM)

Plaintiff,

v.

**FIFTH AMENDED**  
**PRETRIAL SCHEDULING ORDER**

ASSOCIATED BANK, N.A.,

Defendant.

**Pursuant to the parties' September 26, 2016 Joint Stipulation to Modify Pretrial Scheduling Order [Docket No. 154] and Rule 16 of the Federal Rules of Civil Procedure and the Local Rules of this Court, and in order to secure the just, speedy and inexpensive determination of this action, the following schedule shall govern these proceedings. The schedule may be modified only upon formal motion and a showing of good cause as required by Local Rule 16.3**

**Disclosures**

All pre-discovery disclosures required by Rule 26(a)(1), including production of documents, shall be completed on or before September 4, 2015.

**Pleadings**

1. All motions that seek to amend or supplement the pleadings (other than to add a claim for punitive damages) must be filed and served on or before November 6, 2015.
2. All motions that seek to amend to add parties must be filed and served on or before November 6, 2016.
3. All motions that seek to amend the pleadings to add a claim for punitive damages or bad faith damages under Minn. Stat. § 604.18, if applicable, must be filed and served on or before August 15, 2016.

4. Any motion set forth in the above paragraphs must include a redlined version reflecting the changes contained in the proposed pleading. (See Local Rule 15.1.)
5. Reply memorandums for any motions to amend are permitted pursuant to paragraph 6 of the section Non-Dispositive Motions.

#### Discovery Limits and Deadlines

##### 1. Fact Discovery

No more than 100 hours of deposition testimony shall be taken per party.

No more than 35 interrogatories (including all subparts) shall be served by one party upon another party.

No more than 60 document requests shall be served by one party upon another party.

No more than 100 requests for admission shall be served by one party upon another party.

All fact discovery of any kind shall be commenced in time to be completed on or before June 3, 2016.

##### 2. Experts

Disclosure of the identities of expert witnesses under Rule 26(a)(2)(A), the full disclosures required by Rule 26(a)(2)(B) (including the written report prepared and signed by each expert witness), and the full disclosures required by Rule 26(a)(2)(C), shall be made as follows:

Identification by the party bearing the burden of persuasion on the issue for which the expert is offered on or before April 4, 2016.

Rule 26(a)(2)(B) and 26(a)(2)(C) disclosures by the party bearing the burden of persuasion on the issue on which the expert is offered on or before July 19, 2016.

Identification or rebuttal experts by the opposing party on or before August 1, 2016.

Rule 26(a)(2)(B) and 26(a)(2)(C) disclosures of rebuttal experts by the opposing party on or before August 19, 2016.

Each party may depose all disclosed experts.

Each party may call all disclosed experts at trial.

All expert discovery of any kind, including expert depositions, shall be commenced in time to be completed on or before September 19, 2016.

### Non-Dispositive Motions

1. All non-dispositive motions and supporting documents (notice of motion, motion, affidavits, exhibits, memorandum of law, and proposed order), other than those seeking to amend or supplement the pleadings, to add parties, or relating to expert discovery, shall be scheduled, filed and served on or before **October 21, 2016**. This deadline includes motions relating to discovery, punitive damages and motions to amend this Scheduling Order.<sup>1</sup>
2. All non-dispositive motions shall be scheduled, filed and served in compliance with the Electronic Case Filing Procedures for the District of Minnesota and in compliance with Rule 37(a) and Local Rules 7.1<sup>2</sup> and 37.1. Prior to filing, all non-dispositive motions must be scheduled for hearing by calling Katherine Haagenson, Courtroom Deputy/Judicial Assistant for Magistrate Judge Mayeron, at 612-664-5460, except when all parties are in agreement that no hearing is required. Such an agreement shall be expressly set forth in the notice of motion. Counsel are advised not to notice additional motions for hearing on an already existing hearing date without first contacting the Court for permission to do so.
3. When a submission is filed on ECF, one paper courtesy copy, three-hole punched, of the entire submission, shall be mailed or delivered to the undersigned in an envelope addressed to Katherine Haagenson, Courtroom Deputy/Judicial Assistant for Magistrate Judge Mayeron, at the same time as the submission is posted on ECF.
4. The “meet and confer” requirement of Rule 37(a) and Local Rules 7.1 and 37.1 shall include communications through personal contact (e.g. phone, video conference or in person), rather than solely by communications by letter, email and the like.

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<sup>1</sup> Parties which agree by Stipulation to seek an order modifying this Scheduling Order may submit a Stipulation to the Court that complies with Local Rule 16.3, and do not need to comply with Local Rule 16.3(a) (i.e., the parties do not need to schedule a hearing to address the Stipulation).

<sup>2</sup> The parties are reminded that under Local Rule 7.1, the time for filing and serving a response or reply to a non-dispositive motion is counted from the date of filing of the motion, not from the date of service. Therefore, Rule 6(d) has no application to the timing for the filing and service of responses or replies.

5. For all non-dispositive motions (including motions to amend or supplement the pleadings, to add parties or to add a claim for punitive damages or bad faith damages under Minn. Stat. § 604.18), a reply memorandum not exceeding 1750 words (including footnotes) may be served, filed and delivered to the chambers of the undersigned no later than four days after the filing of a response to the non-dispositive motion, so long as the total word count for the original and reply memorandum does not exceed 12,000 words.
6. If a discovery motion is related to written discovery or the contents of depositions, the parties must fill out a chart (attached) that describes each disputed discovery request and response; each party's position, and the moving party's last offered compromise. This chart must be in Word format and emailed at least three days before the hearing to chambers at: mayeron\_chambers@mnd.uscourts.gov. Failure to provide this chart to the Court as required by this scheduling order shall result in the cancellation of the hearing.
7. If the non-dispositive motion seeks to challenge designations of documents or materials pursuant to a protective order or the withholding of documents or information based on the attorney-client privilege, work product doctrine or other doctrine, prior to filing any such motion, counsel for the parties shall schedule a telephonic conference with the Court to address how such motions will be presented to the Court.
8. Prior to scheduling any non-dispositive motion and following the conference required by Rule 37(a)(1) and Local Rule 7.1(a), the parties are encouraged to consider whether the motion, including motions relating to discovery and scheduling, can be informally resolved through a telephone conference with the Magistrate Judge.<sup>3</sup>

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<sup>3</sup> At the Rule 16 scheduling conference, the Court advised the parties that it is willing to resolve non-dispositive disputes between the parties on an informal basis via a telephone conference. However, before the Court will agree to proceed with this informal resolution mechanism, the "meet and confer" required by Rule 37(a)(1) and Local Rule 7.1(a) must have taken place, and all parties to the dispute must agree to use this informal resolution process, as the very nature of the process is such that the parties are giving up rights they would otherwise have (e.g., the dispute is heard over the phone; there is no recording or transcript of the phone conversation; no briefs, declarations or sworn affidavits are filed; and there is no right to an appeal of the Court's ruling to the District Court). If the parties do agree to use this informal resolution process, one of the parties shall contact Katherine Haagenson, Courtroom Deputy/Judicial Assistant at 612-664-5460, to schedule the telephone conference. The parties may (but are not required to do so), submit short letters to the Court and opposing counsel, with or without a limited number of documents attached, prior to the conference to set forth their respective positions. The Court will read the written submissions of the parties before the phone conference, hear arguments of counsel at the conference, and if no one changes their decision during the phone conference regarding their willingness to participate in this informal resolution process, the Court

### Handling of Sealed Document in Connection with Motions

1. In connection with any motion filed with this Court, only those portions of a party's submission (e.g., memorandum of law, affidavit and exhibits) which meet the requirements for treatment of protection from public filing (e.g. because they are subject to the attorney-client privilege or work product doctrine, they meet the standards articulated by Rule 26(c)(1)(G), or a statute, rule or regulation prohibits their disclosure), shall be filed under seal. At the same time, a redacted version of the submission shall be publically filed and a copy of the redacted version (highlighting the redactions in yellow) shall be provided to chambers at mayeron\_chambers@mnd.uscourts.gov. Designation of material as confidential or protected by any party pursuant to a Protective Order as the sole basis for filing the material under seal shall not satisfy this requirement. If a party intends to submit in connection with a motion a pleading or document the party believes in good faith does not qualify for filing under seal but which has been designated by another party as confidential or protected, the party intending to file the pleading or document shall follow the procedures set forth in the applicable protective order to challenge the designation of the document.
2. With respect to any submission filed with the Court which is sealed and posted on ECF with a placeholder, the sealed submission shall be sent electronically or hand delivered to all parties and the Court on the same day as the documents are posted on ECF.

### Electronic Discovery

The parties shall preserve all electronic documents that bear on any claims, defenses or the subject matter of this lawsuit.

### Dispositive Motions

All dispositive motions shall be served and filed on or before **October 21, 2016**. Notwithstanding the provisions of Local Rules 7.1(c)-(d), the following procedures shall apply to the dispositive motion<sup>4</sup> practice in this case:

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will issue its decision at the conclusion of the phone conference or shortly after the conference. Depending on the nature of the dispute, the Court may or may not issue a written order. If there is no agreement to resolve a dispute through this informal resolution process, then the dispute must be presented to the Court by formal motion and hearing.

<sup>4</sup> The following are deemed dispositive motions under this Order: motions for preliminary or permanent injunctive relief; motions to dismiss, for judgment on the pleadings or for summary judgment; motions to certify a class action; motions to exclude expert testimony under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and/or Federal Rule of Evidence 702; motions to remand or transfer; and

1. The moving party shall first contact Judge Doty's Courtroom Deputy, Connie Baker, at 612-664-5063 to secure a hearing date at least 42 days in the future. Once the moving party has secured a hearing date, it shall promptly file a notice of motion informing all parties of the nature of the motion and the date, time and location of the hearing.
2. The moving party shall serve and file the following documents at least 42 days before the scheduled hearing: (a) motion; (b) memorandum of law, and (c) affidavits and exhibits. The party shall provide Courtroom Deputy Connie Baker with two hard copies of its memorandum and one hard copy of any affidavits and exhibits.
3. The responding party shall serve and file the following documents at least 21 days before the hearing: (a) memorandum of law, and (b) affidavits and exhibits. The party shall provide Courtroom Deputy Connie Baker with two hard copies of its memorandum and one hard copy of any affidavits and exhibits.
4. The moving party shall serve and file the following documents at least 14 days before the hearing: (1) reply memorandum, or (b) a notice stating that no reply memorandum will be filed. A reply memorandum shall not raise new grounds for relief or present matters that do not relate to the response. The party shall provide Courtroom Deputy Connie Baker with two hard copies of its reply memorandum.
5. If the Court, *sua sponte*, cancels the hearing or continues the hearing date, all subsequently filed motion papers must be served as if the original hearing date was still in effect, unless otherwise directed by Judge Doty.
6. Parties do not need to meet and confer, as required under Local Rule 7.1(a), in advance of filing a dispositive motion, although they are encouraged to do so to attempt to narrow the issues presented to the Court.

All other provisions in Local Rule 7.1 are unaffected by this Order and remain applicable, including the word limitation in Rule 7.1(f).

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motions to compel arbitration. Absent permission from the Court, a party moving for a temporary restraining order must file and serve its motion papers, in addition to the Summons and Complaint, on the proposed-enjoined party before the Court will entertain the motion. A motion for a temporary restraining order is not subject to the 42-day rule set forth below, rather, the Courtroom Deputy will advise the parties of the hearing date and briefing schedule. All motions for injunctive relief and motions to exclude expert testimony will be handled without live witness testimony absent advance permission from the Court.

For any dispositive motion sought to be brought while discovery is ongoing, the moving party must seek permission to file such motion from the undersigned prior to filing. Permission shall be requested in a letter, not to exceed three pages, to the undersigned and the opposing party. Within four days of receipt of the request, the opposing party shall respond to the request in a letter, not to exceed three pages, to the undersigned and requesting party.

Trial

This case shall be ready for trial as of January 1, 2017.

Practice Pointers and Preferences

Please refer to Magistrate Judge Janie S. Mayeron's Practice Pointers and Preferences which may be found on the Court's website or the Minnesota Federal Bar Association's website.

Dated: September 27, 2016

*s/ Janie S. Mayeron*  
JANIE S. MAYERON  
United States Magistrate Judge

**Case Name and Number \_\_\_\_\_**

Several discovery responses have been identified as deficient in [the moving party's Motion to Compel (ECF No. \_\_\_\_\_)]. To assist the Court in more efficiently resolving the parties' discovery dispute, the parties shall meet and confer, and jointly complete the following chart. The purpose of this chart is not to repeat, or cut and paste, the arguments present in the parties' memoranda, but to identify succinctly each party's position and the compromise last offered at the meet and confer. Please attach additional sheets as necessary. At least three days before the hearing, the fully completed chart shall be e-mailed to chambers at [mayeron\\_chambers@mnd.uscourts.gov](mailto:mayeron_chambers@mnd.uscourts.gov).

Discovery Request at Issue	Moving Party's Position	Responding Party's Position	Moving Party's Last Offered Compromise	Responding Party's Last Offered Compromise	Court Notes

Counsel for Moving Party: \_\_\_\_\_

Counsel for Responding Party: \_\_\_\_\_

Date: \_\_\_\_\_