

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.

**AMENDED PRETRIAL  
SCHEDULING ORDER**

ASSOCIATED BANK, N.A.,

Defendant.

Phase I of this case addressing defendant's Motion to Dismiss based on the affirmative defenses of *res judicata* and *in pari delicto* has been completed. Phase II will now focus on the balance of the case.

Pursuant to 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.

Pleadings and Disclosures

- |                     |   |
|---------------------|---|
| September 4, 2015 - | All pre-discovery disclosures required by Rule 26(a)(1), including production of documents, shall be completed on or before this date.  |
| November 6, 2015 -  | Following the meet and confer required by L.R. 7.1, all motions which seek to amend or supplement the pleadings must be served and filed on or before this date, and shall include a redlined version reflecting the changes contained in the proposed pleading. <u>See</u> L.R. 15.1. This deadline does not apply to motions which seek to amend the complaint to add a claim for punitive damages. Such motions must be brought on or before the fact non-dispositive motion deadline. |

Discovery and Nondispositive Motions

Disclosure of the identity of expert witnesses under Rule 26(a)(2)(A) shall be served on the following dates:

April 4, 2016 - By party with burden of persuasion  
May 18, 2016 - Rebuttal

Full disclosures and written reports required by Rule 26(a)(2)(B) and the full disclosures required by Rule 26(a)(2)(C) shall be served on the following dates:

May 4, 2016 - By party with burden of persuasion  
June 17, 2016 - Rebuttal

April 4, 2016 - All fact discovery of any kind shall be commenced in time to be completed by this date.

July 15, 2016 - All expert discovery of any kind, including expert depositions, shall be commenced in time to be completed by this date.

August 1, 2016 - All non-dispositive motions and supporting pleadings (notice of motion, motion, affidavits, exhibits, memorandum of law, and proposed order), including those which relate to discovery, punitive damages and any request for modification of this Pretrial Scheduling Order,<sup>1</sup> shall be served, filed and HEARD by this date.

A reply memorandum not exceeding 1750 words (including footnotes) may be served, filed and delivered to the chambers of this Court no later than 4 days after filing of a response to the nondispositive motion so long as the total word count for the original and reply memorandum does not exceed 12,000 words. In the event the Court is unable to schedule the hearing before this date because of conflicts in its own schedule, the hearing may take place after this date but the moving party's motion papers (notice of motion, motion, affidavits, exhibits, memorandum of law, and proposed order) must be served and filed 14 days before this date, the responding party's response must be served and filed 7 days before this date, and the reply must be served and filed 3 days before this date.

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<sup>1</sup> Parties which agree by stipulation to seek an order modifying this scheduling order may submit the stipulation to the Court without a motion and do not need to comply with L.R. 16.3(a) or L.R. 7.1(b) (i.e. the parties do not need to schedule a hearing to address the stipulation).

If the discovery motion is related to written discovery, 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: mayeron\_chambers@mnd.uscourts.gov.

Prior to scheduling any non-dispositive motion and following the conference required by Fed. R. Civ. P. 37(a)(1) and L.R. 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>2</sup> To the extent that any non-dispositive motion is to be filed, such motion shall be scheduled for hearing by calling Katherine Haagenson, Judicial Assistant to Magistrate Judge Janie S. Mayeron, (612) 664-5460.

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

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<sup>2</sup> At the Rule 16 Scheduling Conference, the Court advised the parties that it is willing to resolve nondispositive 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 Fed. R. Civ. P. 37(a)(1) and L.R. 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). If the parties do agree to use this informal resolution process, one of the parties shall contact Judicial Assistant Katherine Haagenson, 612-664-5460, to schedule the 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 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 via formal motion and hearing.

with Local Rules 7.1<sup>3</sup> and 37.1 as modified as follows: When a submission is filed on ECF, one paper hard copy, three-hole punched, of the entire submission shall be mailed or delivered to the undersigned in an envelope addressed to Katherine Haagenon, Calendar Clerk, contemporaneously with the submission being posted on ECF.

### Dispositive Motions and Trial

October 1, 2016 - All dispositive motions shall be served and filed on or before this date. 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:

1. The moving party shall first contact the court'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 the court with TWO hard copies of its memorandum and ONE copy of any affidavits and exhibits.

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<sup>3</sup> The parties are reminded that under Local Rule 7.1, the time for filing and serving a response or reply to a nondispositive motion is counted from the date of filing of the motion, not from the date of service. Therefore, Fed. R. Civ. P. 6(d) has no application to the timing for the filing and service of responses or replies.

<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 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.

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 the court with TWO hard copies of its memorandum and ONE copy of any affidavits and exhibits.
4. The moving party shall serve and file the following documents at least 14 days before the hearing: (a) memorandum of law or (b) a notice stating that no reply 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 the court with TWO hard copies of its 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 were still in effect, unless otherwise directed by the court.
6. Parties need not 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).

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.

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

#### General

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 on another party.

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

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

Each party may depose all disclosed experts.

Each party may call all disclosed experts at trial.

#### Electronic Discovery

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

#### Handling of Sealed Documents Filed in Connection with All Motions

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 Fed. R. Civ. P. 26(c)(1)(G), or a statute, rule or regulation prohibits their disclosure), shall be filed under seal. 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.

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 contemporaneously with the documents being posted on ECF.

#### Practice Pointers and Preferences

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

Dated: August 24, 2015

*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 prepared in Word format shall be emailed to chambers at 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

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

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

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