

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-019190

02/20/2013

HONORABLE MARK H. BRAIN

CLERK OF THE COURT  
A. Melchert  
Deputy

STEPHEN F SURFACE

HENRY ALZATE

v.

MANDALAY AT SOUTH MOUNTAIN H O A, RYAN J MCCARTHY  
et al.

JOINT PRETRIAL MEMORANDUM AND PROPOSED SCHEDULING ORDER

The Court has received and reviewed the Motion to Set and Certificate of Readiness and the Motion for an Order to Appoint a Judge Pro Tem to Preside at a Settlement Conference and to Require the Parties to Participate in a Settlement Conference, both filed by Plaintiff.

IT IS ORDERED as follows:

Counsel are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz. R. Civ. P. Counsel shall prepare and file with the Court, no later than **5:00 p.m. on March 22, 2013**, a Joint Pretrial Memorandum, and a proposed Order, for discovery, motion and disclosure deadlines.

If the parties agree to the dates, they should prepare an Order in the form set forth below, containing the provisions which are applicable to their case. For example, paragraph 1 of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-019190

02/20/2013

The proposed Order shall include specific dates (“December 5, 2008” is a specific date, “90 days prior to trial” is a date in reference to a trial date and is not a specific date). All applicable blanks should be filed in, except for the date of the Scheduling and Status Conference, as indicated. Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their Pretrial Memorandum and each shall prepare a separate proposed Order.

The Court will review the Joint Pretrial Memorandum and proposed Scheduling Order. If all is in order, the Court will set a scheduling and status conference close to the discovery cutoff date. At the scheduling and status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. There will be no telephonic appearances at the status conference without prior Court approval. Counsel who will be the trial lawyers in the case may appear telephonically with their trial calendars. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal **within 60 days**.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the Joint Pretrial Memorandum.

If a Joint Pretrial Conference Memorandum and proposed Scheduling Order are not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

**SCHEDULING ORDER LANGUAGE:**

The Court has received and reviewed the parties’ Joint Pretrial Memorandum and proposed Scheduling Order.

In accordance therewith,

IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***. [or]
  - a. Plaintiffs shall disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-019190

02/20/2013

- b. Defendants shall disclose areas of expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***.
2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***. [or]
  - a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***.
  - b. Defendants shall disclose the identity and opinions of their expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***.
3. Any and all discovery requests shall be served by **5:00 p.m. on \_\_\_\_\_, 200\***.
4. The parties shall disclose all non-expert witnesses by **5:00 p.m. on \_\_\_\_\_, 200\***. [or]
  - a. Plaintiffs shall disclose areas of non-expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***.
  - b. Defendants shall disclose areas of non-expert testimony by **5:00 p.m. on \_\_\_\_\_, 200\***.
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by **5:00 p.m. on \_\_\_\_\_, 200\***.
6. All discovery shall be concluded by **5:00 p.m. on \_\_\_\_\_, 200\***.
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by **5:00 p.m. on \_\_\_\_\_, 200\***. This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. Settlement conference (choose one):
  - a. 

**PRIVATE MEDIATION**

The parties shall participate in private mediation by **5:00 p.m. on \_\_\_\_\_, 200\***;

**OR**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-019190

02/20/2013

- b. **REFERRAL TO ADR FOR SETTLEMENT CONFERENCE**  
Counsel shall endorse the Court's Alternative Dispute Resolution Office

The parties shall participate in a Mandatory Settlement Conference. This case is referred to the Court's Office of Alternative Dispute Resolution for the appointment of a judge pro tempore to conduct a Settlement Conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge pro tempore. Counsel and any "pro per" parties will contact the appointed judge pro tempore to arrange the date, time and location for the Settlement Conference. The judge pro tempore is requested to conduct a settlement conference not later than \* \_\_\_\_\_, 2008. The Office of Alternative Dispute Resolution will not do the scheduling of the Settlement Conference so please do not contact that office.

If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re: alternative to ADR must be presented to the Court by no later than **5:00 p.m. on** \* \_\_\_\_\_, **2008**.

IT IS ORDERED that the parties shall simultaneously submit confidential memoranda to the Judge Pro Tempore at least **5 days prior** to the date set for Settlement Conference.

**All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle this case, shall personally appear and participate in good faith in this Settlement Conference, even if no settlement is expected.**

9. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
10. All pretrial motions, other than motions *in limine*, must be filed by **5:00 p.m. on** \_\_\_\_\_, **200\***.
11. A **scheduling and status conference** is set for the purpose of assigning a trial date on [ **LEAVE DATE AND TIME BLANK** ] if the case has not settled.

**PLEASE NOTE:** If this **JOINT PRETRIAL MEMORANDUM** and proposed **SCHEDULING ORDER** are filed electronically, a separate minute entry will be entered setting a **SCHEDULING AND STATUS CONFERENCE** for the purpose of setting a trial date.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2011-019190

02/20/2013

- Counsel may appear telephonically for this conference if all counsel agree to do so.
  - Counsel for Plaintiff shall initiate the conference call unless the parties agree otherwise.
  - Counsel shall have their trial calendars available for the conference.
12. Should any discovery disputes arise, counsel, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P. If the issues are straightforward enough not to require briefing, counsel may telephonically contact the Court to set up a telephonic conference to discuss any remaining issues.
13. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.
14. This case is removed from the Inactive Calendar and all requirements of Rule 38.1 of Ariz.R.Civ.P. are waived unless and until otherwise ordered by the Court.

**A signature block shall be included on the form of proposed Scheduling Order for the Judge's approval.**

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.