

NO. _____

IN THE COUNTY COURT

Plaintiff(s),

V.

Defendant(s).

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AT LAW NO. 1

ELLIS COUNTY, TEXAS

FINAL PRETRIAL SUBMISSION

[Required for all Jury Trials and Bench Trials of more than a half day]

(Updated August 2023)

This Final Pretrial Submission must be filed no later than seven (7) days before the Final Pretrial Conference and all objections to witnesses and exhibits must be made and delivered to opposing counsel and filed no later than four (4) days before the Final Pretrial Conference. Lead counsel must attend the Final Pretrial Conference; the clients are not required to attend if lead counsel has full authority to make decisions on behalf of the client, otherwise the client must attend.

Failure by a party to timely file their Final Pretrial Submission, or if such submission is timely filed but the attorney for that party fails to attend the Pretrial hearing, where another party has timely filed their Final Pretrial Submission and that party’s attorney attends the Pretrial Hearing, may result in the exclusion of the delinquent party’s witnesses and exhibits and/or in the complete or partial postponement of the Final Pretrial Conference and the award of attorney’s fees for the continued hearing against the non-compliant party and/or attorney. The trial setting may be removed by the Court if all parties fail to timely file Final Pretrial Submissions. A courtesy copy of the Final Pretrial Submission should be emailed to the Court Coordinator (ccl1coordinator@co.ellis.tx.us) concurrently with the e-filing of the submissions. The proposed Jury Instructions should be emailed in Microsoft Word format.

For all civil cases filed on or after September 1, 2020 where the amount in controversy exceeds \$250,000 the jury shall be comprised of 12 members unless all of the parties agree to a jury composed of a lesser number of jurors. Govt. Code §25.0007(c). If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members, in all other cases the jury shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law. Govt. Code §25.0722(i).

This Final Pretrial Submission is prepared and submitted by:

ATTACHED HERETO ARE THE FOLLOWING, TO WIT:

1. **Contentions of the party are set forth in Exhibit A.**
2. **Contested Issues of fact and law are set forth in Exhibit B. (One page or less per issue)**
3. **Any Agreed Factual Stipulations are set forth in Exhibit C.**
4. **Prior Rulings of this Court as to the facts and laws believed to be relevant to the trial are set forth in Exhibit D.**
5. **Lists of Fact Witnesses are set forth in Exhibit E along with the subject matter of the testimony of each such witness. Included are all rebuttal and impeachment witnesses whose testimony can reasonably be anticipated at this time. Witnesses must be actually named, simply using a placeholder such as “Police Officer” or “Medical Provider” will not suffice and will result in the exclusion of the non-specifically identified witness.**

...The Court utilizes the provisions of Rule 103 Tex.R.Evid. to rule on the legal admissibility of all lay witness testimony. The attorneys must present all reasonably anticipated evidentiary objections concerning lay testimony to the Court during the final pretrial conference or objection is waived.

*...After receipt of opponent’s Final Pretrial Submission, the Parties must confer in an attempt to resolve all objections concerning fact witnesses. All objections not resolved by agreement must be filed with the Court **four days before** the Pretrial Conference and called to the attention of the Court for ruling at the final pretrial conference. All objections not timely filed and all objections for which a specific ruling is not timely obtained are waived.*

...If the opinion of a lay witness complies with the requirements of Rule 701, Texas Rules of Evidence, it is sufficient to list such a witness in this exhibit as a fact witness rather than in the list of expert witnesses. If there is doubt as to whether such testimony may be expert testimony and possibly does not comply with the requirements of Rule 701, the witness must be listed as both a fact witness with the subject matter of the witness’ testimony and as an expert witness along with a report containing the information required of an expert witness.

...If a party intends to opine concerning values of his/her property, the existing law deems such testimony to be expert testimony that is permitted by court decisions. In order to avoid surprise, this Court requires that such party be listed as an expert witness and that a report of the opinions and other information required of expert witnesses be furnished to the opponent.

6. **Names, addresses, telephone numbers and qualifications of Expert Witnesses are set forth in Exhibit F, together with the subject matter upon which the expert is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the bases of the mental impressions and opinions held by the expert. Witnesses must be actually named, simply using a placeholder such as “Police Officer” or “Medical Provider” will not suffice and will result in the exclusion of the non-specifically identified witness. Any Daubert/ Robinson challenges must be stated and prepared for hearing no later than the FPTC. The Court has special instructions and checklists for all parties as to how the hearing will be conducted. A copy of the form may be requested by the attorneys from the Court Coordinator.**

...The Court utilizes the provisions of Rule 103 Texas Rules of Evidence to rule on all expert testimony pursuant to the Daubert/Robinson standards. During the final pretrial conference, the attorneys must present all objections to the Court concerning expert testimony not previously ruled upon by the Court or objection is waived.

*...After receipt of opponent’s Final Pretrial Submission, the Parties must confer in an attempt to resolve all objections concerning expert witnesses. All objections not resolved by agreement must be filed with the Court **four days before** the Pretrial Conference and called to the attention of the Court for ruling at the final pretrial conference. All objections not timely filed and all objections for which a specific ruling is not timely obtained are waived.*

...A copy of the expert’s report may be attached in satisfaction of this requirement if the report conforms to the requirements of the law and of this Court.

...All witnesses who are expected to provide any amount of expert testimony must be set forth in this list, including parties who are to testify as to the value of their own property and lay witnesses who are expected to render expert opinions as well as give factual testimony that exceeds the permissible limits of Rule 701 Tex.R.Evid (ex., an artisan such as a plumber, electrician or mechanic who is expected to opine concerning their specialized knowledge.) If there is any doubt as to whether Rule 701 Tex. R. Evid. is applicable, the Court requires that the lay witness be listed and treated both as a lay witness and as an expert.

...Uncooperative, non-retained experts who have dealt with a party and have unique factual information (such as treating physicians or mechanics) must be listed and designed as “non-retained” experts. The Court will consider granting extraordinary relief for non-retained expert witnesses who are uncooperative.

...Qualifications, mental impressions, facts known to the expert and opinions of the expert not disclosed in the expert’s report as shown in Exhibit F will not be permitted as trial testimony.

7. **All Exhibits are certified by the attorney(s) as being in existence, pre-marked by the attorneys and listed as Exhibit G and that opposing counsel has been provided copies of the proposed exhibits, electronic versions are satisfactory, concurrently with the filing of this Pretrial Submission. Simply submitting a placeholder term such as “Medical Records” or “Photographs” will not suffice and will result in the exclusion of the non-specifically identified exhibits.**

...The Court utilizes the provisions of Rule 103 Tex.R.Evid to rule on all exhibits, the legal admissibility of testimony and all other evidence as part of pretrial procedures. The attorneys must present all evidentiary objections to the Court during the final pretrial conference or objection is waived.

*...After receipt of opponent's Final Pretrial Submission, the Parties must confer in an attempt to resolve all objections concerning exhibits. All objections not resolved by agreement must be filed with the Court **four days before** the Pretrial Conference and called to the attention of the Court for ruling at the final pretrial conference. All objections not timely filed and all objections for which a specific ruling is not timely obtained are waived.*

...The Parties must pre-mark all exhibits and list them. The adoption of opposing counsel's exhibits is permitted, but such adoption shall constitute waiver of any objection to such exhibit.

...The Court expects the parties (jointly or separately) to produce a final list of premarked exhibits to be admitted into evidence by the Court at the commencement of the trial.

- 8. The Depositions that will be offered into evidence at the trial are listed in Exhibit H. Included in this list are the depositions that will be offered into evidence (including witnesses who are available to testify at trial.) Shown and designated separately in Exhibit H are the depositions that may be offered of witnesses who are not reasonably expected to be present at trial.**

*...The Court will consider admission into evidence of summaries of depositions as permitted by Rule 1006, Tex. R. Evid. Such summaries must be fair and reasonable representations of the underlying testimony. Proposed written summaries should be presented to opposing counsel **seven days prior** to the date the Final Pretrial Submission is due to be filed so as to permit a reasonable time in which to examine and consider whether the summary is fair and reasonable. Objections must be in writing and presented to opposing counsel no later than **four days prior** to the date the Final Pretrial Submission is due to be filed. The proposed summary and the unresolved objections must be filed with the Final Pretrial Submission to be ruled upon at the Final Pretrial Conference, in default of which all objections are waived.*

*...All videotaped depositions as well as written depositions must be edited to include only relevant testimony, and the edited lines and pages proposed for use must be reduced to writing in the form of referenced page and line numbers and served on opposing counsel not less than **seven days before** the Final Pretrial Submission is due to be filed to enable counsel to make objections. The objecting party shall contact counsel for the opposing party in a good faith attempt to resolve all objections prior to the final pretrial conference and shall present written objections to the opposing counsel not less than **four days before** the Final Pretrial Submission is due to be filed. The objections must be filed with the Final Pretrial Submission, in default of which all objections are waived.*

- 9. The undersigned party certifies that all Written Discovery, including interrogatory answers, responses to requests for production, deposition testimony, affidavits submitted in connection with motions for summary judgment and information relating**

to expert witnesses have been supplemented as required by the Texas Rules of Civil Procedure.

10. The Motions listed in Exhibit I will be ruled upon by the Court at final pretrial conference if called to the Court's attention.
11. Estimated Time of Trial is shown on Exhibit J.
12. Attached as Exhibit K (and provided to the Court in Microsoft Word format) are the requested Jury Instructions and Questions (in a form ready to be presented to the jury).
13. Attached as Exhibit L is the amount in controversy ()
14. The party certifies that this dispute cannot be settled and all reasonable means of settlement have been exhausted prior to filing this Final Pretrial Submission. This further certifies that the original and copies were properly served on all counsel with a copy furnished to the trial judge.

Signed on _____

Attorney(s) for _____