

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,

Plaintiffs,

-v-

UNITED STATES DEPARTMENT OF COMMERCE, et al.,

Defendants.

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: 09/17/2018

18-CV-2921 (JMF)

SCHEDULING
ORDER

JESSE M. FURMAN, United States District Judge:

Plaintiffs' letter-motions to compel production of documents withheld or redacted on the ground of deliberative process privilege (Docket No. 299) and to compel Defendants to respond to interrogatories and produce documents (Docket No. 313) are GRANTED in part and DENIED in part to the extent discussed, and for the reasons given, on the record at the conference held on September 14, 2018.

As discussed at that conference, Defendants may submit a letter of no more than five single-spaced pages by **September 18, 2018** presenting their arguments, with appropriate citations to authority, with respect to why summary judgment practice is appropriate this case. In the same letter, Defendants shall also preview any arguments they would offer in a motion for summary judgment. Plaintiffs shall file any response, also not to exceed five pages, by **September 21, 2018 at 12:00 p.m.**

Unless and until the Court orders otherwise, it is ORDERED that trial in this matter will begin on **November 5, 2018 at 9:00 a.m.** Counsel should familiarize themselves with the Court's Individual Rules and Practices for Trials, available at http://nysd.uscourts.gov/cases/show.php?db=judge_info&id=1046. Contrary to its usual practice, the Court may hold trial (on some, if not all, days) from 9:00 a.m. to 5:00 p.m., and the parties are advised to plan accordingly.

As discussed on the record during the September 14, 2018 conference, **the trial date should be treated as a firm date.** Counsel should immediately confirm the trial date with any and all witnesses they anticipate calling and advise the Court if the date is a problem. If counsel fails to bring any such conflict to the Court's attention within the next three days, no adjournments will be granted on that basis.)

In addition, the following schedule shall govern the further conduct of pretrial proceedings in this case:

1. By **October 26, 2018**, the parties shall file a Joint Pretrial Order, including any and all

information relevant to the trial referenced in the Court's Individual Rules and Practices in Civil Cases (available at <http://nysd.uscourts.gov/judge/Furman>) with respect to Joint Pretrial Orders. At the same time, the parties shall each file a pretrial memorandum, not to exceed thirty-five pages, addressing the principal legal and factual issues for trial.

2. At the same time, the parties shall serve, *but not file*, affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person whom a party has been granted leave by the Court (pursuant to a letter motion) to call live at the hearing. The parties shall also serve, *but not file*, all deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis (with transcript citations) of those excerpts for each deposition.
3. At the same time, the parties shall provide the Court with an electronic copy of each exhibit sought to be admitted (with each filename corresponding to the relevant exhibit number — e.g., “PX-1,” “DX-1,” etc.) on either a CD-ROM or a flash drive. The parties shall also provide, by e-mail to the Court a Microsoft Word document listing all exhibits sought to be admitted. The list shall contain four columns labeled as follows:
(1) “Exhibit Number”; (2) “Description” (of the exhibit); (3) “Date Identified”; and
(4) “Date Admitted.” The parties shall complete the first two columns, but leave the third and fourth columns blank, to be filled in by the Court during trial.
4. Three business days after submission of the affidavits discussed above, counsel for each party shall file a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits.
5. By **October 31, 2018**, at **noon**, the parties shall file any reply memorandum of law to any memorandum filed with the Joint Pre-Hearing Order.
6. No later than **ten calendar days after the close of trial**, the parties shall each file Proposed Post-Trial Findings of Fact and Conclusions of Law. The Proposed Findings of Fact should be detailed and should include citations to the trial transcript and exhibits, and the Proposed Conclusions of Law shall include all law that the parties wish to submit to the Court. No later than **fifteen calendar days after the close of trial**, the parties may each file a memorandum, not to exceed fifteen pages, responding to the other side's Proposed Post-Trial Findings of Fact and Conclusions of Law.

It is hereby ORDERED that counsel for all parties shall appear for a conference on **October 17, 2018 at 3:30 p.m.**, in **Courtroom 1105** of the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York. No later than **October 15, 2018, at 5:00 p.m.**, the parties are directed to file a joint status letter describing the issues to be discussed at that conference or indicating that the conference is no longer necessary.

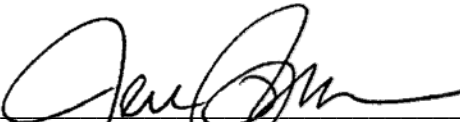
Finally, it is FURTHER ORDERED that counsel for all remaining parties shall appear for a final pretrial conference on **November 1, 2018 at 11:00 a.m.**, in **Courtroom 1105** of the

Thurgood Marshall Courthouse, 40 Centre Street, New York, New York. **The final pretrial conference must be attended by the attorneys who will serve as principal trial counsel.**

The Clerk of Court is directed to terminate Docket Nos. 299 and 313.

SO ORDERED.

Dated: September 17, 2018
New York, New York



JESSE M. FURMAN
United States District Judge