

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

		X
		:
Dennis McMillan		20-CV-2358 (JMF)
		:
	Plaintiff,	:
-v-		:
		<u>CIVIL CASE</u>
		<u>MANAGEMENT PLAN</u>
Zimmer, Inc., et al.		<u>AND SCHEDULING</u>
		<u>ORDER</u>
		:
	Defendant(s):	:
		X

This Civil Case Management Plan and Scheduling Order is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties [consent ☐ / do not consent **X**] to conducting all further proceedings before a United States Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences.
2. The parties [have **X** / have not ☐] conferred pursuant to Fed. R. Civ. P. 26(f).
3. Settlement discussions [have **X** / have not ☐] taken place.
4. *[If applicable]* Counsel have discussed an informal exchange of information in aid of early settlement and have agreed upon disclosure of the following information within \_\_\_\_ days/weeks:

N/A

5. Pursuant to Order No. 3 (ECF Doc. 51), the deadline to amend pleadings and join additional parties was **June 28, 2019**.
6. Pursuant to Order No. 3 (ECF Doc. 51), Plaintiffs' traditional Rule 26(a)(1) initial disclosures were satisfied by submitting a Plaintiff Preliminary Disclosure Form, and Defendants already served their master initial disclosures pursuant to Rule 26(a)(1).

7. The plaintiff(s) shall provide HIPAA-compliant medical records release authorizations to the defendant(s) no later than **October 24, 2024**.
8. Discovery
  - a. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York.
  - b. All case-specific fact discovery shall be completed no later than **February 14, 2025**.
  - c. The parties agree that there [is **X** / is no ☐ ] need for expert discovery.
  - d. All expert discovery, including reports, production of underlying documents, and depositions, shall be completed no later than **June 27, 2025**.
    - i. Plaintiff shall supplement the expert reports of his expert witnesses –  
– limited to addressing any additional discovery occurring from the date of this report – by **March 14, 2025**.
    - ii. Defendants shall serve their expert reports by **April 14, 2025**.
    - iii. All expert depositions shall be completed by **June 27, 2025**.
  - e. The parties should not anticipate extensions of the deadlines for fact discovery and expert discovery set forth in the foregoing Paragraphs. Relatedly, the parties should not make a unilateral decision to stay or halt discovery (on the basis of settlement negotiations or otherwise) in anticipation of an extension. If something unforeseen arises, a party may seek a limited extension of the foregoing deadlines by letter-motion filed on ECF. Any such motion must be filed before the relevant deadline and must explain why, despite the parties' due diligence, discovery could not be completed by the relevant deadline.
9. Interim Discovery Deadlines
  - a. Case-specific requests for production of documents shall be served by **November 15, 2024**.
  - b. Case-specific interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York shall be served by **November 15, 2024**.
  - c. Unless otherwise ordered by the Court, contention interrogatories pursuant to Rule 33.3(c) of the Local Civil Rules of the Southern District of New York must be served no later than thirty (30) days before the close of discovery. No other interrogatories are permitted except upon prior express permission of the Court.
  - d. Unless otherwise ordered by the Court, depositions of fact witnesses shall be completed by the date set forth in Paragraph 8(b).

- i. Absent an agreement between the parties or an order from the Court, depositions are not to be held until all parties have responded to initial requests for document production.
    - ii. There is no priority in deposition by reason of a party's status as a plaintiff or a defendant.
    - iii. Absent an agreement between the parties or an order from the Court, non-party depositions shall follow initial party depositions.
  - e. Unless otherwise ordered by the Court, requests to admit shall be served by no later than thirty (30) days before the close of discovery.
  - f. Any of the deadlines in Paragraphs 9(a) through (e) may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in Paragraph 8(b).
10. All motions and applications shall be governed by the Federal Rules of Civil Procedure, the Local Rules of the Southern District of New York, and the Court's Individual Rules and Practices (available at <https://nysd.uscourts.gov/hon-jesse-m-furman>).
  11. In the case of discovery disputes, parties should follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does not resolve the dispute, the party shall, in accordance with the Court's Individual Rules and Practices in Civil Cases, promptly file a letter-motion, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Any letter-motion seeking relief *must* include a representation that the meet-and-confer process occurred and was unsuccessful. Any opposition to a letter-motion seeking relief shall be filed as a letter, not to exceed three pages, within three business days. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, by order, by conference, or by telephone. **Counsel should seek relief in accordance with these procedures in a timely fashion; if a party waits until near the close of discovery to raise an issue that could have been raised earlier, the party is unlikely to be granted the relief that it seeks, let alone more time for discovery.**
  12. All counsel must meet in person for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.
  13. Absent good cause, the Court will not have summary judgment practice in a non-jury case. Summary judgment motions, if applicable, and any motion to exclude the testimony of experts pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, are to be filed within thirty (30) days of the close of fact or expert discovery (whichever is later). Unless otherwise ordered by the Court, opposition to any such motion is to be filed two (2) weeks after the motion is served on the opposing party, and a reply, if any, is to be filed one (1) week after service of any opposition.

14. Unless otherwise ordered by the Court, within thirty (30) days of the close of all discovery, or, if a dispositive motion has been filed, within thirty (30) days of a decision on such motion, the parties shall submit to the Court for its approval a Joint Pretrial Order prepared in accordance with the Court's Individual Rules and Practices and Fed. R. Civ. P. 26(a)(3). The parties shall also follow Paragraph 5 of the Court's Individual Rules and Practices for Civil Cases, which identifies submissions that must be made at or before the time of the Joint Pretrial Order, including any motions *in limine*.
15. If this action is to be tried before a jury, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be filed on or before the Joint Pretrial Order due date in accordance with the Court's Individual Rules and Practices. Jury instructions may not be submitted after the Joint Pretrial Order due date, unless they meet the standard of Fed. R. Civ. P. 51(a)(2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law shall be filed on or before the Joint Pretrial Order due date in accordance with the Court's Individual Rules and Practices.
16. Unless the Court orders otherwise for good cause shown, the parties shall be ready for trial two weeks after the Joint Pretrial Order is filed.
17. This case [is **X** / is not ☐ ] to be tried to a jury.
18. Counsel for the parties have conferred, and the present best estimate of the length of trial is **10 trial days**.
19. Other issues to be addressed at the Initial Pretrial Conference, including those set forth in Fed. R. Civ. P. 26(f)(3), are set forth below.

N/A

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TO BE FILLED IN BY THE COURT IF APPLICABLE:**

\_\_\_\_\_ shall file a motion for/to \_\_\_\_\_ no later than \_\_\_\_\_  
 \_\_\_\_\_. Any opposition shall be filed by \_\_\_\_\_. Any reply shall be filed by \_\_\_\_\_  
 \_\_\_\_\_.

The parties shall contact the Chambers of the Magistrate Judge assigned to this case on or before \_\_\_\_\_ in order to schedule settlement discussions under his/her supervision in or about \_\_\_\_\_.

The parties shall file a joint letter by \_\_\_\_\_ indicating whether they would like the Court to refer the case to the assigned Magistrate Judge and/or the Court mediation program for settlement purposes and, if so, approximately when they believe a settlement conference should be held.

The next pretrial conference is scheduled for February 27, 2025 at 9 a.m. \_\_\_\_\_ . Unless and until the Court orders otherwise, the conference will be held remotely by telephone in accordance with Paragraph 2.B of the Court's Individual Rules and Practices in Civil Cases. The parties should join the conference by calling the Court's dedicated conference line at (888) 363-4749 and using access code 542-1540, followed by the pound (#) key.

Absent leave of Court, by Thursday of the week prior to any future conference, the parties shall file on ECF a joint letter, not to exceed three (3) pages, regarding the status of the case. The letter should include the following information in separate paragraphs:

(1) A statement indicating whether the parties believe they can do without the pretrial conference altogether. If not, the Court will hold the pretrial conference, albeit perhaps at a different time. To that end, counsel should indicate in their joint letter dates and times during the week of the conference that they would be available for the teleconference;

(2) A statement of all existing deadlines, due dates, and/or cut-off dates;

(3) A brief description of any outstanding motions;

(4) A brief description of the status of discovery and of any additional discovery that needs to be completed;

(5) A list of all prior settlement discussions, including the date, the parties involved, whether any third-party (e.g., Magistrate Judge, mediator, etc.) was involved, and the approximate duration of such discussions, if any;

(6) A statement of whether or how the Court could facilitate settlement of the case (for example, through a(nother) settlement conference before the assigned Magistrate Judge or as part of the Court's Mediation Program);

(7) A statement of the anticipated length of trial and whether the case is to be tried to a jury;

(8) A statement of whether the parties anticipate filing motions for summary judgment; and

(9) Any other issue that the parties would like to address at the pretrial conference or any information that the parties believe may assist the Court in advancing the case to settlement or trial.

This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Further, the use of any alternative dispute resolution

mechanism does not stay or modify any date in this Order. Indeed, unless the Court orders otherwise, parties engaged in settlement negotiations must proceed on parallel tracks, pursuing settlement and conducting discovery simultaneously. Parties should not assume that they will receive an extension of an existing deadline if settlement negotiations fail.

Any application to modify or extend the dates herein (except as provided in Paragraph 9(f)) shall be made in a written application in accordance with Court's Individual Rules and Practices for Civil Cases and shall be made no fewer than two (2) business days prior to the expiration of the date sought to be extended. Absent exceptional circumstances, extensions will not be granted after deadlines have already passed.

SO ORDERED.

Dated: October 7, 2024

New York, New York



JESSE M. FURMAN  
United States District Judge

With apologies for any inconvenience, the pretrial conference scheduled for October 9, 2024, is hereby ADJOURNED to **October 15, 2024, at 3:15 p.m.** due to a death in the undersigned's family. In the meantime, the parties shall proceed with discovery consistent with this Case Management Plan. The parties should also note the date of the following pretrial conference on the previous page.

The Clerk of Court is directed to docket this in both 20-CV-2358 and 18-MD-2859.