UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYE YO, a civic organization based in Miami-Dade County, FLORIDA IMMIGRANT COALITION, INC., a Florida non-profit corporation, NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS, a Pennsylvania non-profit corporation, FLORIDA NEW MAJORITY, INC., a Florida non-profit corporation, and 1199SEIU UNITED HEALTHCARE WORKERS EAST, a Labor Union,

Plaintiffs,

v.

KEN DETZNER, in his official capacity as Florida Secretary of State,

Defendant.

Case No. 1:12-cv-22282-WJZ

Honorable Judge William J. Zloch

EXPEDITED MOTION TO MODIFY PRE-TRIAL SCHEDULING ORDER

As explained further in the attached Memorandum of Law in Support of Expedited Motion to Modify Pre-Trial Scheduling Order, Plaintiffs respectfully submit that certain scheduling changes in the Court's August 13 Order for Pre-Trial Conference (Dkt. 36) are necessary in order to:

1. Create a realistic opportunity for Plaintiffs to effectively litigate by mid-October those claims that require factual development;

2. Enable Plaintiffs to reserve for later resolution any claims that they conclude, based on the facts they receive over the next weeks, cannot be effectively litigated on the expedited schedule;

3. Permit amendment of pleadings at a time that will permit certainty that all of Plaintiffs' claims will presented in this case; and

4. Clarify an inconsistency in the scheduling orders regarding the timing of mediation.

Therefore, Plaintiffs respectfully move that this Court amend its August 13, 2012 Order for Pre-Trial Conference (Dkt. 36) to:

1. Extend the deadline for Plaintiffs to amend their Complaint until at least September 7, 2012;

2. Extend the close of mediation from August 6, 2012, until September 7, 2012;

3. Modify the procedures governing discovery so that responses to discovery must be provided within seven days from service (with service by email permitted) and so that motions to compel must be briefed on an expedited basis (allowing the recipient three days to respond and allowing the movant two days to reply) as described in Plaintiffs' August 9, 2012, submission (Dkt. 33);

4. Extend the close of discovery of evidence that can be used in the October hearing or trial from Saturday, September 15, 2012 – 20 days before the Pre-Trial conference – until September 27, 2012, while simultaneously shortening the time to file submissions in advance of the Pre-Trial conference accordingly; and

5. Re-designate the date currently set for final trial as the date for a potential preliminary injunction hearing and set a final trial date several months

after the November 6, 2012 general election, should that need arise, with discovery continuing to a date closer to trial.

Plaintiffs have conferred with the Defendant regarding the proposed amendments detailed in their motion. The parties agree on Plaintiffs' proposed amendment to the day by which to complete mediation – September 7, 2012. Defendant opposes all other requests in this motion. Defendant has represented that he will agree to respond to this motion on an expedited basis, and will file his response by no later than the close of the week.

Respectfully submitted,

Dated: August 15, 2012

By: /s/ John De Leon

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

Dated: August 15, 2012 By: /s/ John De Leon
John De Leon

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYE YO, a civic organization based in Miami-Dade County, FLORIDA IMMIGRANT COALITION, INC., a Florida non-profit corporation, NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS, a Pennsylvania non-profit corporation, FLORIDA NEW MAJORITY, INC., a Florida non-profit corporation, and 1199SEIU UNITED HEALTHCARE WORKERS EAST, a Labor Union,

Plaintiffs,

v.

KEN DETZNER, in his official capacity as Florida Secretary of State,

Defendant.

Case No. 1:12-cv-22282-WJZ

Honorable Judge William J. Zloch

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' EXPEDITED MOTION TO MODIFY PRE-TRIAL SCHEDULING ORDER

Plaintiffs support this Court's decision to conduct expedited proceedings in this case in an effort to enable their important claims regarding voter-discrimination to be resolved prior to the general election. However, Plaintiffs

respectfully submit that certain scheduling changes in the Court's August 13 Order for Pre-Trial Conference (Dkt. 36) are nonetheless necessary in order to:

> (1) Create a realistic opportunity for Plaintiffs to effectively litigate by mid-October those claims that require factual development;
>
> (2) Enable Plaintiffs to reserve for later resolution any claims that they conclude, based on the facts they receive over the next weeks, cannot be effectively litigated on the expedited schedule;
>
> (3) Permit amendment of pleadings at a time that will permit certainty that all of Plaintiffs' claims will be presented in this case; and
>
> (4) Clarify an inconsistency in the scheduling orders regarding the timing of mediation.

Plaintiffs have conferred with the Defendant regarding the proposed amendments detailed in their Motion. The parties agree on Plaintiffs' proposed amendment to the day by which to complete mediation – September 7, 2012. Defendant opposes all other requests in this Motion. Defendant has represented that he will agree to respond to this Motion on an expedited basis, and will file his response by no later than the close of the week.

DISCUSSION

Specifically, Plaintiffs respectfully submit that the following changes are warranted to this Court's scheduling order of August 13, 2012.

First, in order to permit the parties to conduct effective discovery, this Court should clarify that responses to discovery will be provided within seven days from service (with service by email permitted), and that motions to compel will be

briefed on an expedited basis, as Plaintiffs proposed in their August 9 filing.[1] Plaintiffs also request that the Court extend the final date for discovery of evidence that can be used in the October hearing or trial from Saturday, September 15, 2012 (20 days before the Pre-Trial Conference), until September 27, 2012, to maximize the time available for discovery to be used in the October hearing or trial.[2] That would coincide with the date currently set for filings due in advance of the Pre-Trial Conference. Because Pre-Trial filings may depend upon the results of discovery, Plaintiffs propose shortening the time prior to the Pre-Trial Conference in which to file those motions so as to lengthen the time for discovery.

Currently, this Court's schedule provides that discovery will close twenty days before the October 5, 2012 Pre-Trial Conference, which is September 15, 2012. The schedule does not specify a time limit for discovery responses. If the ordinary 30-day discovery period were to apply, no party would have to respond to discovery requests submitted after today, August 15, 2012, as responses would be due after the close of discovery. Since the parties have not yet exchanged initial

[1] The Northern District of Florida is proceeding under a more relaxed schedule in the U.S. Department of Justice case after its denial of a temporary restraining order, but has nonetheless included in its scheduling order a requirement that Defendant produce certain discovery material on August 17, 2012, and September 14, 2012. *See* Ex. 1, Scheduling Order, Dkt. 43, No. 12-cv-00285 (N.D. Fla. Aug. 8, 2012).

[2] As Plaintiffs discuss below, they request that the dates designated for a final trial instead be designated for a preliminary injunction hearing with a final trial scheduled for a later date, after the November 6 general election.

disclosures, much less any discovery, this schedule should be amended. Assuming parties were to wait the full 30 days to respond to discovery requests, parties would:

1. Be unable to submit follow-up requests based on any information - obtained in discovery;

2. Have to take depositions before they received any documents;

3. Have to submit expert reports (under an expert disclosure deadline currently scheduled for September 14, 2012) without having received any documents; and

4. Would have little, if any, time to file motions to compel in response to any objections made at the end of the 30-day period, have them resolved, and obtain documents after resolution.

In addition, Plaintiffs would not be able to discover information about implementation of Defendant's planned use of the SAVE database. If Plaintiffs submit discovery after the State begins to implement its revised purge plan, the State's responses would not be due until after the close of the discovery period.

This Court should therefore set a seven-day time limit for parties to respond to discovery requests and an expedited schedule for briefing motions to compel, based on the details Plaintiffs proposed in their August 9 filing.[3] (Dkt. 33). The

[3] In his August 9 submission, Defendant proposed limiting the scope of discovery. (Dkt. 35). Plaintiffs do not oppose working with Defendant to reduce the burden on both parties regarding the scope of the discovery. In their August 9 submission, for example, Plaintiffs proposed a method for expedited resolution of burdensomeness objections. However, Plaintiffs oppose the limitation suggested by Defendant, which would have the effect of foreclosing Plaintiffs from obtaining

Plaintiffs also request that this Court extend the discovery period to September 27 for material that can be used in any October hearing or trial. That would provide a more realistic opportunity for Plaintiffs to obtain the information needed to litigate their fact-based claims prior to the Pre-Trial Conference, which is currently set for October 5, 2012.

Second, Plaintiffs respectfully urge this Court to redesignate October 5, 2012, as a date for a conference on a preliminary injunction hearing with the date for a final trial set at least several months after the November general election.[4]

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discovery related to all of their claims. It would, for example, foreclose Plaintiffs from obtaining discovery related to their claim that Defendant breached the National Voter Registration Act and Voting Rights Act by causing letters of potential ineligibility to be sent to registered voters. This claim is plainly encompassed in the Complaint. For example, the Complaint (Dkt. 1) specifically requests relief that includes "*instruct[ing] all Supervisors of Elections to send new notices to all persons on the Purge List explaining their rights as voters and assuring them that no lawful, eligible voter will be disenfranchised based on failure to provide documentary proof of United States Citizenship.*" As the United States explained in its Rule 26 Report in the Northern District, "*eligible citizens who received mailings questioning their citizenship based on this same database matching process have been injured and may be confused about their ability to cast a ballot in upcoming elections*." *See* Report of Rule 26 Initial Conference, Dkt. 42 at 10, No. 12-cv-00285 (N.D. Fla. Aug. 1, 2012).

[4] In Plaintiffs' August 9 filing, they proposed a briefing schedule for a preliminary injunction motion. Plaintiffs recognize, however, that they did not propose a date for their first brief. With respect to Plaintiffs' fact-based claims, the time when it will make sense for them to file that brief will turn on how quickly Defendant provides information in discovery. However, if Defendant forces Plaintiffs into a position where they are unable to file a preliminary motion until their proposed date for close of discovery – September 27 – that date will still allow time to conduct an expedited hearing prior to the currently scheduled

While Plaintiffs hope to be able to obtain sufficient evidence to fully litigate all of their claims prior to the November election, it may turn out that this is not possible even with the expedited discovery Plaintiffs propose. Some of Plaintiffs' claims are heavily dependent on the facts.[5] For example, Plaintiffs' discrimination claims under § 2 of the Voting Rights Act and § 8 of the NVRA require attention to data collection, as well as expert analysis. Moreover, fact-based claims related to Defendant's planned use of the SAVE database likely will require information regarding actual implementation of those plans that currently is unavailable. Plaintiffs may ultimately conclude that they do not want to compromise one or more of their important claims by trying them on the limited record developed in the short time between now and October. Plaintiffs should have the option of continuing discovery with a post-election trial date on these claims. Indeed, the Northern District of Florida is proceeding with a schedule on a much simpler claim under § 5 of the Voting Rights Act in which a trial would occur after a January 3

October 5 Pre-Trial Conference, and certainly to do so prior to the November general election, a key part of relief Plaintiffs seek.

[5] At least one of Plaintiffs' claims – Plaintiffs' claim under 42 U.S.C. § 1973gg-6(c)(2)(A) – that any purge effort within 90 days of a federal election violates the NVRA – is not a claim that is as heavily reliant on factual development as other claims. It will certainly be possible to resolve that claim before the general election and likely will be possible to resolve that claim without any trial at all and to do so before the date this Court has currently set for a Pre-Trial Conference. However, before filing a motion on that claim, Plaintiffs first want to amend their Complaint for the reasons described below.

pre-trial conference; the preliminary injunction hearing is not set. Plaintiffs respectfully submit that claims as important as theirs should not be compromised by an under-developed factual record. For these reasons, Plaintiffs respectfully propose turning the currently scheduled pre-trial dates (with trial to follow) into dates for a potential preliminary injunction hearing with a trial date set later. Plaintiffs also propose that the discovery period for evidence used in this trial be extended to just before that trial date.[6]

Third, Plaintiffs request moving the date to amend the Complaint until at least September 7, 2012. *See infra* at 10 n.5. This will help ensure that Plaintiffs are able to litigate their claim for relief against Defendant's planned use of the SAVE database to purge additional voters prior to the general election, rather than having to file a new case. It will also help ensure that the parties and this Court do not waste time in this case on a sideshow over whether Plaintiffs' claims fall within the scope of their original Complaint and whether the notice Plaintiffs have previously provided regarding Defendant's violations satisfies the 20-day notice requirement set forth in the NVRA with respect to the entirety of Defendant's efforts to purge non-citizens from the rolls.

[6] The discovery period set by the Northern District of Florida extends to January 3, 2013. *See* Ex. 1, Scheduling Order, Dkt. 43, No. 12-cv-00285 (N.D. Fla. Aug. 8, 2012).

In both the July 23, 2012 status conference and in his August 9 filing regarding a proposed schedule, Defendant asserted that Plaintiffs' Complaint relates only to Defendant's actions in the first half of 2012 that led to the removal of some registered voters from the rolls and does not encompass

1. Defendant's planned use of the SAVE database to remove additional registered voters prior to the general election, and

2. Registered voters who received letters questioning their eligibility as a result of Defendant's past actions but who were not ultimately removed from the voter rolls.

In addition, in his Answer, Defendant asserted as an affirmative defense that Plaintiffs had failed to comply with the requirement of 42 U.S.C. § 1973gg-9(b) that an aggrieved party must provide a State actor with 20-days' notice and an opportunity to cure an alleged NVRA violation prior to commencing legal action. Plaintiffs have already provided ample and sufficient notice to Defendant prior to his Answer in at least three ways: by sending specific letters giving such notice on May 14, 2012, and July 27, 2012; by initiating this litigation on June 19, 2012; and at a status conference related to this case on July 23, 2012. However, out of an abundance of caution as to whether that notice was sufficient – particularly with respect to Defendant's planned use of the SAVE database prior to the general election – and out of a concern that they would be forced to divert resources to litigate the scope and sufficiency of both their prior notice and prior Complaint, on August 3, 2012, Plaintiffs sent a renewed notification to Defendant specifically

outlining potential violations related to Defendant's planned use of the SAVE database, as well as reiterating the violations related to the prior steps Defendant had taken as part of the State's Purge Program.

Plaintiffs intend to amend their Complaint to set forth claims expressly encompassing Defendant's use of the SAVE database. Defendant has undoubtedly designed the important elements of his purge plan using the U.S. Department of Homeland Security's SAVE database. Plaintiffs had originally intended to amend their Complaint immediately after the 20 days have run. However, Plaintiffs would prefer to have an additional two weeks so that they can add information on the details of Defendant's planned use of SAVE (as some details have not yet been announced but Plaintiffs believe they may be announced over the next few weeks).

Under this Court's schedule, however, the deadline for amendment is August 22, 2012. This is one day *before* 20 days have run from the additional notice that Plaintiffs provided on August 3, 2012. Thus, absent an alteration of the amendment deadline, Plaintiffs will either have to amend before the new 20-day period has run, likely leading to protracted pre-trial motions related to the scope and viability of Plaintiffs' claims; or will instead have to refrain from amending their Complaint in this case and file a second suit after August 23, 2012, that includes claims related to Defendant's prospective use of the SAVE database. Either course would lead to inefficiency at best. The far better outcome would be

to extend the deadline for amendment by at least two weeks, which would eliminate any question about the 20-day notice period and would also permit further clarity regarding the details of Defendant's plans.[7]

Finally, Plaintiffs request that the Court clarify a possible typographical or clerical error in its Order. This Court required that mediation be completed 60 days prior to October 5, 2012, which is August 6, 2012. *See* Dkt. 37. Plaintiffs believe that mediation may assist in the resolution of this dispute, and therefore request this Court set a new deadline for the parties to engage in such efforts in accordance with the terms of the August 13, 2012 Order of Referral to Mediation. Plaintiffs are prepared to engage in mediation with dispatch.

[7] Indeed, as Plaintiffs discuss above, they believe the final trial date should be set significantly after the November general election, meaning that the amendment date should be set long enough after the general election in order to permit amendments based on facts that develop leading up to that election. This Court could still set a second, earlier date that would serve as the final date for the addition of any claims or parties that would be evaluated in the October time frame that this Court has currently set for trial and that Plaintiffs believe should instead be set for a preliminary injunction hearing. This date would still need to be some period after the 20-day notice period has passed, and Plaintiffs have proposed September 7 as a date that would make sense.

Dated: August 15, 2012

Respectfully submitted,

By: /s/ John De Leon

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Attorneys for Plaintiffs

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v. CASE NO. 4:12cv285-RH/CAS

STATE OF FLORIDA and KEN DETZNER, Secretary of State, in his official capacity,

Defendants.

_____/

SCHEDULING ORDER

This order is entered upon consideration of the parties' Federal Rule of Civil Procedure 26(f) scheduling report. The attorneys should note paragraphs 13 and 14, which depart from the Local Rules.

IT IS ORDERED:

1. The defendant must produce to the plaintiff by August 17, 2012, the list of more than 180,000 registered voters as originally compiled, all revisions of that list, the sample list of more than 2,600 voters provided to one or more supervisors of election, all revisions of the sample list, and all records in the defendant's possession or under his control identifying one or more of the listed

registrants who have been removed from a voting roll. A privilege list must be provided by August 17, 2012, for any document withheld on a claim of privilege or work-product protection. The defendant must answer any interrogatory asking the names and counties of removed voters by the later of (a) August 17, 2012, or (b) seven days after service of the interrogatory, without a three-day extension based on electronic service of the interrogatory.

2. The clerk must set a scheduling conference for the first available date on or after January 3, 2013. The trial will be set at that scheduling conference. The scheduling conference will be conducted by telephone unless both sides advise the courtroom deputy clerk by December 21, 2012, that they wish to have the scheduling conference conducted in person. The parties must confer and file by December 21, 2012, a joint report, or separate reports, setting out their positions on the schedule for further proceedings.

3. The discovery deadline is extended to December 17, 2012.[1]

[1] The defendant says no discovery is needed or should be allowed. That is incorrect. Thus, for example, the plaintiff asserts that eligible voters have been, or at least may have been, improperly removed from the voting rolls in violation of federal law. The plaintiff is entitled to take discovery on this issue. The plaintiff asks for a discovery deadline of October 19, 2012. The parties are free to conduct and indeed complete discovery by that date, but this order moves the deadline back to allow discovery after the election, and provides more than 30 days so that post-election discovery may include interrogatories or production requests. If there is discovery that is needed for resolution of this case but that does not relate just to this election, the parties—who will have quite enough to do before the election—may choose to conduct the discovery afterward.

4. The joint scheduling report, ECF No. 9, will control the matters on which, as set out in the joint scheduling report, the parties have agreed, except to the extent of any conflict with this order. On matters not addressed in this order or in agreements set out in the joint scheduling report, the Initial Scheduling Order remains in effect.

5. A pleading may be amended only by the deadline set out in the joint scheduling report or on a motion showing good cause for not amending by that date. And when the Federal Rules of Civil Procedure allow an amendment only with leave of court, a pleading may be amended only with leave of court.

6. The deadline for Federal Rule of Civil Procedure 26(a)(1) disclosures is August 17, 2012. The deadline for Rule 26(a)(2) disclosures is September 14, 2012, but the deadline is October 5, 2012, for 26(a)(2) disclosures for evidence intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C).

7. Rule 26 must be supplemented promptly after learning information calling for supplementation and in time to ensure the opposing party is not prejudiced by any failure to supplement immediately after the information was or with diligence should have been discovered.

8. Documents and electronically stored information produced during discovery must be produced in the format proposed by the plaintiff in the joint scheduling report or as otherwise agreed by the parties.

9. The discovery limits are those set out in the Federal Rules of Civil Procedure except that each side may take up to 15 depositions; additional depositions may be taken only be agreement or with leave of court.

10. Privilege lists must be provided as required by the governing law unless the parties agree otherwise.

11. The parties may request entry of a confidentiality order setting out specified terms at any time. Unless amended by a further order, this section will apply.

(a) Information disclosed during discovery that the disclosing party asserts should remain confidential (referred to in this paragraph as "stamped confidential information") may be used only in connection with this litigation, must not be used for any other purpose, and must not be disclosed to anyone other than (i) an attorney of record; (ii) a person who is assisting in this litigation and is employed by—or employed by the same employer as—an attorney of record; (iii) an expert witness or potential expert witness who has a reasonable need for the information in connection with the person's role in this lawsuit; or (iv) an employee of a party, to the extent, and only to the extent, necessary to allow the employee to assist in

the processing of this lawsuit, including (for a management employee) by consulting with the party's attorney regarding strategy or settlement.

(b) A document, including a transcript, that includes stamped confidential information must be bear a prominent legend stating "CONFIDENTIAL—SUBJECT TO PROTECTIVE ORDER IN CASE NO. 4:12cv285, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA." To the extent feasible, a separate transcript must be prepared for a portion of a deposition or other proceeding that includes stamped confidential information, and a document that includes both confidential and nonconfidential information must be redacted or separately bound, so that treatment of information as stamped confidential information is restricted to information that properly should be so treated.

(c) A person to whom stamped confidential information is disclosed must be made aware of this order and must read it prior to receiving the information, and a person to whom stamped confidential information is disclosed under paragraph (a)(iii) or (a)(iv) must sign an acknowledgment prior to receiving the information stating:

> I have read and understand the confidentiality provisions set out in section 8 of the order entered in this lawsuit on August 8, 2012. I agree to abide by the provisions. I agree not to use stamped confidential information for any purpose other than to assist in the preparation of this lawsuit. I agree not to disclose stamped confidential information to anyone except as authorized by the order

> of August 8, 2012, or by the court's further order. I understand that violation of the order may be punishable as contempt of court and may result in sanctions, including imprisonment.

The attorney of record for the party affiliated with the person receiving the disclosure must maintain the signed original of the acknowledgment.

(d) This order does not restrict the use of stamped confidential information by anyone who has obtained or later obtains the information other than as a result of formal or informal discovery in this litigation.

(e) No party or attorney may designate information as stamped confidential information without a good faith basis for asserting that the information is privileged or a trade secret or that its disclosure would create a risk of significant injury to legitimate privacy interests of a party or nonparty.

(f) This order does not restrict public access to information filed in the record for consideration by the court on any issue.

12. The deadline for filing summary-judgment motions is 21 days after the discovery deadline, but *they should be filed at the earliest appropriate time. It is rarely necessary that such motions await the completion of all discovery.*

13. Local Rule 56.1, which addresses summary-judgment procedures, will not apply in this case. The following procedures will apply instead:

(a) A party who moves for summary judgment must file at the same time a memorandum of up to 25 pages and any supporting evidence not already in the

record. The memorandum must include a statement of facts generally in the form that would be appropriate in an appellate brief—not a statement of undisputed facts in the form specified in Local Rule 56.1. A statement of facts must not be set out in a separate document.

(b) An opposing party must file within 21 days—without a three-day extension based on the manner in which the motion is served—a memorandum of up to 25 pages and any opposing evidence not already in the record. The opposing party must not file a separate document responding to the moving party's statement of facts.

(c) The moving party may file a reply memorandum of up to 10 pages. The deadline for a reply memorandum is the earlier of (a) seven days after the opposing memorandum is filed—without a three-day extension based on the manner in which the opposing memorandum is served—or (b) two days before the pretrial conference.

(d) *Each memorandum must include pinpoint citations to the record evidence supporting each factual assertion.*

(e) The page limit for a memorandum may be increased by an agreement of the parties or on a motion showing good cause, but the parties should take note: a longer memorandum is usually less persuasive, not more.

(f) A motion may be resolved against a party without a hearing at any time after the party has had an opportunity to file a memorandum and materials under this paragraph. If a motion has not been resolved and a party has filed a separate request for a hearing, the clerk must set a hearing. The hearing must be set for an available date at least two days after the due date for the reply memorandum. The hearing will be conducted by telephone if, at least two days before the hearing, a party so requests. The hearing may be combined with the pretrial conference if doing so will not delay the hearing by more than two weeks.

14. If attorney's fees are awarded, the lodestar will be determined based only on hours for which contemporaneous time records—in the form required by Local Rule 54.1—were made and retained. But the records must not be filed with the clerk until necessary in connection with a motion to award fees; the Local Rule 54.1 requirement to file the records with the clerk each month will not apply in this case. An attorney must disclose to another party on request the total number of hours devoted to the case for any month by attorneys and other time keepers.

15. Deadlines will be determined based on this order (including the joint scheduling report to the extent made applicable by this order), other applicable orders, and the governing rules. Docket entries made by the clerk of the court are for the clerk's internal use and are not controlling.

16. By a separate Order for Pretrial Conference to be issued later, a deadline will be set for an attorney conference leading to the filing of a pretrial stipulation and related papers. The deadline for the attorney conference (as established by the Order for Pretrial Conference) also will be the deadline for disclosures under Federal Rule of Civil Procedure 26(a)(3). The deadline for 26(a)(3) objections is seven days later.

17. Any motion in limine or other pretrial motion must be served sufficiently in advance of the pretrial conference to allow consideration of the motion at or prior to the pretrial conference.

18. A party may move for an order requiring mediation. But no mediation requirement is imposed at this time.

SO ORDERED on August 8, 2012.

s/Robert L. Hinkle
United States District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 15, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

Dated: August 15, 2012 By: /s/ John De Leon
John De Leon