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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

[PLAINTIFF(S)]

Plaintiff (s),

-vs-

[DEFENDANT(S)]

Defendant(s).

JULIEN XAVIER NEALS, U.S.D.J.

Civil Action No.:

**FINAL PRETRIAL ORDER**

**THIS MATTER** having come before the Court for a final pretrial conference pursuant to Fed. R. Civ. P.16; and \_\_\_\_\_ having appeared for Plaintiff(s), and \_\_\_\_\_ having appeared for Defendant(s); and counsel all having been notified that:

(1) a [bench/jury] trial in this matter has been scheduled before the Honorable Julien Xavier Neals, U.S.D.J., on \_\_\_\_\_ [date] \_\_\_\_\_;

(2) the pretrial submissions detailed in ¶¶ 4, 20, and 21 below are to be submitted no later than four (4) weeks prior to trial (unless otherwise ordered by the Court) or they will be deemed waived; and

(3) a Pre-trial Housekeeping Conference is scheduled before the Honorable Julien Xavier Neals, U.S.D.J. on \_\_\_\_\_ [date] \_\_\_\_\_;

Accordingly, the following Final Pretrial Order is hereby entered:

1. **JURISDICTION** [The parties shall identify the basis for the Court’s jurisdiction.]
2. **NATURE OF ACTION** [The parties shall provide a brief description of the nature and background of the action.]

3. **PATENT INFRINGEMENT SUITS ONLY - THE PARTIES' CONTENTIONS**

[Plaintiff shall provide an identification and brief description of its contentions, including at least the following information:]

- A. The specific patent claims to be asserted at trial;
- B. The specific products to be accused of infringement at trial;
- C. Whether the patentee intends to rely on the doctrine of equivalents to establish infringement for any claim;
- D. Whether the patentee intends to assert indirect infringement, and, if so, under what theory (i.e., contributory infringement and/or inducement) and as to which claims and products;
- E. The type of infringement damages to be sought (i.e., lost profits, reasonable royalty, or both); and
- F. If the accused infringer asserts that one or more of the asserted patent claims is obvious, whether the patentee intends to rely on any "secondary indicia" of non-obviousness to rebut this contention, and if so, which specific indicia.

[Defendant shall provide an identification and brief description of its contentions, including at least the following information:]

- A. Whether the accused infringer intends to assert that one or more of its products does not infringe one or more asserted claims; and
- B. Whether the accused infringer intends to assert that one or more of the asserted patent claims is invalid, and, if so, then:
  - 1. The specific patents, publications, devices, or other prior art to be asserted at trial as anticipating or rendering obvious one or more of the asserted claims;
  - 2. Whether the accused infringer will assert at trial that one or more asserted claims is invalid under 35 U.S.C. § 101; and
  - 3. Whether the accused infringer will assert at trial that one or more asserted claims is invalid under 35 U.S.C. § 112 and, if so, the specific grounds to be asserted.

4. **PENDING/CONTEMPLATED MOTIONS** [Set forth all pending or contemplated motions. Judge Neals anticipates that the pending/contemplated motions will be limited to *in limine* motions. Judge Neals's judicial preference is to have all discovery, dispositive and *Daubert* motions decided well in advance of the final pretrial conference unless otherwise directed by the Court. **ALL IN LIMINE MOTIONS SHALL BE FULLY BRIEFED AND FILED NO LATER THAN FOUR (4) WEEKS PRIOR TO TRIAL OR AS OTHERWISE**

**ORDERED BY THE COURT.** Only those motions listed herein will be entertained prior to trial.]

5. **STIPULATION OF FACTS** [Set forth in numbered paragraphs all uncontested facts, including all answers to interrogatories and admissions, to which there is agreement among the parties.]
6. **JUDICIAL NOTICE** [Include a short explanation and legal citation for Court's authority to take judicial notice, including whether the request is made pursuant to F.R.E. 201(b)(1) or (b)(2). Objections shall also include a short explanation and legal citation in support of the opposition. If the parties' position(s) cannot be set forth succinctly, then issues concerning judicial notice should be addressed in a motion *in limine*.]
  - A. Plaintiff requests that the Court take judicial notice of the following facts:
  - B. Defendant objects to the taking of judicial notice for the following reasons:
  - C. Defendant requests that the Court take judicial notice of the following facts:
  - D. Plaintiff objects to the taking of judicial notice for the following reasons:
7. **PLAINTIFF'S CONTESTED FACTS** [Plaintiff must state contested facts separately for each Defendant. Proof shall be limited at trial to the contested facts set forth below. Failure to set forth any contested facts shall be deemed a waiver thereof.]
  - A. Plaintiff intends to prove the following contested facts with regard to liability:
  - B. Plaintiff intends to prove the following contested facts with regard to damages [include each item of damages, the amount of each item, and the factual basis for each item and, if punitive damages are claimed, the facts upon which plaintiff will rely to establish punitive damages]:
8. **DEFENDANT'S CONTESTED FACTS** [Stated separately for each plaintiff. Proof shall be limited at trial to the contested facts set forth below. Failure to set forth any contested facts shall be deemed a waiver thereof.]
  - A. Defendant intends to prove the following contested facts with regard to liability:
  - B. Defendant intends to prove the following contested facts with regard to damages [include the factual basis for each defense against Plaintiff's claims for damages]:
9. **PLAINTIFF'S WITNESSES** [Aside from those called for impeachment purposes, only those witnesses whose names and addresses are listed below will be permitted to testify at trial.]
  - A. On liability, Plaintiff intends to call the following witnesses who will testify in accordance with the following summaries:

- B. On damages, Plaintiff intends to call the following witnesses who will testify in accordance with the following summaries:
- C. Defendant objects to the following witnesses for the reasons stated [If there are no objections to any of the witnesses, Defendant shall so state that in this portion of the Order]:

**10. DEFENDANT’S WITNESSES** [See instructions above.]

- A. On liability, Defendant intends to call the following witnesses who will testify in accordance with the following summaries:
- B. On damages, Defendant intends to call the following witnesses who will testify in accordance with the following summaries:
- C. Plaintiff objects to the following witnesses for the reasons stated [If there are no objections to any of the witnesses, Plaintiff shall so state that in this portion of the Order]:

**11. EXPERT WITNESSES** [No expert shall be permitted to testify at trial unless identified below and a summary of the witnesses’ qualifications<sup>1</sup> and a copy of their report is attached hereto. The summary may be read into the record at the time the expert takes the stand, and no opposing counsel shall be permitted to question the expert’s qualifications unless the basis of the objection is set forth herein. Additionally, each party shall submit in writing to the Court and to opposing counsel any hypothetical questions to be put to an expert witness on direct examination.]

- A. Plaintiff’s Expert Witness(es) are:
- B. Defendant’s objection to the qualifications of Plaintiff’s Expert Witness(es) are (the objections shall be referenced to the name of each listed expert):
- C. Defendant’s Expert Witness(es) are:
- D. Plaintiff’s objections to the qualifications of Defendant’s Expert Witness(es) are (the objections shall be referenced to the name of each listed expert):

**12. LAY OPINIONS** [Include a short explanation and legal citation for the Court’s authority to permit the opinion. Objections shall also include a short explanation and legal citation in support of the opposition. If the parties’ position(s) cannot be set forth succinctly, then issues concerning lay opinion testimony should be addressed in a motion *in limine*.]

- A. Plaintiff requests that the Court permit the following witness(es) to provide the following lay opinion(s):

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<sup>1</sup> If the parties stipulate to an expert's qualifications, there is no need to attach a summary of the witnesses’ qualifications.

- B. Defendant objects to the lay opinion testimony for the following reasons:
- C. Defendant requests that the Court permit the following witness(es) to provide the following lay opinion(s):
- D. Plaintiff objects to the lay opinion testimony for the following reasons:

**13. PLAINTIFF'S DEPOSITIONS** [List, by page and line, all deposition testimony to be offered into evidence. All irrelevant and redundant matters and all colloquy between counsel must be eliminated. Deposition testimony to be used solely for impeachment purposes need not be listed.]

- A. On liability Plaintiff intends to read into evidence the following:
- B. On damages Plaintiff intends to read into evidence the following:
- C. Defendant objects to the deposition testimony set forth above for the reasons stated:

**14. DEFENDANT'S DEPOSITIONS** [See instructions above.]

- A. On liability Defendant intends to read into evidence the following:
- B. On damages Defendant intends to read into evidence the following:
- C. Plaintiff objects to the deposition testimony set forth above for the reasons stated:

**15. EXHIBITS** [[Except for exhibits the need for which could not reasonably have been foreseen or which are used solely for impeachment purposes, only the exhibits set forth on the exhibit list attached hereto may be introduced at trial. Any objection to an exhibit, and the reason for said objection, must be set forth below or it shall be deemed waived. All parties hereby agree that it will not be necessary to bring in the custodian of any exhibit as to which no such objection is made. Exhibits must be physically pre-marked with an exhibit sticker corresponding to the designation in the attached exhibit lists.]

- A. Plaintiff's Exhibits: Plaintiff intends to introduce into evidence the exhibits listed on the attached exhibit list (list by number with a description of each exhibit):
- B. Defendant objects to the introduction of Plaintiff's exhibit (set forth number of exhibit and grounds for objection):
- C. Defendant Exhibits: Defendant intends to introduce into evidence the exhibits listed on the attached exhibit list (list by number with a description of each exhibit):
- D. Plaintiff objects to the introduction of Defendant's exhibit (set forth number of exhibit and grounds for objection):

**16. LEGAL ISSUES** [Any issue not listed shall be deemed waived.]

- A. Plaintiff:
- B. Defendant:

**17. CHOICE OF LAW** [If there is any issue as to what state's law is applicable to any count of the Complaint, set forth the choice of law question. This issue shall be separately briefed in accordance with an order to be entered herewith.]

**18. STIPULATIONS REGARDING TRIAL PROCEDURES** [The parties shall identify stipulations regarding trial procedures (e.g., exchange of demonstratives, disclosure of deposition designations and objections, etc.)]

**19. MISCELLANEOUS** [Set forth any matters that require action or should be brought to the attention of the Court. Set forth any notice required to be given by the Federal Rules of Evidence.]

**20. JURY TRIALS** [Litigants should send to Chambers two (2) courtesy copies of the following materials. Submissions should be tabbed and spiral bound (not Velo-bound). The materials should also be sent to the Court in hard copy form and an electronic version, to Judge Neals's law clerk. These materials are due no later than four (4) weeks prior to trial (or as otherwise ordered by the Court). For clarification on the pre-trial submissions listed below, the parties are required to consult Section VII. of Judge Neals's Judicial Preferences and Procedures]

- A. Trial Briefs Each party shall submit to the Court and to opposing counsel a trial brief in accordance with Local Rule 7.2 (*SEE ATTACHED "RIDER ON LENGTH OF BRIEFS"*) with citations to authorities and arguments in support of its position on all disputed issues of law.
- B. Jury Charges Counsel must confer with each other before trial and submit joint requests to charge in hard copy form and an electronic version in Word format. Any additional proposed charges that could not be agreed upon should be submitted by the propounding party to the Court at the same time.
- C. Preliminary Statement of the Case Counsel shall confer and agree upon a joint preliminary statement of the case that the Court can read during jury selection as part of the Court's initial statements.
- D. Verdict Sheet Counsel shall submit to the Court a single proposed verdict sheet. If counsel cannot agree on a joint verdict sheet, counsel shall separately submit proposed verdict sheets at the same time.
- E. Juror Voir Dire The parties are required submit a single set of agreed-upon *voir dire* questions, not to exceed thirty (30).
- F. Exhibit List The parties shall prepare a joint trial exhibit list containing a description

of all exhibits. The list shall be divided into three columns: the first column will identify the exhibit; the second column will state the opponent's objection and contain a short statement citing the relevant rule and/or concept that supports the objection; the third column will contain the proponent's rationale for admissibility. The exhibits themselves are to be pre-marked and must include exhibit stickers. Additionally, the parties must prepare three copies of the bench book containing the exhibits that they expect to use.

**21. NON-JURY TRIALS** [The following materials should be submitted to the Court in the same manner as materials for jury trials, listed above. For clarification on the below, the parties are required to consult Section VII. of Judge Neals's Judicial Preferences and Procedures]:

- A. Trial Briefs Each party shall submit to the Court and to opposing counsel a trial brief in accordance with Local Rule 7.2 (SEE ATTACHED "RIDER ON LENGTH OF BRIEFS") with citations to authorities and arguments in support of its position on all disputed issues of law.
- B. Findings of Fact and Conclusions of Law Following a non-jury trial, proposed findings of fact and conclusions of law must be submitted to the Court within one week of the close of trial (or as otherwise ordered by the Court). Submitting litigants must include specific reference to testimonial or documentary evidence in support of the proposals.
- C. Hypothetical Questions If any hypothetical questions are to be put to an expert witness on direct examination, they shall be submitted to the Court and opposing counsel.

**22. TRIAL COUNSEL** [Each party shall identify the names, law firms, addresses, telephone numbers, and email addresses for the attorneys who will try the case on behalf of that party.]

**23. BIFURCATION** [If any party intends to request phasing, bifurcation, or other procedure concerning the trial length or ordering of evidence, that party shall include any such request herein and explain the basis for the request.]

**24. ESTIMATED LENGTH OF TRIAL** [Each party shall specify the number of hours that it contends is appropriate for each party for each of the following: (a) *voir dire*; (b) opening statements; (c) presentation of evidence for liability; (d) presentation of evidence for damages; (e) closing arguments.]

**\*NOTE:** Failure to comply with any of the above instructions may subject the non-complying party to sanctions. **AMENDMENTS TO THIS PRETRIAL ORDER WILL GENERALLY NOT BE PERMITTED ABSENT GOOD CAUSE SHOWN. THE COURT MAY FROM TIME-TO-TIME SCHEDULE CONFERENCES AS MAY BE REQUIRED EITHER ON ITS OWN MOTION OR AT THE REQUEST OF COUNSEL.**

**CONCLUDING CERTIFICATION**

*(Please retype the following statement above counsel's signatures as illustrated below.)*

We hereby certify by the affixing of our signatures to this Final Pretrial Order that it reflects the efforts of all counsel and that we have carefully and completely reviewed all parts of this Order prior to its submission to the Court. Further, it is acknowledged that amendments to this Joint Final Pretrial Order will not be permitted except where the Court determines that manifest injustice would result if the amendment is not allowed.

Attorney(s) for Plaintiff(s):

Attorney(s) for Defendant(s):

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\_\_\_\_\_

Entry of the foregoing Joint Final Pretrial Order is hereby APPROVED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
United States Magistrate Judge

**(EXHIBITS LIST FOLLOWS)**



### **RIDER ON LENGTH OF BRIEFS**

The attention of the parties is directed to Local Rule 7.2(b). Briefs “shall not exceed 40 ordinary typed pages\*\*\*” (emphasis added). This page limitation shall be strictly enforced.

When submitting a brief in accordance with Local Rule 7.2(b), a party may request special permission to submit an additional brief on any point or points deemed to need additional pages of argument. This request must be made by letter not to exceed two ordinary typed or printed pages and must be submitted with the brief.

The Court shall, in its sole discretion, decide whether to allow additional briefing on review of the party’s Local Rule 7.2(b) brief and letter.

The Court also reserves the right, in its sole discretion, to require additional briefing on any point or points after review of the written submissions of the parties or oral argument.