FOR THE NINTH JUDICIAL CIRCUIT COURT
IN AND FOR ORANGE COUNTY, FLORIDA

SECTION 1 - PHILOSOPHY, SCOPE AND GOALS

1.1 - Citation to Procedures. These Business Court Procedures shall be known and cited as the Business Court Procedures. They may also be referred to in abbreviated form as "BCP" or "Business Court Procedures," e.g., this section may be cited as "BCP 1.1."

1.2 - Purpose and Scope. The Business Court Procedures are designed to facilitate the proceedings of cases in the Business Court Subdivision of the Civil Division of the Ninth Judicial Circuit Court of Florida ("Business Court"). The Business Court Procedures shall apply to all actions in the Business Court.

1.3 - Goals. The Business Court Procedures are intended to provide better access to court information for litigants, counsel and the public; increase the efficiency and understanding of court personnel, counsel and witnesses; decrease costs for litigants and others involved in the court system; and facilitate the efficient and effective presentation of evidence in the courtroom. The Business Court Procedures shall be construed and enforced to avoid technical delay, encourage civility, permit just and prompt determination of all proceedings and promote the efficient administration of justice.

1.4 – Professionalism. The Business Court directs the reader's attention to BCP 14 of the Business Court Procedures concerning decorum and professionalism standards for the Business Court. The Business Court expects the highest level of professionalism and full compliance with BCP 14 from practitioners and their clients.

1.5 - Integration with Other Rules. The Business Court Procedures are intended to supplement, not supplant, the rules adopted by the Supreme Court of Florida. Should any conflict be deemed to exist between the Business Court Procedures and the rules adopted by the Supreme Court of Florida, then the rules adopted by the Supreme Court of Florida shall control.

SECTION 2 - CASE FILING, ASSIGNMENT, TRACKING AND IDENTIFICATION

2.1 - Cases Subject to the Business Court. The principles set out in Amended Administrative Order 2019-08-01, which is located on the Business Court Website at https://www.ninthcircuit.org/sites/default/files/2019-08-01%20-%20Amended%20Order%20Regarding%20Business%20Court.pdf shall govern the assignment of cases to the Business Court.

2.2 - Case Identification Numbers. On assignment of any matter to the Business Court, the matter shall retain the civil action number assigned to it by the Clerk of Courts.

SECTION 3 – VIDEOCONFERENCING AND TELEPHONE APPEARANCES

3.1 - Videoconference by Agreement. By mutual agreement, counsel may arrange for any proceeding or conference to be held by videoconference by coordinating a schedule for such hearing that is convenient with the Business Court. All counsel and other participants shall be subject to the same rules of procedure and decorum as if all participants were present in the courtroom.

3.2 - Responsibility for Videoconferencing Facilities. The parties and/or counsel wishing to attend by videoconference are responsible for obtaining all communications facilities and arranging all details as may be required to connect and interface with the videoconferencing equipment available to the Business Court. The Business Court will endeavor to make reasonable technical assistance available to the parties and/or counsel, but all responsibility for planning and executing all technical considerations required to successfully hold a videoconference shall remain solely with the parties and/or counsel wishing to attend by videoconference. The Ninth Circuit's Video Conferencing Policy is available at the Business Court page on the court's website at: https://www.ninthcircuit.org/sites/default/files/VideoConferencePolicy.pdf.

3.3 - Allocation of Videoconferencing Costs. In the absence of a contrary agreement among the parties, the parties and/or counsel participating by videoconference shall bear their own costs of participating via this method.

3.4 Court Reporter. Where any proceeding is held by videoconference, the court reporter transcribing such proceeding will be present in the same room as the judge presiding over the proceeding.

3.5 - Exchange of Exhibits and Evidence to be Used in Videoconference Hearing. Any exhibits or evidence to be used in a videoconference hearing must be provided to opposing counsel and to the court three business days prior to the hearing. All exhibits or evidence so provided shall bear exhibit tags marked with the case name, case number, identity of the propounding party and an identification number. Any objections to any exhibit or evidence must be provided to the court in writing at least one day in advance of the hearing and reference the appropriate exhibit tags.

3.6 – Telephone Appearances. Parties and/or counsel may appear by telephone when allowed by the court. No prior authorization for telephone appearances is necessary for the court's regularly scheduled Short Matters and Ex Parte times. The court has only one telephone line into each courtroom, so all parties and/or counsel who wish to attend any matter telephonically have the responsibility for arranging a conference call to the courtroom at the time set for the hearing. The responsibility for planning and executing all technical considerations to appear telephonically shall remain solely with the parties and/or counsel wishing to appear telephonically **and conference line log in information shall be included on the notice of hearing**. The procedures for appearing telephonically can be found in the court's Division Procedures under Policies and Procedures on the Business Court page at https://www.ninthcircuit.org/about/divisions/business-court.

SECTION 4 - CALENDARING, APPEARANCES AND SETTLEMENT

4.1 - Preparation of Calendar. The calendar for the Business Court shall be prepared under the supervision of the Business Court Judge(s) and published on the Business Court page on the website for the Ninth Judicial Circuit Court of Florida.

4.2 - Appearances. An attorney who is notified to appear for any proceeding before the Business Court must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case appear.

4.3 - Notification of Settlement. When any cause pending in the Business Court is settled, all attorneys or unrepresented parties of record must notify the assigned Business Court Judge or the Business Court Judge's designee within twenty-four (24) hours of the settlement and must advise the court of the party who will prepare and present the judgment, dismissal or stipulation of dismissal and when such filings will be presented. The court will not abate cases for extended time periods to facilitate settlement.

SECTION 5 - MOTION PRACTICE

5.1 - Form. All motions, unless made orally during a hearing or a trial, shall be accompanied by a memorandum of law, except as provided in BCP 5.12. Any memorandum of law shall be filed in support of one motion only and **the motion and memorandum shall not exceed twenty-five (25) pages in length, in total. For the purposes of calculating the page limits, the signature block, certificate of service, certificate of good faith conference and case caption are excluded.** Each motion shall be filed separately containing its own supporting memorandum of law. Motions that are inextricably intertwined and either substantively related or in the alternative may be filed together.

5.2 Content of Motions. All motions shall: (1) state with particularity the grounds for the motion; (2) cite any statute or rule of procedure relied upon; and (3) state the relief sought. Factual statements in a motion for summary judgment shall be supported by specific citations to the supporting documents. The parties shall not raise issues at the hearing on the motion that were not addressed in the motion and memoranda in support of and in opposition to the motion. The practice of offering previously undisclosed cases to the court at the hearing is specifically disallowed.

5.3 - Certificate of Good Faith Conference. Before filing any motion in the Business Court, the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion, and shall file with the motion a statement certifying that the moving party has conferred with opposing counsel and that counsel have been unable to agree on the resolution of the motion.

a. The term "confer," as used herein, requires a substantive conversation between counsel ***in person or by telephone*** in a good faith effort to resolve the motion without court action and does not envision an exchange of ultimatums by email, fax or letter. Counsel who merely attempt to confer have not conferred. Counsel must respond promptly to inquiries and communications from opposing counsel. The court will *sua sponte* deny motions that fail to include an appropriate and complete Certificate of Good Faith conference under this section.

b. The Certificate of Good Faith Conference shall set forth the date of the conference, the names of the participating attorneys and the specific results achieved. It shall be the responsibility of counsel for the movant to arrange for the conference.

c. No conference, and therefore no Certificate of Good Faith Conference, is required in motions for injunctive relief without notice, for judgment on the pleadings, for summary judgment or to permit maintenance of a class action.

d. A party alleging that a pleading fails to state a cause of action shall confer with counsel for the opposing party before moving to dismiss and, upon request of the other party, will stipulate to an order permitting the filing of a curative amended pleading in lieu of filing a motion to dismiss.

5.4 - Motions Decided on Papers and Memoranda. Motions shall be considered and decided by the court on the pleadings, admissible evidence, the court file and memoranda, without hearing or oral argument, unless otherwise ordered by the court. Any party seeking oral argument shall file a separate motion setting forth the reasons oral argument should be granted and shall send a proposed order granting oral argument to the court with service copies and stamped envelopes. A party who believes a matter requires an evidentiary hearing must file a motion for oral argument. Motions for oral argument must contain a separate Certificate of Good Faith Conference under BCP 5.3, and must set forth the length of time needed for oral argument.

If the court grants oral argument on any motion, it shall either order the parties to coordinate a hearing or give the parties at least five (5) business days' notice of the date and place of oral argument. The court, for good cause shown, may shorten the five (5) days' notice period. All papers relating to the issues to be argued at the hearing shall be delivered to opposing counsel and the court at least five (5) business days before the hearing. Service and receipt of the papers less than five (5) business days before the hearing is presumptively unreasonable and may result in the hearing being cancelled by the court.

5.5 Motions for Summary Judgment and for Partial Summary Judgment. Motions for summary judgment and for partial summary judgment shall be considered and decided by the court on the affidavits, answers to interrogatories, admissions, depositions and other materials as would be admissible in evidence ("summary judgment evidence") and, if a hearing is not waived, based on arguments at the summary judgment hearing.

The court will hold a hearing if the right to a hearing is not waived in the Case Management Report under BCP 6.3. In the event of a hearing, the court will also consider any additional summary judgment evidence filed in accordance with the provisions of Florida Rule of Civil Procedure 1.510(c). In order to obtain a hearing, the moving party shall (but either party may) schedule a hearing on the motion immediately after filing the motion. The parties shall also comply with the provisions of BCP 5.14 on submission of proposed orders.

In the event the hearing referenced in Florida Rule of Civil Procedure 1.510(c) is waived by the parties in the Case Management Report, the motion for summary judgment or a motion for partial summary judgment shall be decided by the court based on the summary judgment evidence in the court file. In order to obtain a ruling from the court, the moving party shall (but either party may) provide notice to the court that the motion for summary judgment or for partial summary judgment is fully briefed by filing a Notice of Fully Briefed Motion pursuant to BCP 5.14 which shall advise the court that the right to a hearing is waived. The form and content of the notice of fully briefed motion is available at the Business Court page on the court's website at https://www.ninthcircuit.org/about/divisions/business-court. The parties shall also comply with the provisions of BCP 5.14 on submission of orders.

5.6 Delivery of Materials for Oral Argument. Parties shall deliver copies of materials to the court in preparation for oral argument at least five (5) business days prior to a hearing. Materials may include, but not be limited to, copies of the motion, response and reply and cases cited therein with exhibits which will be referenced in the oral argument. If such materials exceed fifty (50) pages in total, then the parties shall deliver the materials only on a USB drive. Parties must insure that the electronic copy of the materials is indexed and that the index contains a hyperlink to the document/exhibit/case indexed. For an example of this format, see http://www.ninthcircuit.org/sites/default/files/Example-of-electronic-courtesy-copy.pdf.

5.7 - Response to Motion and Memoranda. The party opposing a motion shall file a memorandum in opposition within twenty (20) days after service of the motion or within thirty (30) days of service if the motion is for summary judgment. The response memorandum shall clearly identify the title and date of filing of the motion to which it responds. Memoranda in opposition shall not exceed twenty-five (25) pages in length. If supporting documents are not then available, a party may move for an extension of time to file a response. For good cause appearing therefore, a party may be required by the court to file any response and supporting documents, including a memorandum, within such shorter period of time as the court may specify.

5.8 - Reply Memorandum. The moving party may file a reply memorandum within ten (10) days of service of the memorandum in opposition to the motion. A reply memorandum is limited to discussion of matters raised in the memorandum in opposition and shall not exceed ten (10) pages in length. The reply memorandum must clearly identify the titles and dates of filing of the original motion and the response memorandum.

5.9 Extension of Time for Filing Supporting Documents and Memoranda. Upon proper motion accompanied by a proposed order and in addition to the relief available under BCP 5.7, the court may enter an order, specifying the time within which supporting documents and memoranda may be filed, if it is shown that such documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response shall not run during any such extension.

5.10 - Font and Spacing Requirements. All motions and memoranda shall be double-spaced and in Times New Roman 14-point font or Courier New 12-point font. Page margins shall not be less than 1 inch.

5.11 - Suggestion of Subsequently Decided Authority. A suggestion of controlling or persuasive authority that was decided after the filing of the last memorandum may be filed at any time prior to the court's ruling and shall contain only the citation to the authority relied upon, if published, or a copy of the authority if it is unpublished, and shall not contain argument.

5.12 - Motions Not Requiring Memoranda. Memoranda are not required by either the moving party or the opposing party, unless otherwise directed by the court, with respect to the following motions:

a. discovery motions, if the parties have agreed to have the matter heard by a general magistrate (discovery motions to be heard by the presiding Business Court Judge must be fully briefed unless excused from this requirement by the presiding Business Court Judge);

b. extensions of time for the performance of an act required or allowed to be done, provided that the request is made before the expiration of the period originally prescribed or extended by previous orders;

c. to continue a pretrial conference, hearing or the trial of an action;

d. to add or substitute parties;

e. to amend the pleadings;

f. to file supplemental pleadings;

g. to appoint a next friend or guardian ad litem;

h. to stay proceedings to enforce judgment;

i. for *pro hac vice* admission of counsel who are not members of The Florida Bar;

j. relief from the page limitations imposed by the Business Court Procedures; and

k. request for oral argument.

The above motions must state good cause therefore and cite any applicable rule, statute or other authority justifying the relief sought. If the motion is agreed upon by all parties, then these motions must be accompanied by a cover letter indicating that opposing counsel has reviewed and approved the proposed order and a proposed order, together with copies for all parties and stamped, addressed envelopes. If the motion is contested and can be heard in 20 minutes or less without the taking of evidence, then the moving party may set the motion for hearing at the court's short matter hearing time.

5.13 - Failure to File and Serve Motion Materials. The failure to file a memorandum in opposition or reply within the time specified in this section shall constitute a waiver of the right thereafter to file such memorandum in opposition or reply, except upon a showing of excusable neglect. A motion unaccompanied by a required memorandum may, in the discretion of the court, be summarily denied. Failure to timely file a memorandum in opposition to a motion may result in the pending motion being considered and decided as an uncontested motion.

5.14 - Submission of Orders. When a motion is fully briefed, either by the filing of a memorandum in opposition and reply or by virtue of the time passing for the filing of those pleadings, the moving party shall prepare and file a Notice of Fully Briefed Motion. The form and content of the Notice of Fully Briefed Motion is available on the Business Court page of the court's website at https://www.ninthcircuit.org/about/divisions/business-court. The Notice of Fully Briefed Motion, Fully Briefed Motion Checklist and a proposed order with copies and envelopes for all parties shall be sent to the court when the motion is fully briefed and ready for the court to rule upon it. The order must also be emailed to the court in accordance with the Fully Briefed Motion Checklist found on the Business Court section of the court's website at https://www.ninthcircuit.org/about/divisions/business-court. No agreed order will be entered unless the party proffering such an order represents to the court in writing that he or she has provided copies to the opposing parties in advance, and they have no objection to the form of the order. When sending to the court a proposed order entering a final judgment of default, a party must contemporaneously provide the court with sufficient information establishing that the motion for entry of a final judgment by default should be granted. If the court has directed that a party prepare a proposed order following a hearing on the motion, the party preparing the order must provide a copy of the proposed order to opposing counsel. The court will not accept "dueling orders" unless specifically requested by the court. If an agreement among the parties cannot be reached on a proposed order, the parties must convene a hearing at the court's short matter hearing time to address any objections to the proposed order.

5.15 – Short Matters and Ex Parte. The court will hear ex parte matters and short matters (contested hearings of 20 minutes or less where no testimony or evidence is required) via Division Guidelines published on the court's website at:

https://www.ninthcircuit.org/about/divisions/business-court. The procedure for ex parte matters and short matter hearings is outlined in the court's Division Guidelines under Policies and Procedures on the Business Court page at https://www.ninthcircuit.org/about/divisions/business-court. The time limits for providing courtesy copies referenced in BCP 5.4 and 5.6 do not apply to BCP 5.15.

5.16 - Determination of Motions through Oral Argument without Briefs. The parties may present motions and the court may resolve disputes regarding the matters described in BCP 5.12 through the use of an expedited oral argument procedure, if such procedure is agreed upon by all parties with an interest in the outcome of the motion who are also present for the oral argument. Applicable motions are those that are limited to matters which can be argued and determined in twenty minutes or less and may be heard on the court's short matters docket, which requires coordination with counsel, but not the reservation of a specific time through the judicial assistant. The dates and times of short matters hearings will be posted on the Business Court section at the court's website at https://www.ninthcircuit.org/about/divisions/business-court.

5.17 - Motions to Compel and for Protective Order. Any party seeking to compel discovery or to obtain a protective order with respect to discovery must identify the specific portion of the material that is directly relevant and ensure that it is filed as an attachment to the application for relief. **Filing the entire discovery response is discouraged.**

5.18 - Motions to File Under Seal. Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. Motions to file under seal are disfavored. The court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. A party seeking to file a document under seal must file an appropriate motion in accordance with

Florida Rule of Judicial Administration 2.420(d), together with a proposed order thereon. The motion, whether granted or denied, will remain in the public record.

5.19 - Emergency Motions. The court may consider and determine emergency motions at any time. Counsel should be aware that the designation "emergency" may cause a judge to abandon other pending matters in order to immediately address the emergency. The court will sanction any counsel or party who designates a motion as an emergency under circumstances that are not true emergencies. It is not an emergency when counsel has delayed discovery until the end of the discovery period.

SECTION 6 - CASE MANAGEMENT NOTICE, MEETING, REPORT, CONFERENCE AND ORDER

6.1 - Notice of Hearing and Order on Case Management Conference. Within thirty (30) days of filing or transfer of a case to the Business Court, the court will issue an Order Setting Case Management Conference (the "Case Management Notice"). Counsel for Plaintiff(s) shall immediately thereafter serve a copy of the Case Management Notice on all Defendants. Defendant(s) shall immediately serve a copy of the Case Management Notice on all Third-Party Defendants.

6.2 - Case Management Meeting. Regardless of the pendency of any undecided motions, Lead Trial Counsel shall meet no less than thirty (30) days in advance of the Case Management Conference and address the following subjects, along with other appropriate topics, including those set forth in Florida Rule of Civil Procedure 1.200(a), some of which subjects and topics will be incorporated into a Case Management Order prepared by the court:

a. Pleadings issues, service of process, venue, joinder of additional parties, theories of liability, damages claimed and applicable defenses;

b. The identity and number of any motions to dismiss or other preliminary or pre-discovery motions that have been filed and the time period in which they shall be filed, briefed and argued;

c. A discovery plan and schedule including the length of the discovery period, the number of fact and expert depositions to be permitted and, as appropriate, the length and sequence of such depositions;

d. Anticipated areas of expert testimony, timing for identification of experts, responses to expert discovery and exchange of expert reports;

e. An estimate of the volume of documents and computerized information likely to be the subject of discovery from parties and nonparties and whether there are technological means that may render document discovery more manageable at an acceptable cost;

f. The advisability of using special master(s) for fact finding, mediation, discovery disputes or such other matters as the parties may agree upon;

g. The time period after the close of discovery within which post-discovery dispositive motions shall be filed, briefed and argued and a tentative schedule for such activities;

h. The possibility of settlement and the timing of Alternative Dispute Resolution, including the selection of a mediator or arbitrator(s);

i. Whether or not a party desires to use technologically advanced methods of presentation or court-reporting and, to the extent this is the case, a determination of the following:

(1) Fairness issues, including but not necessarily limited to use of such capabilities by some but not all parties and by parties whose resources permit or require variations in the use of such capabilities;

(2) Issues related to compatibility of court and party facilities and equipment;

(3) Issues related to the use of demonstrative exhibits and any balancing of relevance and potential prejudice that may need to occur in connection with such exhibits;

(4) The feasibility of sharing the technology resources or platforms amongst all parties so as to minimize disruption at trial; and

(5) Such other issues related to the use of the court's and parties' special technological facilities as may be raised by any party, the court or the court's technological advisor, given the nature of the case and the resources of the parties.

j. A good faith estimate by each party based upon consultation among the parties of the costs and attorneys' fees each party is likely to incur in pursuing the litigation through trial court adjudication;

k. A preliminary listing of the principal disputed legal and factual issues;

l. A preliminary listing of any legal principle and facts that are not in dispute;

m. Any law other than Florida law which applies to the issues in the case;

n. A good faith estimate by each party of the length of time to try the case;

o. Whether a demand for jury trial has been made;

p. The track to which the case will be assigned. The Business Court typically employs the following management tracks: Business Expedited (Target Trial Date within

13 months of filing of complaint); Business Standard (Target Trial Date within 18 months of filing of complaint); and Business Complex (Target Trial Date within two years of filing of complaint); and

q. Such other matters as the court may assign to the parties for their consideration.

6.3 - Joint Case Management Report.

a. No less than ten (10) days in advance of the Case Management Conference, the parties shall file the Joint Case Management Report addressing the matters described above. All counsel and parties are responsible for filing a Joint Case Management Report in full compliance with the Business Court Procedures. Contemporaneous with filing the Joint Case Management Report, counsel for Plaintiff(s) shall email a copy of the report to the division email address: 43Orange@ninthcircuit.org. Counsel for Plaintiff(s) shall have the responsibility to coordinate the meeting between the parties and the filing of the Joint Case Management Report. If a non-lawyer Plaintiff is proceeding pro se, counsel for Defendant(s) shall coordinate compliance and service of the copy to the court. If counsel is unable to coordinate such compliance, counsel shall timely notify the court by written motion or request for a status conference.

b. In the Joint Case Management Report, Lead Trial Counsel for each party shall certify that the party (if an individual) or an authorized representative of the party (if an entity) will attend the Case Management Conference in person, unless the court has entered an order excusing compliance with this requirement. In the certificate, Lead Trial Counsel for any entity party shall provide the name and title of the representative who will attend the Case Management Conference and shall certify that the representative has authority to make appropriate decisions regarding such issues listed in BCP 6.2 above as

are pertinent to the case or on which there are material differences of opinion. If the court has entered an order permitting the attendance of a party or authorized representative by telephone, videoconference, or other means, Lead Trial Counsel shall certify that the party or authorized representative shall attend the Case Management Conference in the manner permitted by the court's order.

6.4 - Case Management Conference. The attendance in person by Lead Trial Counsel for all parties is mandatory. All parties and representatives of any entity parties with the authority described in BCP 6.3(b) must attend the Case Management Conference in person unless excused by the court upon a timely motion and order thereon. A motion for relief from the personal attendance requirement must be filed before the deadline for filing the Joint Case Management Report as set forth in BCP 6.3(a), unless the basis for the request could not reasonably have been anticipated at that time. At the Case Management Conference, the court will hear the views of counsel on such issues listed in BCP 6.2 above as are pertinent to the case or on which there are material differences of opinion. If Lead Trial Counsel, a party, or a representative of an entity party with the authority described in BCP 6.3(b) fails to attend the Case Management Conference in person or in such other manner as is permitted by order of the court, the court may impose appropriate sanctions on the noncomplying party, attorney, or both.

6.5 - Case Management Order. Following the Case Management Conference, the court will issue a Case Management Order. The provisions of the Case Management Order may not be deviated from without notice, an opportunity to be heard, a showing of good cause and entry of an order by the court. The Case Management Order may also specify a schedule of status conferences, when necessary, to assess the functioning of the Case Management Order, assess the progress of

the case and enter such further revisions to the Case Management Order as the court may deem necessary or appropriate.

SECTION 7 – DISCOVERY

7.1 - Presumptive Limits On Discovery Procedures. Presumptively, subject to stipulation of the parties and order of the court for good cause shown, each party is limited to the following:

a. Fifty (50) interrogatories (including sub-parts);

b. Fifty (50) requests for admission on each opposing party;

c. Twelve (12) depositions (not including depositions of testifying experts) taken by Plaintiff(s), twelve (12) depositions taken by Defendant(s), and twelve (12) depositions taken by the Third-Party Defendant(s), regardless of the number of separate parties designated as Plaintiffs, Defendants, and Third-Party Defendants.

The parties may agree by stipulation on other limits on discovery within the context of the limits and deadlines established by the Business Court Procedures and the court's Case Management Order, but the parties may not alter the limitations provided by the Business Court Procedures without leave of court.

7.2 - Depositions. The court expects counsel to conduct discovery in good faith and to cooperate and be courteous in all phases of the discovery process. Depositions shall be conducted in accordance with the following guidelines:

a. Counsel shall make reasonable attempts to coordinate the scheduling of depositions, including non-party depositions. If counsel is unsuccessful in coordinating the

scheduling of a deposition after reasonable efforts, counsel may notice the deposition for a date and time at least ten (10) business days in the future.

b. Counsel shall not direct or request that a witness not answer a question, unless counsel has objected to the question on the ground that the answer is protected by privilege or a limitation on evidence directed by the court.

c. Counsel shall not make objections or statements that might suggest an answer to a witness. Counsel's statements when making objections should be succinct, stating the basis of the objection and nothing more.

d. Counsel and their clients shall not engage in private, off-the-record conferences during the client's deposition, except for the purpose of deciding whether to assert a privilege.

e. Deposing counsel shall provide to the witness's counsel a copy of all documents shown to the witness during the deposition. The copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness. The witness and the witness's counsel do not have the right to discuss documents privately before the witness answers questions about the documents.

f. When the deponent or any party demands that the deposition be read and signed, the failure of the deponent to read and sign the deposition within thirty days from the date the transcript becomes available to the deponent shall be deemed to ratify the entire deposition.

g. The court will entertain telephonic hearings regarding issues raised during depositions then in progress.

7.3 – Electronic Discovery. Upon agreement by the parties and stipulated order or by order of the court, mediators or special masters may be utilized to facilitate the resolution of disputes related to electronically stored information.

7.4 – General or Special Magistrates. The court may, at any time, on its own motion or on the motion of any party, appoint a general or special magistrate in any given case pending in the Business Court in accordance with Florida Rule of Civil Procedure 1.490. Unless otherwise ordered, the parties shall bear equally the cost of proceeding before a special magistrate, and such fees may be taxed as costs.

7.5 - No Filing of Discovery Materials. Depositions and deposition notices, notices of serving interrogatories, interrogatories, requests for documents, requests for admission and answers and responses thereto shall not be filed unless the court so orders or unless the parties will rely on such documents in a pretrial proceeding. **For depositions, the filing of excerpts as opposed to the entire depositions is encouraged.** All discovery materials **filed with the court** must be served on other counsel or parties. The party taking a deposition or obtaining any material through discovery (including through third-party discovery) is responsible for the preservation and delivery of such material to the court when needed or ordered in the form specified by the court.

7.6 - Discovery with Respect to Expert Witnesses. Discovery with respect to experts must be conducted within the discovery period established by the Case Management Order. In complying with the obligation to exchange reports relating to experts, the parties shall disclose all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of publications authored by the witness within the preceding ten years; the compensation to be paid for the study and

testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition or affidavit within the preceding four years. Each party offering an expert witness shall provide three alternative dates for the deposition of the expert in the following thirty (30) days.

7.7 - Completion of Discovery. The requirement that discovery be completed within a specified time mandates that adequate provisions must be made for interrogatories and requests for admission to be answered, for documents to be produced and for depositions to be held within the discovery period. The court does not anticipate entertaining motions relating to discovery conducted after the close of the discovery period as set forth in the court's Case Management Order.

7.8 - Extension of the Discovery Period or Request for Additional Discovery. Motions seeking an extension of the discovery period or permission to take more discovery than is permitted under the Case Management Order must be presented prior to the expiration of the time within which discovery is required to be completed. Such motions must set forth good cause justifying the additional time or additional discovery and will only be granted upon such a showing of good cause and that the parties have diligently pursued discovery. The court usually will only permit additional depositions upon a showing of exceptionally good cause.

7.9 - Trial Preparation After the Close of Discovery. Ordinarily, the deposition of a material witness not subject to subpoena should be taken during discovery. However, the deposition of a material witness who agrees to appear for trial, but later becomes unavailable or refuses to attend, may be taken at any time prior to or during trial.

7.10 - Confidentiality Agreements. The parties may reach their own agreement regarding the designation of materials as confidential. There is no need for the court to endorse

the confidentiality agreement. The court discourages unnecessary stipulated motions for protective orders. The court will enforce signed confidentiality agreements. Each confidentiality agreement shall provide or shall be deemed to provide that no party shall file documents under seal without having first obtained an order granting leave of court to file documents under seal based upon a showing of particularized need.

SECTION 8 - ALTERNATIVE DISPUTE RESOLUTION

8.1 - Alternative Dispute Resolution Mandatory in All Cases. Alternative Dispute Resolution ("ADR") is a valued tool in the resolution of litigated matters. An appropriate mechanism for ADR shall be discussed by the court and counsel at the Case Management Conference. The Case Management Order shall order the parties to a specific ADR process, to be conducted either by a court-assigned or an agreed-upon facilitator and shall establish a deadline for its completion.

8.2 - Non-Binding Arbitration. The parties may agree to submit to non-binding arbitration or it may be ordered upon motion of any party. The rules governing arbitration shall be selected by the parties or failing agreement, the court will order use of all or a part of the arbitration rules common to the Ninth Judicial Circuit of Florida, the American Arbitration Association or other available rules.

8.3 - Mediation. The following rules shall apply to all mediations conducted in cases pending in the Business Court:

a. Case Summaries - Not less than ten (10) business days prior to the mediation conference, each party shall deliver to the mediator a written summary of the facts and issues of the case.

b. Identification of Business Representative - As part of the written summary, counsel for each entity shall state the name and general job description of the authorized representative who will *attend and participate with full authority to settle* on behalf of the entity.

c. Attendance Requirements and Sanctions - Lead Trial Counsel and each party including, in the case of an entity, an authorized representative, and in the case of an insurance company, the insurance company representative as set forth in Florida Rule of Civil Procedure 1.720(b)(3) with full authority to settle, *shall* attend and participate in the mediation conference. In the case of an insurance company, the term "full authority to settle" means authority to settle up to the amount of the party's last demand or the policy limits, whichever is less, without further consultation. The court will impose sanctions upon Lead Trial Counsel and parties who do not attend and participate in good faith in the mediation conference.

d. Authority to Declare Impasse - Participants shall be prepared to spend as much time as may be necessary to settle the case. No participant may force the early conclusion of mediation because of travel plans or other engagements. Only the mediator may declare an impasse or end the mediation.

e. Rate of Compensation - The mediator shall be compensated at an hourly rate stipulated by the parties in advance of mediation. Upon motion of the prevailing party, the party's share may be taxed as costs in this action.

f. Settlement and Report of Mediator - A settlement agreement reached between the parties shall be reduced to writing and signed by the parties and their attorneys in the presence of the mediator. Within ten business days of the conclusion of the mediation

conference, the mediator shall file and serve a written mediation report stating whether all required parties were present, whether the case settled and whether the mediator was forced to declare an impasse.

SECTION 9 - JOINT FINAL PRETRIAL STATEMENT

9.1 - Meeting and Preparation of Joint Final Pretrial Statement. On or before the date established in the Case Management Order, Lead Trial Counsel for all parties and any unrepresented parties shall meet together in person for the purpose of preparing a Joint Final Pretrial Statement that strictly conforms to the requirements of this section. The case must be fully ready for trial when the Joint Final Pretrial Statement is filed. Lead Trial Counsel for all parties, or the parties themselves if unrepresented, shall sign the Joint Final Pretrial Statement. The court will strike pretrial statements that are unilateral, incompletely executed or otherwise incomplete. Inadequate stipulations of fact and law will be stricken. Sanctions may be imposed for failure to comply with this section, including the striking of pleadings. At the conclusion of the final pretrial conference, all pleadings are deemed to merge into the Joint Final Pretrial Statement, which will control the course of the trial.

9.2 - Contents of Joint Final Pretrial Statement. The Joint Final Pretrial Statement Shall contain the following:

a. Stipulated Facts - The Parties shall stipulate to as many facts and issues as possible. To assist the court, the parties shall make an active and substantial effort to stipulate at length and in detail as to agreed facts and law, and to limit, narrow and simplify the issues of fact and law that remain contested.

b. Exhibit List - An exhibit list containing a description of all exhibits to be introduced at trial and in compliance with the approved form located on the Business Court

website at http://www.ninthcircuit.org/research/court-forms/complex-litigation, must be filed with the Joint Final Pretrial Statement. Each party shall maintain a list of exhibits on USB drive to allow a final list of exhibits to be provided to the Clerk of Court at the close of the evidence. Unlisted exhibits will not be received into evidence at trial, except by order of the court in the furtherance of justice. The Joint Final Pretrial Statement must attach each party's exhibit list on the approved form listing each *specific* objection ("all objections reserved" does *not* suffice) to each numbered exhibit that remains after full discussion and stipulation. Objections not made – or not made with specificity – are waived.

c. Witness List - The parties and counsel shall prepare a witness list designating in good faith which witnesses will likely be called and which witnesses may be called if necessary. Absent good cause, the court will not permit testimony from unlisted witnesses at trial over objection. This restriction does not apply to rebuttal witnesses. Records custodians may be listed, but will not likely be called at trial, except in the event that authenticity or foundation is contested. Notwithstanding the Business Court Procedures regarding videoconferencing, for good cause shown in compelling circumstances the court may permit presentation of testimony in open court by contemporaneous transmission from a different location.

d. Depositions - The court encourages stipulations of fact to avoid calling unnecessary witnesses. Where a stipulation will not suffice, the court permits the use of videotaped depositions at trial. At the required meeting, counsel and unrepresented parties shall agree upon and specify in writing in the Joint Final Pretrial Statement the pages and lines of each deposition (except where used solely for impeachment) to be published to the

trier of fact. The parties shall include in the Joint Final Pretrial Statement a page-and-line description of any testimony that remains in dispute after an active and substantial effort at resolution, together with argument and authority for each party's position. The parties shall prepare for submission and consideration at the final pretrial conference or trial edited and marked copies of any depositions or deposition excerpts which are to be offered into evidence, including edited videotaped depositions. Designation of an entire deposition will not be permitted except on a showing of necessity.

e. Joint Jury Instructions and Verdict Form - In cases to be tried before a jury, counsel shall attach to the Joint Final Pretrial Statement a copy and an original set of jointly proposed jury instructions, together with a single jointly-proposed jury verdict form. The parties should be considerate of their juries, and therefore should submit short, concise verdict forms. The court prefers pattern jury instructions approved by the Supreme Court of Florida. A party may include at the appropriate place in the single set of jointly-proposed jury instructions a contested charge, so designated with the name of the requesting party and bearing at the bottom a citation of authority for its inclusion, together with a summary of the opposing party's objection. The parties shall submit a USB drive in Word format containing the single set of jury instructions and verdict form with the Joint Final Pretrial Statement.

9.3 - Coordination of Joint Final Pretrial Statement. All counsel and parties are responsible for filing a Joint Final Pretrial Statement in full compliance with the Business Court Procedures at least ten (10) days prior to the pretrial conference. Counsel for Plaintiff(s) shall have the *primary* responsibility to coordinate the meeting of Lead Trial Counsel and unrepresented parties and the filing of a Joint Final Pretrial Statement and related material. If a non-lawyer

Plaintiff is proceeding pro se, then counsel for Defendant(s) shall coordinate compliance. If counsel is unable to coordinate such compliance, counsel shall timely notify the court by written motion or request for a status conference.

SECTION 10 - TRIAL MEMORANDA AND OTHER MATERIALS

10.1 - Trial Memoranda. In the case of a non-jury trial, no later than ten (10) days before the first day of the trial period for which the trial is scheduled, the parties shall file and serve Trial Memoranda with proposed findings of fact and conclusions of law, together with a USB drive in Word format. In the case of a jury trial, no later than ten (10) days before the first day of the trial period for which the trial is scheduled, the parties may file and serve Trial Memoranda, together with a USB drive.

10.2 - Motions in Limine. Motions in limine may be filed for the purpose of seeking an advance ruling on the admissibility of specific evidence at trial. **The court typically does not consider motions in limine for bench trials.** Each motion in limine must attach, or specify in detail, the document, item or statement at issue. The court may strike as superfluous any motion in limine requesting a broad order that a rule of evidence, procedure or professional conduct should be followed at trial. Motions in limine shall not be used as a procedural vehicle to circumvent the passing of the deadline to file dispositive motions.

SECTION 11 - FINAL PRETRIAL CONFERENCE

11.1 - Mandatory Attendance. Lead Trial Counsel and local counsel for each party, together with any unrepresented party, *must* attend the final pretrial conference in person unless previously excused by the court.

11.2 - Substance of Final Pretrial Conference. At the final pretrial conference, all counsel and parties must be prepared and authorized to address the following matters: the formulation and simplification of the issues; the elimination of frivolous claims or defenses; admitting facts and documents to avoid unnecessary proof; stipulating to the authenticity of documents; obtaining advance rulings from the court on the admissibility of evidence; settlement and the use of special procedures to assist in resolving the dispute; disposing of pending motions; establishing a reasonable limit on the time allowed for presenting evidence and argument; and such other matters as may facilitate the just, speedy and inexpensive disposition of the actions.

SECTION 12 – SANCTIONS

12.1 - Grounds. The court may impose sanctions on any party (including any unrepresented party) or any attorney: 1) who fails to coordinate and attend the meeting of counsel to prepare the Joint Case Management Report referenced in BCP 6.3 or refuses to sign or file the Joint Case Management Report; 2) who fails to attend the Case Management Conference; 3) who fails to attend and to actively participate in the meeting to prepare the Joint Final Pretrial Statement or refuses to sign or file the Joint Final Pretrial Statement; 4) who fails to attend the final pretrial conference, or who is substantially unprepared to participate; 5) who fails to attend the mediation and actively participate in good faith, who attends the mediation without full authority to negotiate a settlement or who is substantially unprepared to participate in the mediation; or 6) who otherwise fails to comply with the Business Court Procedures or law. Sanctions may include, without limitation, any, some or all of the following: an award of reasonable attorneys' fees and costs, the striking of pleadings, the entry of default, the dismissal of the case or a finding of contempt of court.

12.2 – Notice of Noncompliance. If a filing does not comply on its face with the formatting, certification, page limit, timeliness, or other requirements of the Business Court Procedures, any party may file a Notice of Noncompliance. The Notice of Noncompliance shall be limited to identifying the filing and the facial defect(s) at issue and shall not contain argument or raise factual disputes. The party filing the Notice of Noncompliance shall send copies of the Notice of Noncompliance and the filing to which it relates to the division email address: 43Orange@ocnjcc.org. In response to a Notice of Noncompliance or acting *sua sponte*, the court may in its sole discretion strike the noncompliant filing or impose other sanctions. The filing of a Notice of Noncompliance shall not toll any response time or suspend any other obligation unless the court orders otherwise.

SECTION 13 – TRIAL

13.1 - Examination of Witnesses. When several attorneys are retained by the same party, the examination or cross-examination of each witness for such party shall be conducted by one attorney, but the examining attorney may change with each successive witness or, with leave of the court, during a prolonged examination of a single witness. The examination of witnesses is limited to direct, cross and re-direct. Parties seeking further examination shall request a bench conference to discuss the reasons therefore, and, upon the articulation of good cause, may be allowed further examination.

13.2 - Objections. Speaking objections are not permitted. A party interposing an objection shall state the legal basis for the objection only. No response from the interrogating party will be permitted unless requested by the court.

13.3 - Trial Date. Trial shall commence on the date established by the court, normally through the Case Management Order or amendments thereto, or in such other manner as the court shall deem appropriate.

13.4 – Continuances. The court will consider a request to continue a trial date only if the request is signed by both the party and counsel for the party.

SECTION 14 - COURTROOM DECORUM AND PROFESSIONALISM

14.1 - Communications and Position. Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the court shall be clearly and audibly made from a standing position behind the counsel table or the podium. Counsel shall not approach the bench except upon the permission or request of the court. Abusive language, offensive personal references, colloquies between opposing counsel and disrespectful references to opposing counsel are all strictly prohibited. Witnesses and parties must be treated with fairness and due consideration. The examination of witnesses and jurors shall be conducted from behind the podium, except as otherwise permitted by the court. Counsel may only approach a witness with the court's permission and for the purpose of presenting, inquiring about or examining that witness with respect to an exhibit, document or diagram. Except in extraordinary circumstances, and then only with leave of court and permission of the witness, all witnesses shall be addressed by honorific and surname (*e.g.*, Mrs. Smith, Reverend Jones, Dr. Adams), rather than by first names.

14.2 - Professional Demeanor. The conduct of the lawyers before the court and with other lawyers should be characterized by consideration, candor and fairness. Counsel shall not knowingly misrepresent the contents of documents or other exhibits, the testimony of a witness, the language or argument of opposing counsel or the language of a decision or other authority; nor

shall counsel offer evidence known to be inadmissible. In an argument addressed to the court, remarks or statements may not be interjected to improperly influence or mislead the jury.

14.3 – Professionalism. The Court expects all who practicing before it to practice with professionalism and the Court would prefer that professionalism disputes be resolved outside of the Courtroom. On June 6, 2013, the Supreme Court of Florida adopted SC13-688 which includes a Code for Resolving Professionalism Complaints. In the Ninth Judicial Circuit, Administrative Order No. 2014-07-A established the Ninth Judicial Circuit Court Local Professionalism Panel (the "Professionalism Panel") to receive, screen, evaluate and act upon such reasonable complaints of unprofessional conduct as may be referred to the Professionalism Panel. Such complaints are reviewed and evaluated in the context of the standards of professionalism set forth in the Oath of Admission to the Florida Bar, The Florida Bar Creed of Professionalism, The Florida Bar Ideals and Goals of Professionalism, the Rules Regulating the Florida Bar, the decisions and administrative directives of the Florida Supreme Court, the professional standards of the Osceola County Bar Association and the Orange County Bar Association's Professionalism Guidelines. The Professionalism Panel will seek to resolve complaints informally if possible, and, if necessary and appropriate, refer such complaints to the Florida Bar. Proceedings before the Professionalism Panel will remain confidential.

SECTION 15 – JURY INSTRUCTIONS

15.1 - Jury Instruction Conference. At the close of the evidence (or at such earlier time as the judge may direct) in every jury trial, the judge shall conduct a conference on instructions with the parties. Such conference shall be out of the presence of the jury and shall be held for the purpose of discussing the proposed instructions.

15.2 - Objections to Instructions. The parties shall have an opportunity to request any additional instructions or to object to any of those instructions proposed by the judge. Any such requests, objections and rulings of the court thereon shall be placed on the record. At the conclusion of the charge and before the jury begins its deliberations (and out of the hearing, or upon request, out of the presence of the jury), the parties shall be given an opportunity to object on the record to any portion of the charge as given, or omission therefrom, stating with particularity the objection and grounds therefor.

SECTION 16 - WEBSITE AND PUBLICATION

16.1 - Website. The Business Court shall maintain a website for ready access to members of the bar and public. The website shall be located at the uniform resource locator https://www.ninthcircuit.org/about/divisions/business-court. The website will store for ready retrieval basic information about the Business Court, including but not limited to these Business Court Procedures and the procedure for Complex Business Case designation. In addition, the website will store, in the sole discretion of the Business

Court Judge:

a. the court's docket;

b. papers filed with the court;

c. motions filed with the court;

d. briefs filed with the court; and

e. the opinions of the court.