

DISTRICT COURT, DENVER COUNTY, COLORADO

Denver City and County Building
1437 Bannock St.
Denver, Colorado 80202

Plaintiffs: ANTHONY LOBATO, et al.

and

Plaintiff-Intervenors: ARMANDINA ORTEGA, et al.

v.

Defendants: THE STATE OF COLORADO, et al.

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Case No. 2005CV4794

Div. 9

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STIPULATED PROPOSED MODIFIED CASE MANAGEMENT ORDER

Pursuant to C.R.C.P. 16(c)(1), Plaintiffs Anthony Lobato, et al. (“Plaintiffs”), Plaintiff-Intervenors Armandina Ortega, et al. (“Plaintiff-Intervenors”), and Defendants The State of Colorado, et al. (“Defendants”) (together “the Parties”) hereby submit this Stipulated Proposed Modified Case Management Order (“Order”).

The Parties stipulated to the contents of this Order at the Case Management Conference held on August 19, 2010. This Order sets forth only the proposed provisions which the Parties wish to change from the presumptive case management order contained in C.R.C.P. 16(b). Good cause exists to modify the following provisions as set forth in the Parties’ initial proposed case management order dated July 6, 2010. Further, the Parties and the Court agreed during the Case Management Conference that these proposed modifications are reasonable and appropriate given the nature of this action.

1. TRIAL DATE

A five-week trial to the Court is set for August 1, 2011.

2. C.R.C.P. 16(b)(5) DISCLOSURES

a. With the exception of plaintiffs joined in the Second Amended Complaint, the Parties have exchanged their C.R.C.P. 26(a)(1) initial disclosures. Because of the broad scope of issues raised in this litigation, the Parties agree that disclosures will occur on a rolling basis and that no later than thirty days prior to the commencement of deposition discovery, the Parties will have produced their core disclosures. The plaintiffs joined by the Second Amended Complaint shall exchange their C.R.C.P. 26(a)(1) disclosures no later than 30 days from the date the Defendants’ filed their Answer to the Second Amended Complaint, specifically September 20, 2010. Additional plaintiffs or plaintiff-intervenors joined in future amended complaints, if any, shall exchange their C.R.C.P. 26(a)(1) disclosures no later than 30 days from the date Defendants file their answer to the future amended complaint in which they are joined.

b. Expert Disclosures:

- Plaintiffs and Plaintiff-Intervenors shall designate their experts’ identity and subject matter of testimony no later than 180 days before the trial date, currently February 2, 2011.
- Defendants shall designate their experts’ identity and subject matter of testimony no later than 150 days before the trial date, currently March 4, 2011.

- Plaintiffs and Plaintiff-Intervenors shall make disclosure to Defendants of their experts in accordance with C.R.C.P. 26(a)(2) no later than 135 days before the trial date, currently March 21, 2011.
- Defendants shall make disclosure to Plaintiffs and Plaintiff-Intervenors of their experts, if any, in accordance with C.R.C.P. 26(a)(2) no later than 105 days before the trial date, currently April 18, 2011.
- Plaintiffs and Plaintiff-Intervenors shall make disclosure to Defendants of their rebuttal experts, if any, in accordance with C.R.C.P. 26(a)(2) no later than 75 days before the trial date, currently May 18, 2011.

3. C.R.C.P. 16(b)(8) TIME TO JOIN ADDITIONAL PARTIES AND AMEND PLEADINGS

Any additional party shall be joined no later than **45 days from the date of the Case Management Conference**, specifically October 4, 2010. Any motion to amend the pleadings shall be filed and served no later than **45 days from the date of the Case Management Conference**, specifically October 4, 2010.

Plaintiffs and/or Plaintiff-Intervenors will file a motion to strike certain of Defendants' affirmative defenses no later than **45 days from the date of the Case Management Conference**, specifically October 4, 2010.

4. C.R.C.P. 16(b)(9) DISPOSITIVE MOTIONS

- Motions pursuant to C.R.C.P. 56 must be filed no later than 95 days before the trial date, currently April 28, 2011.
- Cross-motions for summary judgment must be filed no later than 85 days before the trial date, currently May 9, 2011.
- The Parties shall respond to motions filed pursuant to C.R.C.P. 56 within 30 days from the date of service of the motion.
- The Parties shall reply to responses to C.R.C.P. 56 motions within 20 days from the date of service of the response.

The Parties may supplement any dispositive motion, response, or reply with argument related to discovery acquired after the deadline for the motion or brief which they wish to supplement.

5. C.R.C.P. 16(b)(10) DISCOVERY SCHEDULE

Discovery Limitations:

- **Rule 26(b)(2)(A) – Depositions:**

1. Plaintiffs may take up to 55 depositions.
2. Plaintiff-Intervenors may take up to 55 depositions.
3. Defendants may take up to 65 depositions.

These limits include party depositions, but exclude depositions of persons expected to give expert testimony disclosed pursuant to Rule 26(a)(2). A deposition taken pursuant to C.R.C.P. 30(b)(6) shall count as one deposition for purposes of these limits regardless of the number of witnesses designated for such a deposition.

Parents and students who are parties to this action will not be deposed. Instead, the State may conduct informal interviews in the presence of counsel, rather than formal depositions, of (a) Individual Plaintiff and Plaintiff-Intervenor parents and (b) Individual Plaintiff and Plaintiff-Intervenor students who are 17 years or older at the time of the interview.

- **Rule 26(b)(2)(B) – Interrogatories:**

1. Plaintiffs may serve on Defendants a total of 40 written interrogatories.
2. Plaintiff-Intervenors may serve on Defendants a total of 40 written interrogatories.
3. Defendants may serve on Individual Plaintiffs a total of 30 written interrogatories. Defendants may serve on Plaintiff-Intervenors a total of 30 written interrogatories. Defendants may serve on School District Plaintiffs a total of 45 written interrogatories.

- **Rule 26(b)(2)(D) – Requests for Production:**

1. Plaintiffs may serve on Defendants a total of 40 requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34.
2. Plaintiff-Intervenors may serve on Defendants a total of 40 requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34.
3. Defendants may serve on Individual Plaintiffs a total of 30 requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34. Defendants may serve on Plaintiff-Intervenors a total of 30 requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34. Defendants may serve on School District

Plaintiffs a total of 45 requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34.

- Rule 26(b)(2)(E) – Requests for Admission:
 1. Plaintiffs may serve on Defendants a total of 50 requests for admission pursuant to C.R.C.P. 36 and may serve requests for admission of genuineness of an unlimited number of documents.
 2. Plaintiff-Intervenors may serve on Defendants a total of 50 requests for admission pursuant to C.R.C.P. 36 and may serve requests for admission of genuineness of an unlimited number of documents.
 3. Defendants may serve on Individual Plaintiffs a total of 50 requests for admission pursuant to C.R.C.P. 36. Defendants may serve on Plaintiff-Intervenors a total of 50 requests for admission pursuant to C.R.C.P. 36. Defendants may serve on School District Plaintiffs a total of 50 requests for admission pursuant to C.R.C.P. 36. Defendants may serve on Individual Plaintiffs, Plaintiff Intervenors, and School District Plaintiffs requests for admission of genuineness of an unlimited number of documents.

The Parties and the Court will revisit the foregoing discovery limitations in the event Plaintiffs or Plaintiff-Intervenors move for and obtain class certification in this action. The limits on Defendants' depositions are also subject to increase by the number of additional plaintiffs or plaintiff-intervenors in the event additional plaintiffs or plaintiff-intervenors are added to this action after the date of this order.

Dates for Completion of Discovery:

- Fact Discovery: The date for completion of all fact discovery shall be 90 days before the trial date, currently May 3, 2011.
- Expert Discovery: The date for completion of all expert discovery shall be 30 days before the trial date, currently July 5, 2011.

6. OTHER MATTERS

Other deadlines not specifically mentioned in this Case Management Order are controlled by the applicable rules of civil procedure.

The Parties have filed a Stipulated Confidentiality Agreement and Protective Order with claw-back provisions that the Court has granted.

Concurrent herewith, Plaintiffs are filing a Notice of Trial Setting confirming that a five-week trial is set to begin in this case on August 1, 2011.

7. EFFECT OF THE CASE MANAGEMENT ORDER

This Case Management Order shall control the course of this action prior to entry of the Trial Management Order and shall not be amended except by Order of the Court. The Court shall not entertain a motion to modify this Case Management Order unless counsel for the moving party has conferred or made reasonable effort to confer with opposing counsel concerning the matter in dispute before filing the motion. Counsel for the moving party shall include a certificate that it has complied with Section 7 of this Case Management Order in any such motion. In the event of ambiguity in the Case Management Order, the Court shall interpret the order in the manner which best advances the interests of justice.

MADE AN ORDER OF THE COURT this 10th day of September, 2010.

BY THE COURT:



Sheila A. Rappaport
District Court Judge