

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-22370-Civ-COOKE/BANDSTRA

FLAVA WORKS, INC., *et al.*,

Plaintiffs

vs.

CITY OF MIAMI, FLORIDA, *et al.*,

Defendants.

**ORDER REQUIRING COUNSEL TO MEET AND FILE
JOINT SCHEDULING REPORT AND PROPOSED ORDER**

THIS MATTER is before the Court upon remand from the Eleventh Circuit Court of Appeals. To efficiently, expeditiously, and economically resolve this dispute, it is **ORDERED**:

1. Discovery in this case shall be conducted in accordance with the Federal Rules of Civil Procedure and Southern District of Florida Local Rules (effective April 15, 2010), except that the deadlines under Local Rules 16.1.D., E., H., J., K., and L., may be modified by further order of the Court.
2. In addition to complying with Local Rule 5.1, all filings must be *double-spaced*, any motion and accompanying memorandum of law *shall not exceed a combined length of twenty pages*, and all non-dispositive motions *must be accompanied by a proposed order strictly adhering to the following requirements*:
 - a. 12 pt. Times New Roman font;
 - b. One inch margins on all sides;
 - c. 1/2 inch tab setting;
 - d. Left Justified;

- e. Conforming to the exemplar order, found on the last page of this order;
- f. Filed electronically with the corresponding motion; and
- g. E-mailed as a Microsoft Word (.doc) document to cooke@flsd.uscourts.gov. The subject line of the e-mail shall include: (i) case number, (ii) case name, and (iii) docket entry number of the corresponding motion.

Failure to comply with the foregoing requirements may result in the relevant motion being denied without prejudice.

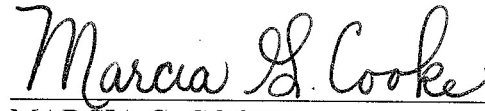
3. Within **forty-five (45) days** of this Order, counsel shall file a Joint Scheduling Report and Joint Proposed Scheduling Order pursuant to Local Rule 16.1.B.2, with a complete service list containing the name, address, e-mail address, phone number, fax number, and party represented of each counsel.
4. Counsel for the parties shall meet in person for a scheduling conference at least **twenty-one (21) days** prior to the date the above Joint Proposed Scheduling Order is due. At this conference, the parties **shall** accomplish the following: (1) determine the appropriate case management track for the action pursuant to Local Rule 16.1.A.2; (2) develop a case management plan which sets deadlines in compliance with paragraphs A, B, and C of this Order; and (3) discuss settlement in good faith.
 - a. The Joint Scheduling Report shall include all information required by the eleven subsections, (a) through (k), of Local Rule 16.1.B.2. **Unilateral submissions are prohibited.**
 - b. As an attachment to the parties' Joint Scheduling Report, and in Compliance with Local Rule 16.1.B.2, the parties shall jointly complete ***Attachment A*** to this Order. The parties shall insert the specific day, month and year for each listed deadline that applies to the parties' case management plan. In completing ***Attachment A***, the parties shall take into consideration the suggested pretrial deadlines set out in ***Attachment B***

to this Order. If the parties agree that one or more of the proposed deadlines (such as “expert witness deadlines”) is not appropriate for this action, they may strike the language and omit that proposed deadline in *Attachment A*. The parties’ proposed dates **shall** include: (1) **at least seventeen (17) weeks** between the deadline for all pretrial dispositive motions and the proposed trial date; and (2) **at least five (5) weeks** between the deadline for the pretrial stipulation and the proposed trial date.

- c. As part of the Joint Scheduling Report, the parties shall jointly complete and file with the Court the Magistrate Judge Jurisdiction Election Form appended to this Order as *Attachment C*. The Court will not accept unilateral submissions in this regard; thus, a “Yes” should be checked only if all parties agree. If the parties consent to a full disposition of the case by the Magistrate Judge, including trial and entry of final judgment, the parties shall jointly file the election form appended to this Order as *Attachment D*.
5. The Parties must jointly select a mediator certified under Local Rule 16.2.B, and schedule a time, date, and place for mediation. In addition, the Parties must jointly file a proposed order scheduling mediation in the form specified by Local Rule 16.2.H. If the parties cannot agree on a mediator, they shall notify the clerk in writing as soon as possible and the Clerk shall designate a certified mediator on a blind rotation basis. Counsel for all parties shall familiarize themselves with and adhere to all provisions of Local Rule 16.2. The parties shall complete mediation at least 30 days prior to the calendar call.
6. The foregoing information will aid the Court in its management of this case, including the expeditious resolution of any discovery disputes, and help the parties focus on the key issues of the case at an early stage in the proceedings. **Accordingly, failure of counsel to file a joint scheduling report may result in dismissal, default, or the imposition of other**

sanctions, including attorney's fees and costs.

DONE and ORDERED in chambers, at Miami, Florida, this 30th day of September 2010.

A handwritten signature in cursive script that reads "Marcia G. Cooke". The signature is written in black ink and is positioned above a horizontal line.

MARCIA G. COOKE

United States District Judge

Copies furnished to:

Ted E. Bandstra, U.S. Magistrate Judge

Counsel of record

Attachment A: Pretrial Deadlines, Pretrial Conference and Trial Date

Joinder of parties and amendment of pleadings.

(INSERT DATES)

Parties shall furnish opposing counsel with a written list containing the names and addresses of all fact witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify unless good cause is shown and there is no prejudice to opposing party. The parties are under a continuing obligation to supplement discovery responses within ten (10) days of receipt or other notice of new or revised information.

All fact discovery must be completed.

Plaintiff must furnish expert witness list to the Defendant, along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Plaintiff shall make its experts available for deposition by Defendant.

All dispositive *and* other pretrial motions not explicitly excluded by S.D. Fla. L.R. 7.1.A.1, and accompanying memoranda of law must be filed. A **minimum of seventeen (17) weeks** is required for the Court to review dispositive motions prior to filing of the joint pretrial stipulation. **If no dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.**

Defendant must furnish expert witness list to the Plaintiff along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Defendant shall make its experts available for deposition by Plaintiff.

All expert discovery must be completed. ***If a Daubert or Markman hearing is necessary, the parties are to add that as an additional deadline at the bottom of Attachment A. All Daubert and Markman briefing shall be complete two (2) weeks prior to any scheduled hearing on the same.***

Mediation must be completed. (The parties should select the earliest date to maximize resolution of the case in a manner that promotes client and judicial economy.)

(a) Joint pretrial stipulation must be filed pursuant to Local Rule 16.1.E. The pretrial stipulation shall include Plaintiff's non-binding breakdown of damages with corresponding amounts; the witness lists shall be pared down to those witnesses the parties actually intend to call at trial; and the exhibit lists shall identify the witness introducing each exhibit. **The parties shall meet at least one (1) month prior to the deadline for filing the pretrial stipulation to confer on the preparation of that stipulation.** The Court will not accept unilateral pretrial stipulations, and will strike, *sua sponte*, any such submissions; **and**

(b) Joint Summary of Respective Motions in Limine must be filed. The Summary shall contain a cover page providing the style of the case and an index of the motions in limine. The Summary shall also include for each evidentiary issue: (i) a one (1) page motion identifying the evidence sought to be precluded at trial and citing legal authority supporting exclusion; and (ii) a one (1) page response to the motion providing a statement of the purpose for which the challenged evidence would be offered and citing legal authority in support of admission of the challenged evidence. The parties shall work together to prepare the Summary. Prior to submission of the Summary, the parties are encouraged to resolve evidentiary issues through stipulation.

Final proposed jury instructions (for jury trial) or findings of fact and conclusions of law (for bench trial) must be submitted. ***(A courtesy copy shall be submitted to chambers at flsd_cookefl@flsd.uscourts.gov, in Microsoft Word format)***, each party's list indicating each witness who will testify at trial, a one sentence synopsis of the testimony, and in consultation with opposing counsel, indicate the amount of time needed for direct and cross examination.

Trial Date.

Attachment B: Suggested Pretrial Deadlines

31 weeks prior to pretrial stipulation	Joinder of parties and amendment of pleadings.
21 weeks prior to pretrial stipulation	Parties shall furnish opposing counsel with a written list containing the names and addresses of all fact witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.
18 weeks prior to pretrial stipulation	All <u>fact</u> discovery must be completed.
16 weeks prior to pretrial stipulation	Plaintiff must furnish expert witness list to the Defendant, along with the summaries/reports required by Local Rule 16.1.K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Plaintiff shall make its experts available for deposition by Defendant.
17 weeks prior to pretrial stipulation	All dispositive pretrial motion and memoranda of law must be filed. A <u>minimum of seventeen (17) weeks</u> is required for the Court to review dispositive motion prior to filing of the joint pretrial stipulation. If <u>no</u> dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.
14 weeks prior to pretrial stipulation	Defendant must furnish expert witness list to the Plaintiff along with the summaries/reports required by Local Rule 16.1K, and only those expert witnesses shall be permitted to testify. Within the fourteen day period thereafter, Defendant shall make its experts available for deposition by Plaintiff.
12 weeks prior to pretrial stipulation	All <u>expert</u> discovery must be completed. If a <i>Daubert</i> or <i>Markman</i> hearing may be necessary, the parties are to add that as an additional deadline at the bottom of attachment A. <i>All Daubert and Markman briefing shall be complete two (2) weeks prior to any scheduled hearing on the same.</i>
10 weeks prior to pretrial stipulation	Mediation must be completed. (The parties should select the earliest date to maximize resolution of the case in a manner that promotes client and judicial economy.)
5 weeks prior to the Friday before trial period	(a) <u>Joint</u> pretrial stipulation must be filed pursuant to Local Rule 16.1.E. The pretrial stipulation shall include Plaintiff's non-binding breakdown of damages with corresponding amounts and other relief sought. The parties shall meet at least one (1) month prior to the deadline for filing the pretrial stipulation to confer on the preparation of that stipulation. The Court will not accept unilateral pretrial stipulations, and will strike, <i>sua sponte</i> , any such submissions; and (b) Joint Summary of Respective Motions in Limine must be filed. The Summary shall contain a cover page providing the style of the case and an index of the motions in limine. The Summary shall also include for each evidentiary issue: (i) a one (1) page motion identifying the evidence sought to be precluded at trial and citing legal authority supporting exclusion; and (ii) a one (1) page response to the motion providing a statement of the purpose for which the challenged evidence would be offered and citing legal authority in support of admission of the challenged evidence. The parties shall work together to prepare the Summary. Prior to submission of the Summary, the parties are encouraged to resolve evidentiary issues through stipulation.
Friday before Calendar Call	Final proposed jury instructions (for jury trial) or findings of fact and conclusions of law (for bench trial) must be submitted. <i>(A courtesy copy shall be submitted to chambers at flsd_cookefl@flsd.uscourts.gov, in Microsoft Word format)</i> , each party's list indicating each witness who will testify at trial, a one sentence synopsis of the testimony, and in consultation with opposing counsel, indicate the amount of time needed for direct and cross examination.

Attachment D: Magistrate Judge Jurisdiction Election Form

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 07-22370-Civ-COOKE/BANDSTRA

FLAVA WORKS, INC., *et al.*,

Plaintiffs

vs.

CITY OF MIAMI, FLORIDA, *et al.*,

Defendants.

_____ /

**ELECTION TO JURISDICTION BY
A UNITED STATES MAGISTRATE JUDGE FOR TRIAL**

In accordance with the provisions of 28 U.S.C. § 636(c), the undersigned parties to the above-captioned civil matter hereby jointly and voluntarily elect to have a United States Magistrate Judge conduct any and all further proceedings in the case, including TRIAL, and entry of final judgment with respect thereto.

(Date)

(Signature-Plaintiff's Counsel)

(Date)

(Signature-Plaintiff's Counsel)

(Date)

(Signature-Defendant's Counsel)

(Date)

(Signature-Defendant's Counsel)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: XX-XXXXX-Civ-COOKE/BANDSTRA

NAME(S) OF PLAINTIFF(S),

Plaintiff(s)

vs.

NAME(S) OF DEFENDANT(S),

Defendant(s).

_____ /

TITLE OF ORDER

THIS MATTER is before the Court on the [Plaintiff/Defendant, insert name(s),] Motion for [insert motion title], [ECF No. (insert docket entry number)], filed [insert date].

The Court, having reviewed the Motion and being fully advised in the premises, hereby

ORDERS and ADJUDGES as follows:

[Insert text of proposed judgment and order].

DONE and ORDERED in chambers, Miami, Florida, this __day of [insert month] 20__.

MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of record