

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

**CASE NO. 07-80031-CIV-MIDDLEBROOKS/JOHNSON**

MICHAEL YOUNG,

Plaintiff,

vs.

REED ELSEVIER, INC., et. al.,

Defendants.

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**PRETRIAL SCHEDULING ORDER**

**THIS CAUSE** is before the Court following a Scheduling Conference that took place before the undersigned United States Magistrate Judge on May 15, 2007. In accordance with said Scheduling Conference and pursuant to S.D. Fla. L.R. 16.1B., it is hereby **ORDERED AND ADJUDGED** as follows:

1. **Pretrial Conference:** Pretrial discovery shall be conducted in accordance with S.D. Fla. L.R. 16.1 and 26.1 and the Federal Rules of Civil Procedure. No Pretrial Conference shall be held in this action, unless the parties so request or the Court determines, sua sponte, that a pretrial conference is necessary. Should a pretrial conference be set, the compliance deadlines as set forth in the remainder of this Order shall remain unaltered. This Court has advised the parties of the opportunity to consent to a specially set trial before the undersigned United States Magistrate

Judge pursuant to 28 U.S.C. §636(c). A fully executed consent form should be filed within thirty (30) days from the date of the within Order to ensure a firm trial date before the undersigned if so requested by all parties. Presently, Judge Middlebrooks has this case set for trial during the two-week trial period commencing October 15, 2007.

**2. Pretrial Stipulation:** Counsel must meet at least forty-five (45) days prior to the beginning of the trial calendar to confer on the preparation of a pretrial stipulation. The original and one copy of a Joint Pretrial Stipulation must be filed on or before the date set forth below and shall conform to S.D. Fla. L.R. 16.1E. The Court will not accept unilateral pretrial stipulations, and will strike *sua sponte* any such submissions. Should any of the parties fail to cooperate in the preparation of the joint pretrial stipulation, all other parties shall file a certification with the Court stating the circumstances. Upon receipt of such certification, the Court will issue an order requiring the non-cooperating party or parties to show cause why such party or parties (and their respective attorneys) should not be held in contempt for failure to comply with the Court's order. The pretrial disclosures and objections required under Fed. R. Civ. P. 26(a)(3) should be served, but **not** filed with the Clerk's Office, as the same information is required to be attached to the parties' pretrial stipulation.

**3. Cases Tried Before A Jury:** In cases tried before a jury, the parties shall submit at least ONE WEEK prior to the beginning of the trial calendar, A SINGLE JOINT SET of proposed jury instructions and verdict form, though the parties need not

agree on the proposed language of each or any instruction or question on the verdict form. Where the parties do agree on a proposed instruction or question, that instruction or question shall be set forth in Times New Roman 14 point typeface. Instructions and questions proposed only by the plaintiff(s) to which the defendant(s) object shall be italicized. Instructions and questions proposed only by defendant(s) to which plaintiff(s) object shall be bold-faced. Each jury instruction shall be typed on a separate page and, except for Eleventh Circuit Pattern instructions clearly identified as such, must be supported by citations of authority. In preparing the requested jury instructions, the parties shall utilize as a guide the Pattern Jury Instructions for Civil Cases approved by the Eleventh Circuit, including the directions to counsel contained therein. A copy of the proposed jury instructions and verdict form shall be delivered to the chambers of the Honorable Donald M. Middlebrooks at the time of filing, together with a 3.5" computer diskette compatible with Corel Word Perfect version 8.0 or higher.

**4. Cases Tried Before The Court:** In cases tried before the Court, each party shall file at least ONE WEEK prior to the beginning of the trial calendar, the original and one copy of the proposed Findings of Fact and Conclusions of Law in hard copy form and on 3.5" computer diskette compatible with Corel Word Perfect version 8.0 or higher. Proposed Conclusions of Law must be supported by citations of authority. Counsel shall also submit narrative written direct testimony for each witness they intend to call at trial. Upon being sworn, each witness will adopt his or her written

testimony and cross-examination will begin.

5. **Exhibits:** All exhibits must be pre-marked. A typewritten exhibit list setting forth the number, or letter, and description of each exhibit must be submitted at the time of trial. The parties shall submit said exhibit list on Form AO 187, which is available from the Clerk's office.

6. **Motions For Continuance:** A Motion for Continuance shall not stay the requirement for the filing of a Pretrial Stipulation and, unless an emergency situation arises, a Motion for Continuance will not be considered unless it is filed at least twenty (20) days prior to the date on which the trial calendar is scheduled to commence.

7. **Pretrial Motions:** Any party filing a pretrial motion shall submit a proposed order granting the motion with sufficient copies for each party.

8. **Mediation:** Pursuant to Fed. R. Civ. P. 16 and S.D. Fla. L.R. 16.2, this case is referred to mediation as follows:

a. The mediation shall be completed no later than sixty (60) days before the scheduled trial date. The parties shall not agree to continue the mediation without prior approval of the Court.

b. The parties shall, within fifteen (15) days of the within order, agree upon a mediator and advise the Clerk of the Court of their choice. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, a copy of which can be obtained in the office of the Clerk of this Court, but may select any other mediator. If there is no agreement, Plaintiff's counsel shall

promptly notify the Clerk in writing and the Clerk shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.

c. Plaintiff's counsel shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record. Plaintiff's counsel shall also be responsible for completing the form order referred to in S.D. Fla. L.R. 16.2H as "ORDER SCHEDULING MEDIATION" and for submitting same to the Court.

d. At the mediation conference, the appearance of counsel and representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjustor with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

e. All discussions, representations and statements made at the mediation conference shall be confidential and privileged.

f. At least ten (10) days prior to the mediation date, all parties shall present to the mediator a brief written summary of the case identifying the issues to be resolved. Copies of these summaries shall be served on all other parties.

g. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements set forth herein or who otherwise violate the terms of this Order. The mediator shall report any non-attendance and may recommend imposition of sanctions by the Court for non-

attendance.

h. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to S.D. Fla. L.R. 16.2B6, or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within thirty (30) days of the date of the bill. If the parties must cancel the mediation, notice of cancellation must be given to the mediator at least two (2) full business days in advance of the scheduled mediation or the parties will be required to pay the mediator's fee for one hour.

i. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with S.D. Fla. L.R. 16.2F2, by filing of a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Thereafter, the parties shall forthwith submit an appropriate pleading concluding the case.

j. Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether or not all required parties were present. The report shall also indicate whether or not the case settled (in full or in part), was continued, or whether the mediator declared an impasse.

k. If mediation is not conducted, the case may be stricken from the trial calender and other sanctions may be imposed.

**9. Noncompliance With This Order:** Non-compliance with any provision of

this Order may subject the offending party to sanctions or dismissal. It is the duty of all counsel to enforce the timetable set forth herein in order to ensure an expeditious resolution of this cause.

10. **Pretrial Timetable:** The following timetable shall govern the pretrial procedure in this case. This schedule shall not be modified absent compelling circumstances. Any requests for modification of this timetable shall be submitted in motion form and be directed to the attention of the Honorable Donald M. Middlebrooks.

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| May 22, 2007  | Joinder of Additional Parties and Amend Pleadings.  |
| May 29, 2007  | Plaintiff shall furnish opposing counsel with a written list containing the names and addresses of all <u>expert</u> witnesses intended to be called at trial and only those <u>expert</u> witnesses listed shall be permitted to testify. Within the fourteen day period following this disclosure (on or before June 11, 2007), the plaintiff shall make its experts available for deposition by the defendant. The experts' depositions may be conducted without further order from the Court. |
| June 11, 2007 | Defendant shall furnish opposing counsel with a written list containing the names and addresses of all <u>expert</u> witnesses intended to be called at trial and only those <u>expert</u> witnesses listed shall be permitted to testify. Within the fourteen day period following this disclosure (on or before June 25, 2007), the defendant shall make its experts available for deposition by the plaintiff. The experts' depositions may be conducted without further order from the Court. |
| <u>Note:</u>  | These provisions pertaining to <u>expert</u> witnesses do not apply to treating physicians, psychologists or other health providers.  |
| June 25, 2007 | Parties shall furnish opposing counsel with a written list containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed   |

shall be permitted to testify.

- July 12, 2007 Parties shall furnish opposing counsel with summaries of their expert witnesses' anticipated testimony or written expert reports in accordance with S.D. Fla. L.R. 16.1.K.
- July 23, 2007 All discovery must be completed.
- Aug. 6, 2007 All Pretrial Motions and Memoranda of Law must be filed.
- Sept. 17, 2007 Joint Pretrial Stipulation must be filed. Designations of deposition testimony must be made.
- Oct. 1, 2007 Objections to designations of deposition testimony must be filed. PLEASE NOTE that late designations will not be admissible absent truly exigent circumstances.
- Oct. 9, 2007 Jury Instructions or Proposed Findings of Fact and Conclusions of Law.

11. **Settlement:** If the case is settled, counsel are directed to inform the Court promptly by calling the chambers of the Honorable Donald M. Middlebrooks at (561) 514-3720 and to submit an appropriate Order for Dismissal, pursuant to Fed. R. Civ. P. 41(a)(1). Such Order must be filed within ten (10) days of notification of settlement to the Court. The parties shall attend all hearings and abide by all time requirements unless and until an order of dismissal is filed.

DATED this 15<sup>th</sup> day of May, 2007.



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LINNEA R. JOHNSON  
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Donald M. Middlebrooks  
All Counsel of Record



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A CIVIL CASE  
BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. §636©), you are hereby notified that the full-time United States Magistrate Judges of this District Court, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any and all proceedings in a civil case, including a jury or non jury trial, and order the entry of a final judgment. Moreover, upon consent, the Magistrate Judge may rule on case dispositive motion(s). Copies of appropriate consent forms for these purposes are attached and are also available from the Clerk of the Court.

You should be aware that your decision to consent or not to consent to the referral of your case to a United States Magistrate Judge for disposition is your decision and yours alone after consulting with your lawyer, that your lawyer cannot make this decision for you, that this decision is entirely voluntary on your part and should be communicated solely to the Clerk of the District Court. You should be aware that you have a right to trial by a United States District Judge. Only if all parties to the case consent to the reference to a Magistrate Judge will either a District Judge or Magistrate Judge be informed of your decision. Once consent is given by the parties it cannot be waived. Only the District court may, for good cause shown on its own motion, or under extraordinary circumstances shown by a party, vacate a reference of a civil matter to a Magistrate Judge. Appeals in rulings from consent cases are decided by the Eleventh Circuit Court of Appeals.

**All counsel are directed to review this notice with their client(s) before the execution of any written consent to trial before U. S. Magistrate Judge.**

UNITED STATES DISTRICT OF FLORIDA  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-80031-CIV-MIDDLEBROOKS/JOHNSON

MICHAEL YOUNG,

Plaintiff,

vs.

REED ELSEVIER, INC., et. al.,

Defendants.

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**NOTICE, CONSENT, AND ORDER OF REFERENCE -  
EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE**

**Notice of Availability of a United States Magistrate Judge  
to Exercise Jurisdiction**

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States Magistrate Judge of this District Court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the Court's jurisdiction from being exercised by a Magistrate Judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any Magistrate Judge or to the District Judge to whom the case has been assigned.

An appeal from a judgment entered by a Magistrate Judge shall be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as a appeal from any other judgment of this District Court.

**Consent to the Exercise of Jurisdiction by  
a United States Magistrate Judge**

In accordance with provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States Magistrate Judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment and conduct all post-judgment proceedings.

Party Represented	Signatures	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Order of Reference**

IT IS ORDERED that this case be referred to \_\_\_\_\_,  
United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636 (c) and Fed.R.Civ.P. 73.

\_\_\_\_\_  
Date United States District Judge

**NOTE: MAIL ORIGINAL FORM TO THE CLERK AND A COPY TO THE DISTRICT JUDGE.**