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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Kathleen Hoffard,

Plaintiff,

vs.

Cochise County, Arizona; Lisa Marra,
in her official capacity as Director of
Cochise County Elections Department

Defendants.

Case Number: 4:20-cv-00243-SHR

JOINT CASE MANAGEMENT REPORT

(Assigned to the Hon. Scott H. Rash)

Pursuant to the July 16, 2021 Order Setting Scheduling Conference (Doc. 33), and Federal Rule of Civil Procedure 26(f), the Parties met and conferred on August 17, 2021, and have developed, and respectfully submit the following Joint Case Management Report (“Report”).

1. RULE 26(f) CONFERENCE PARTICIPANTS

The following individuals participated in the August 17, 2021 Rule 26(f) meeting and jointly assisted in developing this Report:

- a. On behalf of Plaintiff Kathleen Hoffard: Rose Daly-Rooney, Maya Abela, Meaghan Kramer, and Tamaraingsey In.
- b. On behalf of Defendants Cochise County, Arizona, and Lisa Marra, in her official capacity as Director of Cochise County Elections: Christine J. Roberts and Paul Correa.

2. LIST OF THE PARTIES

The following is a list of Parties in this case, including any parent corporations or entities:

- a. Kathleen Hoffard
- b. Cochise County, Arizona; and
- c. Lisa Marra, in her official capacity as Director of Cochise County Elections Department.

3. SHORT STATEMENT OF THE NATURE OF THE CASE

a. Plaintiff:

This is a case arising under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and the Arizona Civil Rights Act (ACRA), A.R.S. § 41-1421(B). Plaintiff alleges that Cochise County has violated these laws by instituting a blanket ban on curbside voting throughout the County. As a result of this ban, Plaintiff alleges she was discriminated against in voting when she was denied curbside voting as a reasonable modification in the 2018 election. Plaintiffs’ position is that all

1 people who are duly qualified and registered to vote should have equal access to do so in
2 person on election day. In Cochise County, Arizona, people who live with disabilities and
3 wish to vote in person on election day are faced with the possibility of disenfranchisement
4 due to the County's blanket policy making curbside voting unavailable for individuals
5 who may need it as a reasonable modification due to their disabilities. Plaintiff alleges
6 that the failure to make the voting process in Cochise County accessible for individuals
7 with disabilities who may require a reasonable modification of curbside voting
8 violates the ADA, Section 504, and the ACRA.

9 **b. Defendants:**

10 Cochise County has not instituted a blanket ban on curbside voting. Rather, in
11 2015, Cochise County decided to move to fully ADA accessible and ADA compliant Vote
12 Centers. Nor, has Cochise County discriminated against Plaintiff in voting based on her
13 disability because Arizona law allows for, but does not mandate, curbside voting.
14 Moreover, there is no other authority requiring Cochise County to offer in-person voting
15 when other ADA compliant options are available.

16 **4. JURISDICTIONAL BASIS OF THE CASE**

17 This Court has jurisdiction of this matter and the Parties hereto pursuant to 28
18 U.S.C. §§ 1331 and 1343, as this case is brought pursuant to Title II of the Americans
19 with Disabilities Act, 42 U.S.C. § 12131 et seq., and Section 504 of the Rehabilitation
20 Act of 1973, 29 U.S.C. § 794, and therefore presents a federal question. This Court also
21 has jurisdiction over the claims alleged under the Arizona Civil Rights Act, A.R.S. § 41-
22 1421(B), pursuant to 28 U.S.C. § 1367, as the state law claims are so related that they
23 form part of the same case or controversy.

24 Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391 because
25 Plaintiff and Defendants reside in the District, Defendants have sufficient contacts within
26 this District to subject them to personal jurisdiction, and the acts and omissions giving
27 rise to this Complaint occurred within this District.

1 **5. PARTIES NOT SERVED**

2 All Parties have been served; Defendants Cochise County and Lisa Marra filed an
3 Answer on July 13, 2021 (Doc. 32).

4 **6. ADDITIONAL PARTIES AND AMENDMENTED PLEADINGS**

5 Plaintiff is considering adding additional Plaintiffs and will do so on or before
6 December 10, 2021. Plaintiff does not anticipate otherwise amending the Amended
7 Complaint, but reserves the right to do so consistent with Federal Rule of Civil Procedure
8 (“Fed. R. Civ. P.” or “Federal Rule”) 15 and this Court’s Case Management Order(s).

9 **7. CONTEMPLATED MOTIONS**

10 The following is a list of the currently contemplated substantive motions, and a
11 statement of the issues to be decided by the motions:

12 a. Motions filed by either or both Parties for summary judgment on the
13 issue of liability under the ADA, Section 504, and ACRA;

14 b. *Daubert* motions filed by either or both Parties under Federal Rule
15 of Evidence 702, as appropriate based on the proffered expert opinions.

16 **8. REFERENCE TO MAGISTRATE JUDGE**

17 a. **Plaintiff:**

18 Plaintiff believes this case would be suitable for reference to a United States
19 Magistrate Judge for settlement conference or for mediation by a private
20 mediator. Plaintiff does not believe this case would be suitable for reference
21 to a Magistrate Judge for trial, and Plaintiff does not consent to magistrate
22 jurisdiction for that purpose.

23 b. **Defendants:**

24 Defendants do not believe, at this time, that this case is suitable for a
25 settlement conference and will not agree to one in front of a United States
26 Magistrate Judge. Nor do Defendants agree to an early mediation
27 administered by a private mediator.
28

1 **9. RELATED PENDING CASES**

2 There are no related cases pending before other courts or other judges of this Court
3 at this time.

4 **10. DISCOVERY OF ESI**

5 a. The Parties agree that discovery and disclosure obligations apply to all
6 electronically stored information (“ESI”) in this matter.

7 b. The Parties have agreed to an Electronic Discovery Protocol which
8 provides the manner of preservation, disclosure, discovery, and production of certain ESI,
9 and how the Parties will agree to search terms to be performed for the sources from which
10 the parties intend to discover ESI and communications. The Parties each reserve all rights
11 to object to unreasonable and/or unduly burdensome or intrusive electronic discovery
12 efforts.

13 c. Plaintiff have filed a Stipulated Protective Order to protect Plaintiff’s
14 healthcare information. The order may also apply to any confidential third-party
15 discovery.

16 **11. PRIVILEGES OR WORK PRODUCT**

17 The Parties do not anticipate that there will be substantial issues regarding
18 privilege or work product at this time.

19 **12. FEDERAL RULE OF EVIDENCE 502(D)**

20 The Parties have agreed to the text of a proposed Federal Rule of Evidence 502(d)
21 order, which has been filed herewith.

22 **13. DISCUSSION OF NECESSARY DISCOVERY**

23 a. **Necessary discovery:**

- 24 i. **Plaintiff:** Plaintiff anticipates that it will serve written discovery on
25 all Defendants, will conduct a Fed. R. Civ. P. 30(b)(6) deposition of
26 the County, and will depose Defendant Marra and other employees
27 critical to the administration of elections and related operations in
28 the County. Plaintiff will also seek third-party discovery from other

1 Arizona counties, and from companies that manufacture carts for
 2 voting machines, ballot printers, voting software, and other voting
 3 hardware utilized for curbside voting. Because Plaintiff is
 4 immunocompromised, Plaintiff requests that all oral depositions be
 5 conducted remotely in this case, and be subject to a remote
 6 deposition protocol – to be jointly developed by the parties.

7 Defendants have indicated that they intend to take a video
 8 deposition of Plaintiff. Plaintiff objects on the basis that a video
 9 deposition is unnecessary in this case and Plaintiff will be
 10 intimidated if she is recorded on video. Defendants do not appear to
 11 contest that Plaintiff has a qualifying disability and is a qualified
 12 elector of Cochise County. (Doc. 25 at 4:17-5:2; Doc. 32 at ¶9). The
 13 bulk of Defendants’ defenses have little to do with the Plaintiff, and
 14 instead focus on the accessibility of the County’s Voting Centers,
 15 the logistics of curbside voting the alleged burden curbside voting
 16 would cause.

17 ii. **Defendants:** Defendants believe that extensive third-party
 18 discovery, especially from other Arizona counties, is neither
 19 reasonable nor warranted in this matter and will be seeking to have
 20 the Court limit the scope of discovery based on relevance, confusing
 21 the issues, etc. Defendants anticipate serving written discovery on
 22 Plaintiff, and any third-party approved by the Court. Defendants will
 23 take a deposition of Plaintiff, preserved on video, and reserve their
 24 rights to depose additional third-parties identified through discovery.

25 b. **Suggested changes, if any, to the discovery limitations imposed by the**
 26 **Federal Rules of Civil Procedure:**

27 i. **Plaintiff:** In their briefing in this case, Defendants have
 28 demonstrated that they intend to assert at least three defenses—that

1 providing curbside voting would: (i) cause the County to suffer an
2 undue burden, (ii) represent a fundamental alteration of its voting
3 programs, services and activities, and (iii) pose a direct threat. As
4 part of Defendants' defenses, they argue that curbside voting is too
5 costly, poses great risks to voting hardware, vehicles, and operators,
6 and that the software and hardware manufactured for the purpose of
7 curbside voting are untenable due to restrictions to Wi-Fi and power
8 at its Voting Centers. Because Defendants have put these facts at
9 issue, Plaintiff must seek rebuttal discovery from Arizona counties
10 conducting curbside voting, and companies selling curbside voting
11 carts, and ballot and pollbook software and hardware. Plaintiff
12 anticipates that such discovery will be narrow in scope. Accordingly,
13 and to reduce the burden on the third parties, most of which are
14 public entities, Plaintiff proposes that a portion of her third-party
15 discovery be conducted via deposition by written question pursuant
16 to Fed. R. Civ. P. 31, rather than via subpoena. Accordingly, Plaintiff
17 requests that she be permitted 25 depositions, rather than the
18 presumptive 10. Because Plaintiff anticipates that the majority of her
19 depositions will be conducted via written question, Plaintiff
20 proposes reducing the total time for its Rule 30 depositions to 50
21 hours – rather than the presumptive 70.

22 ii. **Defendants:** Defendants believe that Plaintiff's request for 25
23 depositions is excessive, as most of the proposed depositions will be
24 of third parties who are not part of this lawsuit, and will be asking
25 the Court to limit Plaintiff's depositions to 10.

26 **c. The number of hours permitted for each deposition:**

27 i. **Plaintiff:** Oral depositions conducted by Plaintiff will be limited to
28 50 hours of total testimony for lay and Fed. R. Civ. P. 30(b)(6)

witnesses. Rule 30(d)(1) will govern the deposition time limits for any testifying expert(s) identified by Defendants (seven hours per witness).

ii. **Defendants:** Defendants do not believe that any change to the presumptive limits is necessary.

14. PROPOSED DEADLINES

- a. Initial disclosure statements: August 31, 2021;
- b. Filing settlement status reports: March 1, 2022 and every 90 days thereafter;
- c. Motions to amend the complaint and join additional parties: December 10, 2021;
- d. Disclosure of lay witnesses: January 28, 2022;
- e. Disclosure of expert witnesses: January 28, 2022;
- f. Disclosure of rebuttal expert witnesses: May 6, 2022;
- g. Plaintiff's expert report(s): March 4, 2022;
- h. Defendants' expert report(s): April 1, 2022;
- i. Rebuttal expert reports: May 6, 2022;
- j. The completion of all discovery: August 5, 2022. The Parties believe that extended time is warranted due to the need for third-party discovery in this case;
- k. Filing dispositive motions: September 3, 2022;
- l. Filing joint proposed pretrial order: September 10, 2022, unless dispositive motions are filed, in which case Counsel shall file a proposed Joint Pretrial Order on or before thirty days after the Court rules on all dispositive motions.

15. WHETHER A JURY TRIAL HAS BEEN REQUESTED

Defendants have requested a jury trial; Plaintiff agrees to and has requested a jury trial.

1 **16. SETTLEMENT PROSPECTS**

2 Plaintiff is open to settlement discussions and feels that the Parties may be able
3 to reach a settlement with the assistance of mediation. At this time, Defendants do not
4 believe that a settlement conference or a mediation would be fruitful, however, does not
5 close the door to such discussions after significant discovery.

6 **17. OTHER MATTERS**

7 There are no other matters to report that will aid the Court and the Parties in a
8 speedy, just, and inexpensive manner.

9 DATED this 3rd day of September, 2021.

10 **ARIZONA CENTER FOR DISABILITY LAW**

11 /s/Rose Daly-Rooney

12 Rose Daly-Rooney

13 Maya Abela

14 Tamarangsey In

15 Meaghan Kramer

 Attorneys for Plaintiff Kathleen Hoffard

16 **BRIAN M. MCINTYRE,**
17 **COCHISE COUNTY ATTORNEY**

/s/ Christine J. Roberts

18 Christine J. Roberts

19 Chief Civil Deputy County Attorney

20 Paul Correa

 Civil Deputy County Attorney

21 Attorneys for Defendants Cochise County and Lisa
22 Marra, in her official capacity as Cochise County
23 Elections Director

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing, and sent a copy by email, to the following:

COCHISE COUNTY ATTORNEY
CHRISTINE J. ROBERTS
Chief Civil Deputy County Attorney
Arizona Bar No. 033718

PAUL CORREA
Civil Deputy County Attorney
P.O. Drawer CA
Bisbee, AZ 85603
CVAttymeo@cochise.az.gov
*Attorneys for Cochise County, and Lisa Marra, in her
official capacity as Cochise County Elections Director*

By: /s/Rose Daly-Rooney

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9 Kathleen Hoffard,

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12 Cochise County, Arizona; Lisa Marra,
13 in her official capacity as Director of
14 Cochise County Elections
Department,

15 Defendants.

Case Number: 4:20-cv-00243-SHR

CASE MANAGEMENT ORDER

(Assigned to the Hon. Scott H. Rash)

16 A Scheduling Conference was held before this Court on September 10, 2021.
17 Accordingly, pursuant to Rule 16(b) of the Federal Rules of Civil Procedure,

18 **IT IS HEREBY ORDERED:**

19 A. Initial disclosures as defined under Federal Rule of Civil Procedure (“Fed.
20 R. Civ. P.” or “Federal Rule”) 26(a)(1) have been exchanged by the parties. Final
21 disclosure of witnesses will be made by the following dates: lay witnesses: January 28,
22 2022; expert witnesses: January 28, 2022, and rebuttal expert witnesses: May 6, 2022.

23 B. Parties are given until December 10, 2021, for leave to move to join
24 additional parties. Parties are given until December 10, 2021, to move to amend the
25 complaint. Thereafter, the Court will entertain these motions only for good cause under
26 Fed. R. Civ. P. 16.

27 C. Plaintiff shall disclose expert reports to be used at trial pursuant to the
28 provisions of Rule 26(a)(2) and (3) of the Federal Rules, on or before March 4, 2022.

1 Defendants shall have up to April 1, 2022 to disclose expert reports. Both Parties shall
2 disclose rebuttal experts and their reports on or before May 6, 2022.

3 D. Counsel shall submit to the Court a brief Joint Settlement Status Report on
4 or before March 1, 2022 and every 90 days thereafter.

5 E. All discovery, including answers to interrogatories, production of
6 documents, depositions, and requests for admissions, must be completed by August 5,
7 2022. To satisfy Rule 5.2 of the Rules of Practice of the U.S. District Court for the District
8 of Arizona (“Local Rules” or “LRCiv”), the parties shall file a Notice of Service of
9 Discovery with the Clerk of the Court. Parties are directed to LRCiv 7.2(j), which
10 prohibits filing discovery motions unless parties have first met to resolve any discovery
11 difficulties. If a discovery dispute arises which cannot be resolved by the parties, the
12 parties shall notify the Judge’s Law Clerk by telephone at (520) 205-4650. The Court will
13 promptly resolve the problem by scheduling a telephonic conference or by having the
14 parties file motions with the required certifying statement. Counsel must conduct
15 discovery in a timely manner that permits all discovery, including the resolution of any
16 discovery disputes, before the discovery deadline.

17 F. Dispositive Motions shall be filed on or before September 3, 2022. Pursuant
18 to LRCiv 7.2, counsel may file a motion, response, and reply. No other (supplemental)
19 pleading will be considered, unless a motion to file said pleading is granted by the Court.
20 All pleadings submitted for the Court’s review and decision must comply with the filing,
21 time, and form requirements of the Local Rules. See LRCiv 12.1; 56.1. Additionally, any
22 pleading which is submitted with more than one exhibit must be accompanied by a Table
23 of Contents. Exhibits must be indexed with tabs that correspond with the Table of
24 Contents. Absent exigent circumstances, the Court will not consider pleadings which do
25 not conform to these requirements.

26 G. Counsel shall file a Joint Proposed Pretrial Order on or before September
27 10, 2022, unless dispositive motions are filed, in which case Counsel shall file a proposed
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1 Joint Pretrial Order on or before thirty days after the Court rules on all dispositive
2 motions. If dispositive motions are filed, the Joint Pretrial Order shall be filed 30 days
3 from the filing date of the Court's order on the dispositive motions. See attached Joint
4 Proposed Pretrial Order for the required content. Motions in limine shall be filed no later
5 than two weeks after the filing of the proposed Joint Pretrial Order. Responses to motions
6 in limine are due ten days after the motion in limine is filed. No replies are permitted.
7 Any hearing on motions in limine will be set at the Pretrial Conference.

8 H. The Pretrial Conference will be set upon the filing of the proposed Pretrial
9 Order, and the Trial Date in this matter will be set at the Pretrial Conference.

10 I. Counsel cannot, without the Court's approval, extend the deadlines
11 imposed by the Court. All motions and requests for extension of time shall comply with
12 LRCiv 7.3. All motions and requests for extension of discovery deadlines must include a
13 summary of the discovery conducted to date, the anticipated discovery to be done if the
14 request is granted, and the reasons why discovery has not been completed within the
15 deadline.

16 J. All motions, responses, and replies must comply with LRCiv 7.2(e). All
17 requests for page extensions must be filed at least one week prior to the filing of the
18 substantive document, must note how many prior extensions have been requested in the
19 caption, and must state the position of all parties. Any page extension requests filed within
20 one week of the filing of the substantive document will be denied.

21 K. All motions that are non-dispositive must have a proposed order attached
22 in accordance with Local Rule 7.1(b)(2)-(3). A copy of the motion must be emailed in
23 Microsoft Word format to Chambers at: rash_chambers@azd.uscourts.gov, pursuant to
24 the Electronic Administrative Policies and Procedures Manual § II(G).

25 L. The parties shall provide to the Court a bound hard copy of any filing that
26 is more than ten (10) pages in length, motions to dismiss, motions for summary judgment,
27 motions for temporary restraining orders, sealed documents, and any responses and
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1 replies thereto. This applies to all attachments, appendices, and indices that are included
2 with a motion filed with the Court. If the hard copy contains multiple documents, each
3 document shall be individually tabbed. Hard copies must be printed directly from ECF to
4 ensure that the ECF pagination is included in the Court's copy for ease of reference. *See*
5 *Electronic Administrative Policies and Procedures Manual § II(D)(3)*.

6 M. Parties are specifically advised that pursuant to LRCiv 7.2(i), "[i]f a motion
7 does not conform in all substantial respects with the requirements of this Local Rule, or
8 if the unrepresented party or counsel does not serve and file the required answering
9 memoranda, or if the unrepresented party or counsel fails to appear at the time and place
10 assigned for oral argument, such non-compliance may be deemed a consent to the denial
11 or granting of the motion and the Court may dispose of the motion summarily." In
12 addition, willful failure to comply with any of the terms of this order may result in
13 dismissal of this action without further notice to the plaintiff, or sanctions upon the
14 defendants. Fed. R. Civ. P. 16(f)(C) & 37(b)(2).

15 N. The parties are expected to fully comply with Federal Rule of Civil
16 Procedure 26 and to minimize the expense of discovery. Furthermore, all filings must
17 conform with Local Rules of Civil Procedure 7.1 and 7.2. Failure to do so may lead to
18 sanctions. Fed. R. Civ. P. 16(f).

19 Dated this 3rd day of September, 2021.
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