

**COMMERCIAL DIVISION
PRELIMINARY CONFERENCE ORDER
PURSUANT TO PART 202 OF THE UNIFORM CIVIL RULES
FOR THE SUPREME COURT KINGS COUNTY**

Date _____ 201_

| | |
|-----------|--------------|
| -against- | Plaintiff(s) |
| | Defendant(s) |

Index # _____

Plaintiff _____ is represented by
Firm: _____
Responsible attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by
Firm: _____
Responsible Attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by
Firm: _____
Responsible Attorney: _____
Address: _____
E-mail: _____
Telephone: _____ Fax: _____

Defendant _____ is represented by

Firm: _____

Responsible Attorney: _____

Address: _____

E-mail: _____

Telephone: _____ Fax: _____

Nature of the Case:

(a) Plaintiff's Claims / Counterclaim Defenses

Amount Demanded: \$ _____

(b) Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Claims / Defenses

Amount Demanded: \$ _____

IT IS HEREBY ORDERED THAT THIS ACTION IS ASSIGNED TO THE

_____EXPEDITED_____STANDARD_____COMPLEX TRACK

AND DISCLOSURE SHALL PROCEED AS FOLLOWS:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):

(a) Demand for a bill of particulars shall be served by _____ on or before _____

(b) Bill of Particulars shall be served by _____ on or before _____

(c) BILL OF PARTICULARS SERVED:

[] Satisfactory

[] Unsatisfactory - because:

(2) DOCUMENT PRODUCTION/ DISCOVERY AND INSPECTION:

(a) All Demands for Discovery and Inspection (CPLR 3120) shall be served not later than _____ days from the date of this Order.

(b) All responses to Discovery and Inspection demands shall be served not later than _____ days after receipt of the opposing party(ies) demand(s).

(c) All demands for production of books, documents, records and other writings relevant to the issues in this case shall be deemed to include a demand for production of any photograph(s), audio tape(s), video tape(s), computer disk(s) or program(s) and e-mail. The failure to comply herewith may result in preclusion from the introduction of such evidence.

(3) INTERROGATORIES: Limited to 25 questions per party

(a) Interrogatories shall be served by _____ on or before _____.

(b) Answers to interrogatories shall be served by _____ on or before _____.

(4) **DEPOSITIONS:** To be held as follows:
(Priority shall be in accordance with CPLR 3106 unless otherwise agreed or ordered)

| Party | Date | Time | Place |
|-------|-------|-------|-------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

FAILURE TO APPEAR FOR DEPOSITION AS SCHEDULED WILL BE DEEMED A WAIVER. FAILURE TO PRODUCE A SPECIFIED WITNESS FOR DEPOSITION WILL PRECLUDE SUCH WITNESS'S TESTIMONY AT TRIAL ON BEHALF OF THE PARTY FAILING TO PRODUCE. SUCH PARTY MAY ALSO BE DEEMED TO HAVE WAIVED THE DEPOSITION OF THE OPPOSING PARTY.

(5) **OTHER DISCLOSURE:**

(a) Commissions or letter rogatory (CPLR 3108): Identify and set forth the location of each witness:

(b) Expert disclosure (CPLR 3101[d])
Plaintiff(s) shall provide expert disclosure by _____
Defendant(s) shall provide expert disclosure by _____

(6) **PRESERVATION OF ELECTRONIC EVIDENCE:**

(a) The term ESI shall include, but not be limited to, e-mails and attachments, voice mail, instant messaging and other electronic communications, word processing documents, text files, hard drive spreadsheets, graphics, audio and video files, databases, calendars, telephone logs, transaction logs, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information and backup materials, Native Files and the corresponding Metadata which is ordinarily maintained.

(b) Within 10 days of the execution of this PC Order, all signatories hereto shall, in compliance with Rule 8(b) of the Uniform Commercial Division Rules (22 NYCRR 202.70), submit to the Court a copy of the agreed written plan/stipulation for the preservation of ESI related documents, data and tangible things reasonably anticipated to be subject to discovery in this action. Such plan, which may be updated, shall identify the categories of ESI to be preserved, individuals responsible for preservation, maintenance and production of ESI and issues relating to potential costs of maintenance, preservation and production of ESI. In the alternative, counsel may stipulate to limit and/or eliminate the discovery of ESI in whole or part and/or forego or

limit the production of information in electronic form. A copy of such stipulation must be submitted to the court within 10 days of this Order.

(c) For the relevant periods relating to the issues in this litigation, each party shall take all reasonable steps (including suspending aspects of ordinary computer processing and/or backup of data that may compromise or destroy ESI) necessary to maintain and preserve such ESI as may be (i) relevant to the parties' claims and/or defenses, or (ii) reasonably calculated to lead to the discovery of admissible evidence, including but not limited to all such ESI data generated by and/or stored on the party's computer system(s) and/or any computer system and storage media (i.e., internal and external hard drives, hard disks, floppy disks, memory sticks, flash drives and backup tapes), under the party's possession, custody and/or control. The failure to comply herewith may result in appropriate sanctions or such other relief as the court may be authorized to impose or award, including but not limited to precluding use of evidence, taking adverse inferences, and/or rendering judgment in whole or part against the offending party(ies).

(d) (i) When ESI is produced, it shall be produced on appropriate electronic media (i.e. CD, DVD or portable hard-drive) in the following format(s), as may be agreed:

___ Digital images endorsed with numbers and confidentiality legends, searchable text and agreed-to metadata fields with regard to the following data:

___ Native Format with metadata intact and, as appropriate under the circumstances, endorsed with numbers and confidentiality legends with regard to the following data:

___ The following format, as agreed by the parties, with regard to the following data:

(ii) In the absence of an agreement by the parties, the court shall direct the manner of production upon application of the party(ies).

(e) Issues with regard to cost shifting shall be brought to the attention of the Court as soon as practicable.

(7) CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT:

(a) In the event that there is a need for a Confidentiality/Non-Disclosure Agreement prior to disclosure, the party(ies) demanding same shall prepare and circulate the proposed agreement. If the party(ies) cannot agree as to same, they shall promptly notify the Court. The failure to promptly seek a confidentiality agreement may result in a waiver of same.

(b) _____ anticipates the need for a

Confidentiality Agreement as to the following issues: _____

(8) DISCOVERY - RELATED DISPUTES:

Issues relating to disclosure shall be resolved between counsel without Court intervention whenever possible. If Court intervention becomes necessary, a conference call may be arranged with the Judge or Law Clerk pursuant to Kings County Commercial Division Rule 18 and must take place prior to any motions being made.

(9) INSURANCE COVERAGE (IF APPLICABLE): _____

(10) IMPLAIDER: Shall be completed on or before _____

(11) END DATE FOR ALL DISCLOSURE: _____

(12) ALTERNATIVE DISPUTE RESOLUTION:

Requested

Declined

(13) COMPLIANCE CONFERENCE: Shall be held on _____

(14) NOTE OF ISSUE: A note of issue/certificate of readiness shall be filed on or before _____. Failure to file a note of issue by this date may result in the dismissal of this action.

(15) MOTIONS: Any dispositive motion(s) shall be made returnable on or before _____

(16) FINAL SETTLEMENT CONFERENCE: A final settlement conference, at which the parties must be present, shall be held on _____

THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED OR MODIFIED EXCEPT WITH APPROVAL OF THE COURT.

IN THE EVENT OF NON-COMPLIANCE WITH THE TERMS OF THIS ORDER, COSTS OR OTHER SANCTIONS MAY BE IMPOSED, INCLUDING PRECLUSION OF EVIDENCE.

IF A SETTLEMENT IS REACHED, THE COURT SHALL BE PROMPTLY NOTIFIED AND A COURTESY COPY OF THE STIPULATION OF DISCONTINUANCE SHALL BE PROMPTLY FORWARDED TO THE COURT. PLAINTIFF IS RESPONSIBLE FOR FILING THE STIPULATION WITH THE COUNTY CLERK AND SHALL PAY THE FEES UNLESS OTHERWISE AGREED BETWEEN THE PARTIES AS PART OF

THE WRITTEN STIPULATION.

