

## **Part 53 Practice Rules**

(Revised February 26, 2014)

*The following rules serve to supplement the applicable CPLR and Statewide Commercial Division Rules, except where indicated.*

1. **Requests for Adjournment:** Absent extraordinary circumstances, no motion scheduled for oral argument in Part 53 will be adjourned unless the **request for adjournment** is received by the Part Clerk no later than noon the day prior to the scheduled argument. Otherwise, **only one adjournment** is allowed per argument on a motion or conference, no matter which side requests it or even if all parties agree.

**Please DO NOT CALL OR SEND letters/faxes to chambers or the courtroom to request an adjournment.**

**Any and all requests for an adjournment shall be made by E-mail, cc'ed to all parties, to RCE53@courts.state.ny.us**

2. **Orders/Transcripts:**
  - A. **No party shall contact the Part or Chambers to inquire as to whether an order has been signed** UNLESS it is an emergency (e.g. the order is time sensitive OR it was submitted more than 45 days prior). In the meantime, parties are directed to check SCROLL, E-Filing, E-Courts and the County Clerk's file for orders. If the order is not there, it has not been signed. Otherwise, if an inquiry must be made, **please send an E-mail, cc'ed to all parties, to RCE53@courts.state.ny.us**  
  
SCROLL and E-Filing can be accessed here:  
<http://iapps.courts.state.ny.us/iscroll/>  
<https://iapps.courts.state.ny.us/nyscef/Login>
  - B. **Any document requiring the Judge's signature** (e.g. proposed/settled orders, stipulations or transcripts to be "so ordered") shall be E-filed **AND** provided to the Court in hard-copy form.
  - C. In the event that a party requests that a **transcript be "So Ordered"** by the Court, the following procedure must be adhered to: Transcripts shall be submitted together with an errata sheet correcting all errors in the record, including presumed court errors. If all parties consent to the proposed corrections or agree that no corrections are required, a stipulation to that effect shall accompany the errata sheet or transcript. In the absence of consent, the requesting party shall notice the record for settlement pursuant to CPLR 5525 [c].
  - D. **Proposed Orders submitted in connection with a motion** must be

**settled on NOTICE**, contain the **motion sequence number**, and be sent directly to the Part or Chambers (unless the proposed order is submitted in connection with a default judgment, in which case, the proposed order should be sent to the Commercial Support Office).

- E. All orders on motions or stipulations to **consolidate or change captions** shall be sent to the Trial Support Office, located in Room 158M.

3. **Motions:**

- A. **Transcripts of Proceedings:** Subsequent to each oral argument held on a motion, the moving party shall request from the court reporter a **transcript** of the proceedings and **promptly provide a copy** to the Court, to be delivered to the Part Clerk. Failure to provide a copy of the transcript to the Court when specifically directed by Chambers will result in the motion being marked abandoned. Contact the Part Clerk to obtain the name and contact information of the court reporter.
- B. **Motion sequence numbers** shall appear on ALL motion papers including: the notice of motion, memos of law, exhibits, affirmations, AND proposed/settled orders.
- C. **MOTIONS WILL NOT BE SCHEDULED FOR ORAL ARGUMENT UNTIL PART 53 HAS A COMPLETE SET OF ALL MOTION PAPERS.** In light of recent changes in the E-filing office, **Part 53 will not schedule newly filed motions for oral argument unless and until all parties to the motion have submitted “Working Copies” in hard copy form to the E-Filing office** (SEE Rule #13 regarding E-filing).
- D. **Memorandums of Law ARE REQUIRED on ALL motions.** Failure to submit separate memos of law (not incorporated into attorney affirmations) may result in the denial of the motion.
- E. **Page extension requests** (enlarged briefs) will be denied absent an extraordinary showing of complexity. Parties requesting a page extension shall submit a short statement containing the request to REC53@courts.state.ny.us. Combined briefs for cross-motions are restricted to the same page limits set forth in Commercial Division Rule 17.
- F. **Opposing Papers on Orders to Show Cause** are returnable directly to the Part, and must be submitted at least one day prior to oral argument on the application. In contrast, opposing/reply papers are returnable to Motion Support/Room 130.
- G. **Dispositive Motions:**

1. **Rule 19-A statements** (Statements of Undisputed Facts) are required on all **summary judgment motions**.
  2. **Summary judgment** motions must be initiated within 30 days after the filing the Note of Issue, unless otherwise directed.
  3. To clarify Rule 11(d) of the Commercial Division Rules, the presumption is that **discovery is not stayed** by the filing of a dispositive motion unless otherwise directed by the Court.
- H. **Oral argument** is required on all motions **except motions to reargue**.
- I. Except for discovery motions, no prior permission is required before making a motion. **Commercial Division Rule 24 letters are NOT required in Part 53.**
4. **E-Filing:** Please note that as of May 24, 2010, E-filing is **mandatory** in all commercial cases filed in New York County. For any questions with respect to E-filing rules and procedures, call the **E-filing Office at (646) 386-3610**. E-filing sample forms and notices are available at:  
<http://www.nycourts.gov/supctmanh/E-Filing.htm>
- A. **Opt-out:** If parties are eligible and wish to opt-out from participating in mandatory E-filing, they must file a **Notice of Opt-Out** (Note: all forms can be found on the E-Filing Website).
- B. **Hard Copy Documents:** All documents in mandatory E-filed cases or E-filed cases in which consent has been given must be filed electronically. Any **hard-copy documents** in E-filed cases, including correspondence and requests for adjournment, that are sent to the Part or to Chambers **MUST be E-filed**.
- C. **Note: CONFIRMATION NOTICES MUST BE ATTACHED TO THE LAST PAGE** and not as a cover page, as was previously directed. Hard copy documents **will be rejected** if they are accompanied by a **Confirmation Notice** as a cover page.
- D. **Courtesy Copies (a.k.a. “Working Papers,” “Originals,” “Duplicate Originals”):**
- (1) Counsel shall submit courtesy copies to the E-Filing office ONLY (NOT TO THE PART OR CHAMBERS) pursuant to the E-filing rules, **on the return date of the motion** (see #4 above). These courtesy copies shall be in the identical form that motion papers in non-E-Filed cases are submitted to the Part 53, and shall include:

**original signatures, exhibit tabs, notaries, proofs of service, and all exhibits without redaction.**

- (2) Upon the Court's disposition of the motion, ALL original motion papers in an E-filed action will be discarded, UNLESS counsel affixes a legend on the face of the motion papers requesting that they not be discarded. Counsel shall have 30 days from the date of entry of the disposition of the motion to retrieve the original motion papers from Part 53, or they will be discarded.

5. **Confidentiality:** Parties shall use the approved **confidentiality stipulation and order for the production and exchange of confidential information** available here:

<http://www.nycourts.gov/courts/comdiv/PDFs/2009%20Approved%20Confidentiality%20Stipulation.pdf>. If the parties agree that additional language be incorporated into the stipulation, a cover letter shall accompany the submission pointing the Court to the changes and/or attach a red-lined copy.

6. **Conferences/Discovery:**

- A. Part 53 conducts **telephone conferences** everyday between 4 and 5 P.M. Even if you are in the building on another matter, you shall not appear in person in either Chambers or the Part for a scheduled telephone conference. A party to the case must initiate the call with all parties on the line before contacting the court, or provide dial-in information (via fax) at least 24 hours before the scheduled call. A reservation is not necessary. WHEN CONTACTING THE PART OR CHAMBERS, THE PARTIES MUST HAVE THE INDEX NUMBER AVAILABLE.
- B. **Preliminary Conferences:** Counsel are encouraged to review the Addendum to the Preliminary Conference Order, annexed to these Practice Rules, prior to the scheduled PC and meet/confer on the issues raised therein.
- C. When **discovery deadlines** are ordered by the Court, service of discovery requests, responses, or motions shall be made in-hand on or before 5pm on the date specified.
- D. **No party shall send a letter to Chambers** pertaining to a discovery or other dispute without first calling the adversary and having a "meet and confer" on the issue. If the parties are unable to resolve the issue, call Chambers for a conference.

**A party may send correspondence e-mail at**

**[RCE53@courts.state.ny.us](mailto:RCE53@courts.state.ny.us)**, fax at 212-401-9057, hand delivery, U.S. mail or overnight delivery to Chambers, but **not by more than one method of delivery**.

- E. **Electronic Discovery:** After service of demands for discovery, and prior to the deadline for written responses and inspection/production of documents, parties shall confer in good faith in order to identify whether documents sought are computer stored data. Parties shall discuss the associated costs of production, the method and scope of the search to be conducted, and attempt to agree to search terms, and/or sampling. The responding party will produce the information sought in some electronic form (i.e. on a disc), unless the parties agree otherwise, shall be accompanied by an index that identifies the document(s) produced in response to each demand, the electronic file where the document has been stored, and an affidavit, where requested. Any issues relating to electronic disclosure will be raised with the Court at the next compliance conference.
- F. **Interrogatories are limited to 25** in number unless another limit is specified in the PC order. This limit applies to consolidated actions as well. Unless otherwise ordered by the court, **interrogatories are limited to the following topics:**
- (1) seeking names of witnesses with knowledge of information relevant to the subject matter of the action;
  - (2) the computation of each category of damages alleged; and
  - (3) the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature.
- G. **Expert Disclosure:** No later than thirty days prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure, which shall include the identification of experts, the exchange of expert reports, and depositions. In the event that a party withholds consent to this procedure, the parties shall consult with the Court. Unless otherwise stipulated or ordered by the Court, expert disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:
- (1) a complete statement of all opinions the witness will express and the basis and the reasons for them;

- (2) the data or other information considered by the witness in forming them;
  - (3) any exhibits that will be used to summarize or support them;
  - (4) the witness's qualifications, including a list of all publications authored in the previous 10 years;
  - (5) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and
  - (6) a statement of the compensation to be paid for the study and testimony in the case.
7. All attorneys or *pro se* litigants must provide their **contact information** to the Trial Support Office, located in Room 158M.
8. **Procedures for Inquests:** A party requesting an inquest in Part 53 shall submit the following information or documents to the Court:
  - (1) An affidavit from a person with knowledge of the facts setting forth how damages are computed.
  - (2) Attorney's affirmation setting forth a brief recitation of the facts and the grounds for liability. The affirmation should also discuss the damages incurred by the party.
  - (3) Exhibits should be submitted in support of all requests for damages. For example:
    - if the relief is attorneys' fees, the attorney's affirmation should attach the billing statements describing the activity, the identity and title of the person performing the activity, time, date, and billing rate.
    - if the relief is for lost profits, financial statements for comparative time periods should be provided.
  - (4) Whenever counsel believes it would assist the Court, affidavits from experts (i.e., accountants, appraisers, etc.) should be submitted.
  - (5) Proof of service must be filed indicating that all papers and exhibits submitted to the Court have been served on opposing parties.
  - (6) A proposed finding of fact and a proposed order for this Court should be submitted, by e-mail at [RCE53@courts.state.ny.us](mailto:RCE53@courts.state.ny.us).
  - (7) Any additional submissions that will be helpful to the Court should be provided.
  - (8) Papers in opposition should follow the same format as set forth above.
  - (9) For inquests that were not granted on default, do not submit evidence on causes of action that have been previously dismissed

or on which no liability was found.

- (10) Failure to properly document damages will result in the rejection of the inquest.
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9. **Trial Rules:** Please see Part 53 trial Rules, available on the Commercial Division website. Note: Motions in limine, pre-trial memoranda, exhibit books, and witness lists are due in the time frame set forth in Part 53 Trial Rules, and not at the pre-trial conference as set forth in Commercial Division Rules 27, 28, and 31.
  
  10. **Class Action Settlements:** The settlement of class actions pending in Part 53 shall be governed by the following guidelines (when circumstances warrant, exceptions will be made).
    - A. All notices to members of the proposed class shall be in plain English. A typical member of the class should be able to easily comprehend each notice. Class counsel must draft such notices consistent with their professional obligation to fully disclose to their clients the significance of the information provided.
    - B. The issue of class certification is not a matter for stipulation between the parties unless prior permission from the Court is obtained, or settlement is without prejudice as provided below in Paragraph 3. Otherwise, a finding that certification of the class is appropriate will be made at an adversarial hearing.
    - C. The failure to opt out of the class will not result in a release unless a class member accepts the settlement benefit or knew or should have known that a failure to opt out will result in a release. Proof of actual delivery of a pre-approved intelligible notice, written in plain language will suffice. In addition, this Court will approve the terms of a settlement that provides for a portion of the settlement fund to be held in escrow following discontinuance of the class action and pending the expiration of any applicable statute of limitations period, to be used toward any separate, potential claims by those who have not responded or have not opted in. In such event, any unused funds would be released to the original class following expiration of the limitations period. Unless permitted by this Court, the terms of the settlement shall not require the class members to opt out or take other action to preserve an existing right.
    - D. Where applicable, the procedure to be followed by class members in applying for the settlement benefit shall be simple and shall not require the class member to provide information or documents not required in the first instance to purchase the product or service other than what is reasonably necessary, such as name, address and proof of purchase (if not otherwise determinable from the parties own records). When practicable, the benefit shall be forwarded to

the class members in the manner of an account credit or a refund on a product return.

- E. A summary of counsel's application for fees, which shall include the basis and justification for the calculation, shall accompany any notice of proposed settlement. This is required without regard to the source of the fee payment. No fee shall be approved unless it bears a reasonable relationship to the benefit actually accepted by the members of the class and is reasonable in light of the risk to counsel of no recovery. Fee calculations may not be based on the potential value of the settlement; rather, fee awards will be awarded in light of the benefits actually received by class members.
- F. The Court may appoint independent counsel to represent the proposed class members on the question of class certification, fees to be awarded class counsel or any other issue where the Court is unable to determine the relative strengths of the parties' positions, or if the settlement raises questions about collusion or the ability of plaintiffs' counsel to represent the interests of the class.
- G. The Court will not "preliminarily" approve any settlement prior to the hearing on fairness.
- H. A member of the proposed class may object orally at the fairness hearing or in writing without the need to notify counsel or to file written objections prior to the hearing.
- I. Notwithstanding Paragraph 1 above, a copy of these rules must be appended to each notice to class members.

10. **Request for admission *PRO HAC VICE***, whether made by motion or stipulation, shall be accompanied by a proposed order and an affidavit in support from a member of the Bar of the State of New York and an affidavit of the applicant and a recent certificate of good standing from the applicant. (See Order below).

FORM OF PROPOSED ORDER FOR  
PRO HAC VICE APPLICATIONS

\_\_\_\_\_, Esq., having applied to this court for admission *pro hac vice* to represent [plaintiff/defendant]\_\_\_\_\_ in this action, and said applicant having submitted in support thereof a stipulation of all parties dated \_\_\_\_\_, an affidavit of \_\_\_\_\_, Esq., a member of the Bar of the State of New York and attorney of record herein for \_\_\_\_\_, an affidavit of the applicant dated \_\_\_\_\_, and a Certificate in Good Standing from the jurisdiction in which the applicant was admitted to the practice of law, and the court having reviewed the foregoing submissions and due deliberation having been had, it is now therefore

ORDERED that the motion is granted on consent and \_\_\_\_\_, Esq. is permitted to appear and to participate in this action on behalf of \_\_\_\_\_; and it is further

ORDERED that he/she shall at all times be associated herein with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the party in question and all pleadings, briefs and other papers filed with the court shall be signed by the attorney of record, who shall be held responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted *pro hac vice* shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the Rules of the Courts governing the conduct of attorneys and the Disciplinary Rules of the Code of Professional Responsibility; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction which affects his/her standing as a member of the Bar.

DATED:

ENTER:

\_\_\_\_\_

\_\_\_\_\_

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X

,

Plaintiff,

Index No.

-against-

Addendum to Preliminary  
Conference Order.

,

Defendant.

-----X

**Charles Edward Ramos, J.S.C.:**

Opt in by checkmark.

\_\_\_\_\_ **Jury Trial Waiver.** The parties agree that any trial of their Dispute shall be heard by a judge sitting without a jury and that their constitutional right to trial by jury is hereby waived.

\_\_\_\_\_ **Mandatory Mediation.**

\_\_\_\_\_ **Waiver of Service of Process Issues.** Each party agrees to waive questions regarding service of process. In lieu of formal service of process, the parties agree that any pleading may be served by overnight delivery service to the business address of the chief executive officer for each party with a copy by overnight delivery service to counsel for such party.

\_\_\_\_\_ **Proof of Service.** The parties agree that a tracking order showing overnight delivery shall be prima facie proof of service and may be filed as an exhibit with an affidavit of service by counsel for each party served.

\_\_\_\_\_ **Time for Responsive Pleading. Answer Extension as of Right.** The parties agree that upon written notice by a party by letter or email to adversary counsel, the time within which the party shall answer, move or otherwise respond to any pleading shall be extended an additional 15 days beyond the date such answer or response otherwise would be due under the applicable rule to the same extent as filing a stipulation and without need for a court motion or order. In the event the extended deadline falls on a weekend or legal holiday, the answer or response shall be due on the next business day following such weekend or legal holiday.

\_\_\_\_\_ **Protective Orders.** The parties agree to limit the scope of discovery that seeks privileged information or trade secrets on the grounds of the relevance, materiality and relative cost to each party.

\_\_\_\_\_ **Page Limits.** Unless the court *sua sponte* orders otherwise the parties agree that no motion filed with the court shall be more than ten pages in length, excluding caption and certificates of service, and no memorandum in support of or in opposition to any motion shall exceed ten pages in length, excluding caption, affidavits filed in support of such motions and certificates of service.

\_\_\_\_\_ **Threshold Motions.** In the event a defendant party files a motion to dismiss or for judgment on the pleadings, unless the Court orders otherwise, the parties agree that all discovery shall be stayed with the exception of discovery requests that directly concern the basis of that motion until the date the court issues its decision on that motion.

\_\_\_\_\_ **Summary Judgment Motions.** In the event that any party files a motion for summary judgment, all discovery shall be stayed in the case from the date the opposition to the summary judgment motion is filed until the date the court issues its decision regarding summary judgment unless the Court orders otherwise. This section shall not apply to motions for partial summary judgment.

\_\_\_\_\_ **Scope of Discovery.** The parties agree to limit the scope of permissible discovery to information and documents that are both relevant and material to the underlying dispute between the parties.

\_\_\_\_\_ **Non-Electronic Discovery Limits and Time for Response.** The parties agree to the following limits on non-electronic discovery based on the lesser of (a) the stated monetary consideration of the contract or (b) the amount claimed in the complaint or counterclaim (see Table 1 for summary chart). Where the value of the dispute cannot be determined from the face of the contract, claim or counterclaim, upon request of any party, the Court shall decide the alleged value of the dispute solely for purposes of determining applicable discovery limits. All discovery interrogatories, document requests, requests for admissions and omnibus conditional discovery requests, shall be responded to within 30 days after the date of service, with three additional days for service by mail, or such additional time as the parties may agree. If the day a response is required is a weekend or holiday, the response shall be due on the next following business day.

\_\_\_\_\_ **Interrogatories.** Interrogatories propounded by any party shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No interrogatory shall contain multiple parts or subparts or consist of more than one sentence. All parties are entitled to one interrogatory seeking the name and contact information of all factual witnesses and one interrogatory seeking expert witness(es) information. The parties agree that each party shall be limited to the additional number of interrogatories specified in the table below.

\_\_\_\_\_ **Requests for Production of Documents:** Requests for Production of Documents shall not contain any instructions and shall not include any definitions other than shorthand expression of

relevant parties, places or events. No document request shall contain multiple parts or subparts or consist of more than one sentence. Document requests shall be deemed to exclude documents that exist in electronic form only, including emails, on the date the document request is made. Document requests may seek categories of documents relevant and material to the case. The parties agree that each party shall be limited to the number of requests specified below:

Disputes up to \$400,000: 7;

Disputes up to \$1,000,000: 14;

Disputes up to \$10,000,000: 21;

Disputes \$10,000,000 or more: 28, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

\_\_\_\_\_ **Requests for Admission:** Requests for Admission shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No request shall contain multiple parts or subparts or consist of more than one sentence. The parties agree that each party shall be limited to the number of requests specified below:

Disputes up to \$400,000: 6;

Disputes up to \$1,000,000: 12;

Disputes up to \$10,000,000: 18;

Disputes \$10,000,000 or more: 24, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

\_\_\_\_\_ **Omnibus Conditional Discovery Requests.** The parties may serve omnibus discovery requests on a conditional basis, consisting of a single document that includes interrogatories, document requests and requests for admission, in which any interrogatory or document request shall be deemed to be withdrawn if a request for admission to which such interrogatory or document request corresponds is admitted. For purposes of the discovery limits, any interrogatory or document request that is withdrawn because a corresponding request for admission has been admitted shall not be counted toward the limit of discovery for such party.

\_\_\_\_\_ **Depositions Generally.** The parties agree that depositions may be conducted by audio visual means by any party upon written notice to all other parties at least one week before the scheduled deposition. Depositions shall not exceed four hours of examination by any party or counsel, excluding recesses agreed to by all counsel or suspension required for resolution of disputes by the Court. The court reporter shall be responsible for determining the amount of time remaining for each party to conduct an examination and shall be requested to advise such party 30 minutes before the four-hour limit is reached. Counsel for any party may appear at any deposition by conference call or video conference and the party taking such deposition shall make accommodation for such calls or video appearances to occur. The parties agree that deponents shall have seven business days after the court reporter mails the transcript of their testimony to their counsel to review and submit any errata sheet signed by the deponent regarding such

deposition testimony.

\_\_\_\_\_ **Number of Depositions Allowed.** The parties agree that the number of depositions shall be limited by the amount in controversy as set forth below.

Disputes up to \$400,000: 2;

Disputes up to \$1,000,000: 4;

Disputes up to \$10,000,000: 6;

Disputes \$10,000,000 or more: 8, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

\_\_\_\_\_ **Informal Witness Interviews.** In addition to depositions, counsel for any party shall be permitted to conduct informal witness interviews with any current or former employees of the opposing party or third persons by teleconference at which all counsel are invited to be present, provided that any counsel wishing to conduct an informal interview of a witness shall give written notice to counsel for all other parties at least seven business days before the interview, the interview is conducted by teleconference at which counsel for any party may dial in to participate, the conference call is audio recorded and the witness so advised at the outset of the interview, and the witness agrees at the outset of the interview to tell the truth. Any witness who fails to agree to be recorded or to agree to tell the truth, or refuses to cooperate with the interview as determined by the Court, may be subject to deposition by the inquiring party in addition to the limits on number of depositions described above. No counsel may interview a witness longer than 45 minutes, provided that any other counsel for different parties participating in the conference call also may interview the witness in turn for up to 45 minutes each. Counsel for witnesses or any party for whom the witness is currently or was formerly employed may briefly interject cautions to the witness on matters of privilege during any counsel's interview. Each party shall be permitted to initiate the following number of informal witness interviews:

Disputes up to \$400,000: 3;

Disputes up to \$1,000,000: 6;

Disputes up to \$10,000,000: 9;

Disputes \$10,000,000 or more: 12, plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

\_\_\_\_\_ **Copy of Witness Interviews.** Within seven business days after completion of the witness interview, the party initiating the witness interview shall provide a copy of the audio recording, either in analog or digital format, to all counsel who request it in writing or by email and to the witness.

\_\_\_\_\_ **E-Discovery.** Electronic discovery ("e-discovery") refers to the preservation, search, collection, and production of electronic documents. E-discovery includes both key wordbased searches for electronic documents as well as requests for specific electronic documents.

\_\_\_\_\_ **Scope.** The parties agree that the scope of permissible e-discovery shall be documents both

relevant and material to the underlying Dispute between the parties. The parties shall not be entitled to any e-discovery except as specifically set forth herein. All e-discovery requests shall be responded to within 30 days after the date of service, with three additional days for service by mail, or such additional time as the parties may agree.

\_\_\_\_\_ **Search Tools.** To the extent necessary, parties shall conduct key word-based searches using any software tool or tools that are capable of searching searchable files and e-mails, including the contents of e-mail archive files (such as .PST and .NSF), attachments, and the contents of files compressed using common formats, such as ZIP, RAR, GZIP, LHZ and TAR. E-mails shall be searched with a tool or tools capable of searching the FROM, TO, CC, BCC, SENT, RECEIVED and SUBJECT fields, the body of the e-mail, and any searchable attachments.

\_\_\_\_\_ **Document Retrieval.** Specific electronic documents requested by a party may be retrieved in any manner at the sole discretion of the custodial party that does not alter the contents of the document. The retrieval may alter metadata with the exception of “created by” and “doc date.”

\_\_\_\_\_ **Non-Searchable Files.** Parties are under no obligation to make non-searchable files searchable. Parties shall not produce a non-searchable version of a document when a searchable version exists and can be accessed by the same custodian.

\_\_\_\_\_ **Format.** Spreadsheets, or the exported contents of databases, shall be produced in native format, unless the native format would render the data not reasonably accessible because it would require software not licensed to the requesting party. In such case, the spreadsheet or database export shall be produced in an alternate searchable format that maintains the organization of the spreadsheet or database export to the extent possible. All other documents need not be produced in native format and, at the sole discretion of the custodial party, may instead be produced in alternate formats that are at least as searchable as the documents’ native format.

\_\_\_\_\_ **Identification.** The identification of a document’s custodian shall be provided with each document or group of documents.

\_\_\_\_\_ **Preservation of Privileges and Work Product.** The parties agree that the attorney-client privilege and work product doctrine and any other privileges shall not be waived by disclosure of any privileged information to any other party. Notwithstanding any such disclosure during e-discovery, the parties reserve the right to object and move to strike any privileged or work product-protected information to the Court in connection with any submission to or introduction of evidence to the Court. Nothing in Section 12 shall prevent the custodial party from objecting to the production of privileged documents or attorney work product. A party shall be under no obligation to withhold documents subject to privilege or work product protections prior to production, and the parties agree that a failure to withhold such documents prior to production shall not constitute a waiver of the applicable privilege or work product protections.

\_\_\_\_\_ **Protective Relief.** To the extent a party believes that a request for electronic discovery is beyond the scope of discovery or made for an improper purpose, that party may submit a discovery motion seeking relief to the Court.

**Presumptions.** It shall be presumed that:

\_\_\_\_\_ **Metadata.** Metadata or slack space need not be searched or produced, with the exception of “created by” and “doc date.”

\_\_\_\_\_ **Reasonable Accessibility.** Electronic repositories that are not reasonably accessible because of undue burden or cost need not be restored, searched, or produced. Examples of not reasonably accessible repositories include backup tapes that are intended for disaster recovery purposes and that are not searchable, legacy data from obsolete systems and not readable, and deleted data potentially discoverable through forensics.

\_\_\_\_\_ **Personal Digital Devices.** Electronic information residing on PDAs, Smartphones, and instant messaging systems need not be searched, collected or produced unless such repository is the only place where particular discoverable information resides.

\_\_\_\_\_ **Voicemail.** Voicemail systems need not be searched, collected or produced.

\_\_\_\_\_ **Foreign Privacy Laws.** Repositories of documents subject to the European Union’s Data Protection Directive or other foreign laws restricting the processing or transfer of data to the United States for use in civil litigation ("Foreign Privacy Laws") need not be searched and documents subject to Foreign Privacy Laws need not be produced.

\_\_\_\_\_ **Overcoming Presumptions.** A party seeking to rebut the presumptions set forth herein may submit a discovery motion to the Court showing good cause why such discovery is essential to a claim or defense along with an explanation why the same or equivalent information cannot be found from a different source.

\_\_\_\_\_ **Exception: Written Information Management Policy.** Notwithstanding the above, to the extent an organization has a written information management policy, that organization may continue to follow that policy, including the destruction of documents in the ordinary course of business, with the exception of documents located in repositories accessible by a custodian. Such repositories must continue to be preserved during the pendency of the Dispute even if documents in such repositories were scheduled for destruction in the ordinary course of business unless, after a good faith investigation by the custodial party, a party has a good faith reasonable belief that no documents that are relevant and material to a known Dispute are located in a particular repository.

\_\_\_\_\_ **Exception: Permission of Court.** To the extent a custodial party believes that the preservation of a particular electronic repository is unreasonably burdensome, the custodial party can seek relief by motion to the Court, with a specific showing of the burden that makes preservation unreasonable.

\_\_\_\_\_ **E-Discovery Limits.** The parties agree to the following limits on e-discovery determined by the amount in controversy based on the lesser of (a) the stated monetary consideration of the contract or (b) the amount claimed in the complaint or counterclaim (see Table 2 for summary chart). Where the value of the dispute cannot be determined from the face of the contract, claim or counterclaim, upon request of any party, the Court shall decide the alleged value of the dispute

solely for purposes of determining applicable discovery limits.

**Document Requests for Specific Electronic Documents.** Requests for Specific Electronic Documents shall not contain any instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No request for electronic documents shall contain multiple parts and subparts or consist of more than one sentence. Requests for Specific Electronic Documents shall reasonably describe the specific electronic document that is sought. In the case of a database or spreadsheet, the Request shall further reasonably identify the specific tables or records requested. Requests for Specific Electronic Documents shall not seek broad categories of documents or require key word searches. To the extent a database subject to a Request for Specific Electronic Documents has a built-in search capability, the parties shall not be required to use any search tools to extract relevant records from the database other than that built-in capability. The parties agree that each party shall be limited to the number of requests specified below:

Disputes up to \$400,000: 4

Disputes up to \$1,000,000: 7;

Disputes up to \$10,000,000: 15;

Disputes \$10,000,000 or more; 25 plus any additional found by the Court to be necessary to prepare for dispositive motion or trial.

**Document Requests for Key Word Searches.** Requests for Key Word Searches of Electronic Documents shall include an identification of the custodians whose electronic repositories are to be searched, along with a single set of key words that will be searched in those repositories. Requests shall not contain any other instructions and shall not include any definitions other than shorthand expression of relevant parties, places or events. No request for key word searches shall contain multiple parts and subparts or consist of more than one sentence.

**Designation of Custodian.** Subject to the limitations set forth below, a party may designate any current or former employee or executive of another party as a custodian if there is a reasonable basis for believing that custodian has relevant documents.

**Scope of Search.** For each identified custodian, subject to the limitations of Section 12, searches shall be run in the Custodian's live and archived e-mail and work computer(s) (desktop and/or laptop). Searches also shall be run in any network locations that are associated with the custodian's work computer, including group shares, that, after a reasonable investigation by the custodial party, are determined to be reasonably likely to contain relevant and material information.

**Limits of Search.** The custodial party shall not be obligated to search an electronic repository if, after a reasonable investigation by the custodial party, it is determined to not be reasonably likely to contain relevant information, even though that electronic repository is accessible by the custodian.

**Key Words.** Key words shall consist of words or Boolean phrases with proximity believed to be reasonably likely to return a reasonable volume of relevant documents. A key word shall not

include a word that is not substantively related to the dispute (such as “and”). Key words shall not include the name of a product, a party, or a current or former employee or executive of a party, but may include these words in combination with other key words. A Boolean combination of key words shall count as a single key word. Key words may include a reasonable use of wild cards and root extenders.

\_\_\_\_ **Number of Key Word Search Requests.** A party shall make no more than two requests for key word searches, which may include in total the key word search limits described below.

\_\_\_\_ **Protective Orders.** A custodial party that believes that a requested key word or custodian was selected for an improper purpose, or would result in an unreasonable volume of documents, after consultation with opposing counsel to attempt to resolve the issue by agreement, can file a motion with the Court requesting relief. Such motion shall include the results of sampling, or other evidence, showing the unreasonableness of the requested key word or custodian.

\_\_\_\_ **Key Word Search Limits.** The parties agree that each party’s Requests for Key Word Searches shall be limited as specified below:

Disputes up to \$400,000: No Requests for Key Word Searches allowed.

Disputes up to \$1,000,000: Requests for Key Word Searches may be sent in the form of an e-document request as follows: Identifying no more than 4 custodians of information; for a period of time no more than six months, which may include multiple periods of time aggregating to no more than six months; and involving not more than six key words likely to lead to the discovery of information both relevant and material to the underlying dispute.

Disputes up to \$10,000,000: Requests for Key Word Searches may be sent in the form of an e-document request as follows: Identifying no more than 8 custodians of information; for a period of time no more than 1 year, which may include multiple periods of time aggregating to no more than one year; and involving not more than 18 key words likely to lead to the discovery of information both relevant and material to the underlying dispute.

Disputes more than \$10,000,000: Requests for Key Word Searches may be sent in the form of an e-document request as follows: Identifying no more than 16 custodians of information; for a period of time no more than three years, which may include multiple periods of time aggregating to no more than three years; involving not more than 40 key words likely to lead to the discovery of information both relevant and material to the underlying dispute; and upon an assertion that additional requests are necessary to discover information both relevant and material to the underlying dispute, the Court may allow additional e-discovery at the request of any party.

\_\_\_\_ **Attorney Fee Shifting.** Unless the Court finds that the discovery dispute was (a) reasonable and (b) not susceptible of voluntary resolution between counsel, the Court shall determine and award attorneys’ fees incurred by the party who prevailed in any discovery dispute to be paid by the opposing party. In making the determination whether a dispute was susceptible of voluntary agreement by counsel, the Court shall consider whether any counsel engaged in lack of civility or professional Courtesy. The parties agree that the Court shall award damages in the

amount of increased costs of litigation as well as reasonable costs and attorneys' fees to any party who prevails in a hearing before the Court.

\_\_\_\_\_The parties may agree in writing at any time to additional or different procedures.

**TABLE 1: PAPER DISCOVERY LIMITS**

	Interrogatories	Document Requests	RFAs	Depositions	Interviews
Up to \$400,000	5	7	6	2	3
Up to \$1,000,000	10	14	12	4	6
Up to \$10,000,000	15	21	18	6	9
\$10,000,000 or more	20	28	24	8	12

**TABLE 2: E-DISCOVERY LIMITS**

	Requests for Specific E-Documents	Key Word: Custodians	Key Word: Time Period	Key Words Number
Up to \$400,000	4	0	0	0
Up to \$1,000,000	7	4	6 months	6
Up to \$10,000,000	15	12	1 year	18
\$10,000,000 or more	25	24	3 years	50

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Attorney for

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Attorney for

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Attorney for

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Attorney for

Dated: \_\_\_\_\_

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J.S.C.