



Defendant \_\_\_\_\_'s Claims/Defenses

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Amount Demanded \$ \_\_\_\_\_

Defendant \_\_\_\_\_'s Claims/Defenses

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Amount Demanded \$ \_\_\_\_\_

Defendant \_\_\_\_\_'s Claims/Defenses

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Amount Demanded \$ \_\_\_\_\_

(Add additional sheets, if needed)

- (2) **Insurance Coverage (CPLR 3101[f]):** If not provided, shall be furnished on or before \_\_\_\_\_. Not applicable \_\_\_\_\_.
- (3) **Bill of Particulars:** (If relevant)
- (a) Demand shall be served on or before \_\_\_\_\_.
- (b) Bill of Particulars shall be served not later than \_\_\_\_\_ days after receipt of the demand.
- (c) All previously served demands shall be responded to on or before \_\_\_\_\_, 200\_\_.
- (4) **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 previously served demands shall be responded to on or before \_\_\_\_\_, 200\_\_.

(d) All demands for production of books, documents, records and other writings relevant to a party's claims or defenses shall be deemed to include a demand for production of any photograph(s), audio tape(s), video tape(s) and Electronically Stored Information ("ESI").

(5) **Depositions:**

(a) Depositions shall be held as follows:

(Priority shall be in accordance with CPLR 3106 unless otherwise agreed or ordered.)

<u>Party</u>	<u>Date</u>	<u>Time</u>	<u>Place</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(Add additional sheets, if needed)

(b) Unless otherwise agreed or ordered, if a party fails or refuses to be deposed, he/she may not utilize the deposition of the adverse party(ies) at trial in addition to such other sanctions as may be available (CPLR 3126).

(c) Depositions of non-party witnesses shall not be noticed until the conclusion of all party depositions unless otherwise agreed by all party(ies) or ordered by the Court.

(d) Any disputes with regard to the propriety of questions at a deposition shall be promptly resolved via an application to the Court either in person, if the deposition is conducted in the Courthouse, or via telephone, if the deposition is conducted elsewhere. In the event the Justice presiding or his/her law secretary is not available, such applications shall be addressed to the Justice presiding in Special Term Part II.

(6) **A Compliance Conference** shall be held on \_\_\_\_\_, 20\_\_.

- (7) **Other disclosure:**
- (a) Commissions or letters 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 \_\_\_\_\_
- (c) Interrogatories (CPLR 3130 - 3133): Each party shall serve no more than 25 interrogatories, inclusive of subdivisions and subparts unless otherwise ordered by the Court.
- (8) **End Date for All Disclosure**, other than expert disclosure\_\_\_\_\_.  
(Set by Court or Part Clerk)
- (9) **Certification Conference** shall be held on \_\_\_\_\_20\_\_\_\_.(Set by Court or Part Clerk)
- (10) **Motions:**
- (a) All dispositive motion(s) (CPLR 3211 and 3212) shall be made on or before \_\_\_\_\_20\_\_\_\_. (Not more than \_\_\_\_\_ days after the Certification Order is granted or conclusion of discovery.)
- (b) All other motions, including those for impleader and amendment of pleading(s) shall not be made until compliance with Commercial Division Rule 24.
- (11) **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: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

(12) **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 drives 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) (i) By entering into this Preliminary Conference Stipulation and Order, each signatory hereto represents that, prior to this date, they have complied with Rule 8 of the Uniform Commercial Division Rules (22 NYCRR 202.70) by having met and conferred with regard to all ESI related discovery issues and that they have entered into a preliminary 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; or, in the alternative,  
  
(ii) The parties may stipulate to limit and/or eliminate the discovery of ESI in whole or part and/or to forego or limit the production of information in electronic form, as further provided in paragraph 12(d).
- (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:

\_\_\_\_\_ TIFF 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.

(13) **Miscellaneous:**

- (a) If the matter settles, the Court shall be promptly notified and a courtesy copy of the Stipulation of Discontinuance shall be promptly forwarded to the Court. Failure to comply with any of these directions may result in the imposition of costs, sanctions or other actions authorized by law.
- (b) The failure of any party(ies) to perform any of the requirements contained in this Order shall not excuse any other party(ies) from performing any other requirement contained herein.
- (c) Any dates established herein shall not be changed or adjourned without the prior approval of the Court.
- (d) Each counsel/party acknowledges receipt of the Commercial Division Rules.

(14) **Trial:**

(a) Plaintiff anticipates his/her/its case on the trial of this matter to be \_\_\_\_\_ days.

Defendant \_\_\_\_\_ anticipates the trial of this matter to be \_\_\_\_\_ days.

Defendant \_\_\_\_\_ anticipates the trial of this matter to be \_\_\_\_\_ days. (Add additional sheets, if needed)

(b) The matter is hereby set down for trial on \_\_\_\_\_ 20\_\_\_\_.

(c) All pre-trial filings and submissions (including trial notebooks), jury selection, if appropriate, and marking exhibits pursuant to Rules 28, 29, 31 and 32 (22 NYCRR 202.70) shall be on \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ A.M./P.M.

(d) A pre-trial conference of this matter shall be held on \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ A.M./P.M.

(15) This Order includes the attached \_\_\_\_\_ page(s) which is/are incorporated herein by reference.

Attorney for Plaintiff(s) Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Attorney for Defendant(s) Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Attorney for Defendant(s) Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Attorney for Defendant(s) Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**SO ORDERED:**

\_\_\_\_\_  
J.S.C.

February 1, 2009