

SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY: COMMERCIAL DIVISION PART []

PRESENT:

-----X

PRELIMINARY CONFERENCE ORDER

Plaintiff(s),

Index Number: _____

Date RJI Filed: _____

-against-

Defendant(s).

-----X

APPEARANCES:

Plaintiff _____

Firm/Attorney of Record: _____

Assigned Attorney: _____

Address: _____

Email: _____

Telephone: _____ Fax: _____

Defendant _____

Firm/Attorney of Record: _____

Assigned Attorney: _____

Address: _____

Email: _____

Telephone: _____ Fax: _____

Defendant _____

Firm/Attorney of Record: _____

Assigned Attorney: _____

Address: _____

Email: _____

Telephone: _____ Fax: _____

Defendant _____

Firm/Attorney of Record: _____

Assigned Attorney: _____

Address: _____

Email: _____

Telephone: _____ Fax: _____

Nature of the Case:

(a) Plaintiff's Claims / Counterclaim Defenses

Amount Demanded: \$ _____

(b) Defendant _____'s Counter or Cross Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Counter or Cross Claims / Defenses

Amount Demanded: \$ _____

Defendant _____'s Counter of Cross Claims / Defenses

Amount Demanded: \$ _____

ALTERNATIVE DISPUTE RESOLUTION:

[] Requested

If ADR is requested, the parties must complete the Mediation Stipulation Form [HERE](#) and email the completed stipulation to the assigned Commercial Division Judge within five (5) business days from the date of this Preliminary Conference.

Following a Preliminary Conference, it is hereby ORDERED that disclosure shall proceed as follows:

(1) INSURANCE COVERAGE: if not yet done, defendant(s) shall disclose in writing the existence and contents of any insurance agreement, including umbrella or excess coverage, as described in CPLR §3101(f) within 30 days from the date of this Order.

(2) BILL OF PARTICULARS (see CPLR §3041):

(a) If not already served, a Demand for a Bill of Particulars shall be served by _____ on or before _____.

(b) Bill of Particulars served:

Satisfactory

Unsatisfactory - (If checked, must complete 2(d)).

(c) A Bill of Particulars shall be served by _____ on or before _____.

(d) A Supplemental Bill of Particulars shall be served by _____ on or before _____ as to items:

(e) If an Affirmative Defense or Counterclaim is asserted, a Demand for a Bill of Particulars shall be served by _____ on or before _____. A response to such demand shall be served on or before _____.

(3) INTERROGATORIES: Pursuant to Commercial Division Rule 11-a, "Interrogatories are limited to 25 in number, including subparts, unless another limit is specified in the preliminary conference order. This limit applies to consolidated actions as well."

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

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

(4) 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's/parties' 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.

(5) 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 MAY RESULT IN PRECLUSION OF SUCH PARTY'S TESTIMONY AT TRIAL. FAILURE TO PRODUCE A SPECIFIED WITNESS FOR DEPOSITION MAY PRECLUDE SUCH WITNESS' 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.

(6) OTHER DISCLOSURE:

(a) Commission or Letters Rogatory (CPLR §3108): Identify and set forth the location of each witness:

(b) Within 90 days, all parties shall exchange names and addresses of all witnesses, and shall exchange statements of opposing parties and photographs, or, if none, shall provide an affirmation to that effect.

(c) All parties shall exchange information relating to expert witnesses in compliance with CPLR §3101(d)(1).

(7) 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, off-line 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 30 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 circumstance, 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 regarding cost shifting shall be brought to the attention of the Court as soon as practicable.

(8) 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, which shall be in compliance with 22NYCRR §202.70, Rule 11g (Appendix B). 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:

(9) COMPLIANCE CONFERENCE: Shall be held on _____. The Conference shall be held virtually using Microsoft Teams.

(10) 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.

(11) TRIAL:

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

(b) Defendant _____ anticipates the trial of this matter to be _____ days.

(c) Defendant _____ anticipates the trial of this matter to be _____ days.

(d) Defendant _____ anticipates the trial of this matter to be _____ days.

(e) Defendant _____ anticipates the trial of this matter to be _____ days.

(f) All pre-trial filings and submissions (including trial notebooks), jury charges, if appropriate, and marked exhibits pursuant to Rules 28, 29, 31 and 32 (22 NYCRR § 202.70) shall be submitted at the Pre-Trial Conference.

(12) STIPULATIONS OF SETTLEMENT OR DISCONTINUANCE: Shall be filed by defendant, pursuant to 22 NYCRR §202.8, with the Queens County Clerk and the parties must also give a copy to the Clerk of the Part to which the action has been assigned, within 20 days of such discontinuance.

ADDITIONAL DIRECTIVES:

THE DATES SET FORTH HEREIN MAY NOT BE ADJOURNED OR MODIFIED EXCEPT WITH APPROVAL OF THE COURT. THE FAILURE OF ANY PARTY(IES) TO PERFORM ANYOF THE REQUIREMENTS CONTAINED IN THIS ORDER SHALL NOT EXCUSE ANY OTHERPARTY(IES) FROM PERFORMING ANY OTHER REQUIREMENT CONTAINED HEREIN.

THE PARTIES HAVE READ THE PRECEDING AND FULLY UNDERSTAND THE PROVISIONS CONTAINED HEREIN SHALL CONSTITUTE AN ORDER OF THE COURT. IN THE EVENT OF NON-COMPLIANCE WITH THE TERMS OF THIS ORDER, COSTS OR OTHER SANCTIONS MAYBE IMPOSED, INCLUDING PRECLUSION OF EVIDENCE.

ATTORNEY _____ FOR PLAINTIFF: _____

ATTORNEY _____ FOR PLAINTIFF: _____

ATTORNEY _____ FOR DEFENDANT: _____

ATTORNEY _____ FOR DEFENDANT: _____

ATTORNEY _____ FOR DEFENDANT: _____

DATED: _____ SO ORDERED: _____

J.S.C.