

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA
COMMERCIAL DIVISION**

PRESIDING JUSTICE: HON. JOSEPH E. LAMENDOLA

**PRELIMINARY CONFERENCE
STIPULATION AND ORDER**

Plaintiff(s),

Index No.:

-v-

Defendant(s).

*All items on this form must be completed unless inapplicable.
Use additional pages, if necessary.*

(1) Appearances:

Counsel for Plaintiff(s):

Client's Name: _____

Lead Counsel's Name: _____

Firm Name and Address: _____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

Counsel for Defendant(s):

Client's Name: _____

Lead Counsel's Name: _____

Firm Name and Address: _____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

Counsel for Defendant(s):

Client's Name: _____

Lead Counsel's Name: _____

Firm Name and Address: _____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

(2) **Pertinent Dates:**

a. Date of Commencement: _____

b. Date of Joinder: _____

c. RJI Date: _____

(3) **Nature of Case:**

Pursuant to 22 NYCRR 202.12(c)(1), provide a brief description of the factual and legal issues raised in the pleadings.

a. The legal theories and salient facts supporting plaintiff's claims are: _____

Relief Demanded: _____

b. Defendant _____'s claims. If issue has been joined, the legal theories and salient facts supporting defendant _____'s defenses, counterclaims and third-party claims are _____

Relief Demanded: _____

c. Defendant _____'s claims. If issue has been joined, the legal theories and salient facts supporting defendant _____'s defenses, counterclaims and third-party claims are _____

Relief Demanded: _____

(4) **Attorneys' Consultation:**

The parties consulted in a good faith effort to reach agreement on the issues identified in Uniform Commercial Division Rule 8. * Agreement was reached as follows:

ISSUE DISCUSSED	DATE OF CONSULTATION	AGREEMENT REACHED (Y or N)
Resolution of the case		
Fact discovery including methods, timing and scope		
Expert disclosure including designation, timing and scope		
The use of ADR		
Voluntary and informal exchange of information		
Confidentiality and privilege		
The scope, extent, order, and form of production		
The anticipated cost and burden of data recovery and proposed initial allocation of such costs		

* Concerning electronic discovery, see Item (8)d below.

COMMENTS: _____

(5) **Impleader:** Do you anticipate the need to add parties? If so, who and when? _____

Note: Impleader must be completed no later than 15 days after the end of the last party deposition.

(6) **Early Disposition:**

a. This case is appropriate for early disposition by:

- i. _____ the accelerated adjudication procedures of the Commercial Division of the Supreme Court as set forth in Uniform Commercial Division Rule 9
- ii. _____ ADR (identify type and timing) _____

- iii. _____ limited issue discovery in aid of an early dispositive motion or settlement (identify type and timing) _____

- iv. _____ dispositive motion that will be filed on or before _____
- v. _____ other (identify type and timing) _____

b. This case is not appropriate for early disposition because _____

(7) **Confidentiality Order:**

The court recognizes that most cases in the Commercial Division involve highly sensitive information. In such cases, the parties may be directed to enter into a Confidentiality

Agreement that the court will “So Order.” The parties are encouraged to use the model confidentiality agreement found at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

The parties _____ HAVE or _____ HAVE NOT entered into a Confidentiality Agreement.

The parties _____ WILL or _____ WILL NOT enter into a Confidentiality Agreement.

If so, then state when: _____. If not, then state why not: _____

(8) **Disclosure** [See generally 22 NYCRR 202.70(g)]:

It is hereby STIPULATED and ORDERED that disclosure shall proceed as follows pursuant to the CPLR and the Uniform Commercial Division Rules:

a. **Insurance Coverage** shall be furnished on or before _____

b. **Bill of Particulars:**

i. Demand(s) for a bill of particulars shall be served on or before _____

ii. Response(s) to the demand(s) for a bill of particulars shall be served on or before _____

c. **Document Production:**

i. Initial demands for discovery and inspection shall be served on or before _____

ii. Responses to the demands for discovery and inspection shall be served on or before _____

iii. The parties will provide a statement regarding the completeness of document production on or before _____

iv. If documents are withheld are grounds of privilege, the parties agree to employ:

_____ a categorical privilege log

_____ a document-by-document privilege log

_____ other (describe) _____

Note: Pursuant to Uniform Commercial Division Rule 11-e, unless agreed to by the parties or otherwise authorized by the court: document production must be complete before the date set for commencement of depositions; and no later than one month prior to the close of fact discovery, each party must provide opposing counsel with a statement regarding the completeness of its document production.

COMMENTS: _____

d. Electronic Discovery

Will there be electronic discovery in the case?

_____ YES _____ NO* _____ NOT SURE **

**If there will be no ESI in this case, then skip ahead to 8e.*

***If the parties are not sure whether the case is reasonably likely to include ESI, then refer to the non-exhaustive list of considerations provided in 22 NYCRR 202.12 (b)(1).*

i. Attorneys' Consultation

The parties consulted in a good faith effort to reach agreement on the following ESI issues. Agreement was reached as follows:

ISSUE DISCUSSED	DATE OF CONSULTATION	AGREEMENT REACHED (Y or N)
Identification of potentially relevant types or categories of ESI and the relevant time frame		
Disclosure of the applications and manner in which the ESI is maintained		
Identification of potentially relevant sources of ESI and whether the ESI is reasonably accessible		
Implementation of a preservation plan for potentially relevant ESI		
Identification of the individual(s) responsible for preservation of ESI		

ISSUE DISCUSSED	DATE OF CONSULTATION	AGREEMENT REACHED (Y or N)
The scope, extent, order, and form of production of ESI		
Identification, redaction, labeling and logging of privileged or confidential ESI		
Claw-back or other provisions for privileged or protected ESI		
The scope or method for searching and reviewing ESI		
The anticipated cost and burden of data recovery and proposed initial allocation of such costs		

ii. Directives concerning electronic discovery:

(A) **Preservation:** [Uniform Commercial Division Rule 8(b)(i)-(v)]: Separately for each party, indicate whether a preservation plan has been created, a custodian for each computer/server has been identified, and an individual responsible the preservation of relevant ESI has been designated. Do not list the names of the custodians or the designated individuals; state only the fact that it has been done or is in the process of being done.

Plaintiff	_____Yes	_____No	_____In process
Defendant	_____Yes	_____No	_____In process
Defendant	_____Yes	_____No	_____In process

(B) **Production** [22 NYCRR 202.70(g)(8)(vi) and (ix)]: Indicate whether the parties have agreed on the scope and method for searching and reviewing ESI (i.e., the relevant search terms or technology-assisted review), the extent, order and form of production, and a projected production schedule. Do not list the actual terms of the review but just the fact that it has been done or is in the process of being done.

Agreement has been reached: _____Yes _____No _____In process

(C) **Privilege Logs and Redactions** [Uniform Commercial Division Rule 8(b)(vii)]. If the parties intend to treat ESI differently than other production (see Item (8)c. above), state how the parties will provide for the identification, redaction, and logging of privileged or otherwise confidential ESI:

(D) **Claw-Back Provisions** [Uniform Commercial Division Rule 8(b)(viii)]:
State how the parties intend to deal with inadvertent production:

(E) **Costs** [Uniform Commercial Division Rule 8(b)(x)]: Unless agreed to by the parties or otherwise ordered by the court, each party shall bear its own costs of production.

iii. Judicial Intervention

The parties anticipate the need for judicial intervention regarding the following issues concerning the scope and methods of preserving and/or producing ESI:

iv. Additional Directives

Set forth any additional directives or issues related to ESI:

e. Interrogatories:

- i. Preliminary interrogatories shall be served on or before _____
- ii. Claim/contention interrogatories shall be served on or before _____

Note: Pursuant to Uniform Commercial Division Rule 11-a, unless agreed to by the parties or otherwise authorized by the court, interrogatories are limited to 25 in number, including subparts, and restricted to the following topics: names of witnesses with

knowledge of information material and necessary to the subject matter of the action, computation of each category of damage alleged, and the existence, custodian, location, and general description of material and necessary document, including pertinent insurance agreements, and other physical evidence. At the conclusion of other discovery, and at least 30 days prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served unless the court has ordered otherwise.

COMMENTS: _____

f. Depositions of Fact Witnesses

i. Depositions shall commence on or after _____

ii. Choose (A) or (B) and (C):

A.	Deponent	Date	Place
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

B. Depositions of all parties shall be completed on or before _____

C. Depositions of all non-party fact witnesses shall be completed on or before _____

Note: Pursuant to Uniform Commercial Division Rule 11-d, unless agreed to by the parties or otherwise authorized by the court, the number of depositions taken by plaintiffs,

or by defendants, or by third-party defendants, shall be limited to 10 and depositions shall be limited to 7 hours per deponent. See Uniform Commercial Division Rule 11-f for special rules regarding depositions of entities including identification of individuals and subject matter.

COMMENTS: _____

g. **Fact Discovery** shall be completed on or before _____

h. **Expert Disclosure:**

- i. Plaintiff(s) _____ MAY or _____ WILL NOT introduce expert testimony at trial
- ii. Defendant _____ MAY or _____ WILL NOT introduce expert testimony at trial
- iii. Defendant _____ MAY or _____ WILL NOT introduce expert testimony at trial
- iv. The parties shall complete expert disclosure on or before _____

Note: Pursuant to Uniform Commercial Division Rule 13(c), if a party intends to introduce expert testimony at trial or in support of a motion for summary judgment, **no later than 30 days** prior to the completion of fact discovery, the parties shall confer on a schedule for expert disclosure -- including the identification of experts, exchange of reports, and depositions of testifying experts -- all of which shall be completed **no later than 4 months after the completion of fact discovery**. Unless agreed to by the parties or otherwise authorized by the court, expert disclosure must be accompanied by a written report, prepared, and signed by the witness, if either (A) the witness is retained or specially employed to provide expert testimony in the case, or (B) the witness is a party's employee whose duties regularly involve giving expert testimony. The report must contain: (A) a complete statement of all opinions the witness will express and the basis and the reasons for them; (B) the data or other information considered by the witness in forming the opinion(s); (D) any exhibits that will be used to summarize or support the opinion(s); (D) the witness's qualifications, including a list of all publications authored in the previous 10 years; (E) a list of all other cases at which the witness testified as an expert at trial or by deposition during the previous four years; and (F) a statement of the compensation to be paid to the witness for the study and testimony in the case.

Absent good cause, the court will preclude the use of expert disclosure not timely provided.

COMMENTS: _____

i. Other Disclosure:

- i. Names and addresses of all witnesses, statements and photographs shall be exchanged on or before _____
- ii. Requests for admissions shall be served on or before _____
- iii. Other (specify) _____

COMMENTS: _____

j. Progress Reports:

- i. On _____, the parties shall provide the court with a written report regarding the status of discovery specifically identifying what discovery has been completed and what discovery, if any, remains outstanding.
- ii. A meeting place conference call is scheduled for _____ at which times the parties shall report to the Court the status of discovery. The court will provide counsel with call-in information one week prior to the conference call.

(9) Motions - Generally:

- a. Plaintiff(s) anticipate making the following motions: _____

- b. Defendant _____ anticipates making the following motions: _____

- c. Defendant _____ anticipates making the following motions: _____

Note: Form of Papers

- The notice of motion or order to show cause shall include a statement of the precise relief sought
- All dispositive motions must include a copy of the pleadings
- Exhibit tabs are required
- If a document to be annexed to an affidavit or affirmation is voluminous and only discrete portions are relevant to the motion, counsel shall attach only the pertinent excerpts and submit the full exhibit separately
- Memoranda of law shall not exceed 25 pages in length; reply memoranda of law shall not exceed 10 pages in length
- Sur-replies and post-argument submissions are not allowed without advance express permission of the Court.

(10) **Summary Judgment and Other Dispositive Motions:**

- a. Unless otherwise authorized by the court, all dispositive motions shall be made no later than the **30th day after filing of the trial note of issue**.
- b. Upon any motion for summary judgment, other than a motion for summary judgment in lieu of a complaint, there shall be a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.
- c. Papers opposing a motion for summary judgment shall include correspondingly numbered paragraphs responding to each numbered paragraph in the statement of the moving party and, if necessary, additional numbered paragraphs containing a separate short and concise statement of the material facts as to which that party contends there exists a genuine issue to be tried.
- d. Each numbered paragraph in the statement of material facts required of the moving party will be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required of the opposing party.
- e. Each statement of material fact by the movant or opponent, including each statement controverting any statement of material fact, must be followed by citation to evidence submitted in support of or in opposition to the motion.

(11) **Settlement Conference** will be held on _____ (to be set by the Court).

(12) **Trial Note of Issue:** Plaintiff shall file a note of issue/certificate of readiness on or before _____.

Note: Trial note of issue must be filed within 12 months of the date of the RJI filing for a standard case or within 15 months of the RJI filing for a complex case.

(13) **Trial:**

- a. Plaintiff(s) anticipates the trial of this action will take _____ days
- b. Defendant(s) anticipates the trial of this action will take _____ days
- c. A final pretrial conference will be held on _____ (to be set by Court)
- d. The trial of this action will commence on _____

Note: All pre-trial filings and submissions required by Uniform Commercial Division Rules 27, 28, 29, 31 and 32 (including motions *in limine*, indexed exhibit binder, witness list, identification of deposition testimony (with transcripts), pre-trial memorandum, requests to charge (with reference to PJI numbers or specific case citations) and jury verdict sheet) shall be filed and exchanged with opposing counsel at least 5 days before the final pre-trial conference.

Failure to comply with any of these deadlines, rules or directives may result in the imposition of costs or sanctions or other action authorized by law.

DATED: _____

Attorney for Plaintiff(s)

Attorney for Defendant(s)

Attorney for Defendant(s)

SO ORDERED: ____/____/____

Hon. Joseph E. Lamendola, JSC