

**SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF WESTCHESTER**

-----X

Plaintiff(s)

- against -

Defendant(s)

-----X

HON. LINDA S. JAMIESON, JSC

COMMERCIAL DIVISION

Index No.: _____

RJI Filing Date: _____

**PRELIMINARY
CONFERENCE
ORDER**

I. APPEARANCES: Please include (1) your name; (2) your firm's name and address; (3) your firm's telephone number; (4) your direct telephone number; (5) your e-mail address; and (6) the party you represent.

Plaintiff(s)

Defendant(s)

Please use additional pages, if necessary.

Plaintiff _____
v.
Defendant _____

Index Number: _____
Preliminary Conference Order
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II. CONFIDENTIALITY AGREEMENT AND ORDER:

The Court recognizes that many cases in the Commercial Division involve facts that are highly sensitive. In such cases, in order for the parties to proceed to proper discovery, the Court may order the parties to enter into a confidentiality agreement which the Court will “So Order.” The parties are free to draft their own confidentiality agreement, which the Court can “So Order.” In the alternative, if they do not wish to do so, the parties are referred to 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 Court ____ **HAS** or _____ **HAS NOT** “So Ordered” the confidentiality agreement and, if the Court has “So Ordered” it, on what date did the Court “So Order” it: _____

The parties ____ **WILL** or _____ **WILL NOT** be entering into a confidentiality agreement. If the parties **WILL**, please indicate when the parties expect to enter into the confidentiality agreement: _____

If the parties have decided that they **WILL NOT** enter into a confidentiality agreement, please provide the Court with a brief explanation as to the reason(s) the parties have decided **not** to enter into a confidentiality agreement.

III. DESCRIPTION OF THE CASE: Pursuant to **22 NYCRR 202.12(c)(1)**, please provide a brief description of the factual and legal issues raised in the pleadings of the case:

- (a) Plaintiff's legal theory and salient facts in support of claims/counterclaim defenses:

Amount Demanded: \$ _____

- (b) If issue has been joined (i.e., if defendant has answered the complaint) defendant _____'s, legal theory and salient facts in support of defenses, counterclaims and third party claims. If issue has not yet been joined, defendant need not, at this time, answer this question.

Amount Demanded on the Counterclaim/Third-Party Claims: \$ _____

If there are multiple defendants:

- (c) If issue has been joined (i.e. if defendant has answered the Complaint), defendant _____'s, legal theory and salient facts in support of defenses, counterclaims and third party claims. If issue has not yet been joined, defendant need not, at this time, answer this question.

Amount Demanded on the Counterclaim/Third-Party Claims: \$ _____

Please use additional sheets, if needed.

IV. DISCOVERY

It is hereby **ORDERED** that disclosure shall proceed pursuant to the Commercial Division Rules.

Have you met and conferred concerning discovery?

___ **YES** ___ **NO**.

If **YES**, when did you meet and confer? _____

If **NO**, when will you do so? _____

Have you adjusted your discovery demands in order to comply with the ***“proportionality in discovery”*** admonition in the Commercial Division Rules? ___ **YES** ___ **NO**.

(1) DOCUMENT PRODUCTION

All documents produced by any and all parties and non-parties MUST be Bates Stamped.

Pursuant to **Rule 11-e(a)**, “For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the "Responses"), either:

- (a) state that the production will be made as requested; or*
- (b) state with reasonable particularity the grounds for any objection to production.*

(a) Initial demands for discovery and inspection shall be served by all parties on or before _____.

(b) Responses to demands shall be served by all parties on or before _____.

(2) INTERROGATORIES

Pursuant to **Rule 11-a**, “Interrogatories (a) 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; (b) Unless otherwise ordered by the court, interrogatories are limited to the following topics: name 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 documentation, including pertinent insurance agreements, and other physical evidence.

(a) Interrogatories shall be served by all parties on or before: _____

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

(3) DEPOSITIONS OF INDIVIDUALS:

Pursuant to **Rule 11-d**,”(a) Unless otherwise stipulated to by the parties or ordered by the court:(1) the number of depositions (of individuals) taken by plaintiffs, or by defendants, or by third-party defendants, shall be limited to 10; and (2) depositions shall be limited to 7 hours per deponent.” Please review the remainder of Rule 11-d for additional directives concerning depositions. Priority of depositions is set by the first Notice to Take Depositions.

(a) Defendant’s deposition of plaintiff(s) on or before: _____

(b) Plaintiff’s deposition of defendant(s) on or before: _____

(c) All depositions shall be completed on or before: _____

(4) DEPOSITION OF ENTITIES:

On October 15, 2015, a new rule concerning the deposition of entities went into effect. **Commercial Division Rule 11-f.** The new Rule concerns the deposition of entities such as a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or government subdivision, agency or instrumentality, or any other legal or commercial entity.

The Rule is intended to promote a more efficient process for deposition of entity representatives and reduce the likelihood of a mismatch between the information sought and the witness produced.

The essential elements of the new Rule are (emphasis added):

- (i) A party wishing to take a deposition of an entity will serve a notice or subpoena enumerating those matters to be the subject of the deposition **“with reasonable particularity.”**
- (ii) If the notice or subpoena *does not* name a particular officer, director, member or employee of the entity, the named entity must designate one or more officers, directors, members or employees or other individual(s) who **consents to testify** on its behalf; the identity, description and title of that individual; and the matter(s) on which that individual will testify.
- (iii) If the notice or subpoena *does* name a particular officer, director, member or employee of the entity, the entity, pursuant to CPLR 3106(d), shall produce that individual, **unless**, no later than ten days before the deposition, the entity designates *another individual* who **consents to testify** on its behalf, in the place of the named or subpoenaed officer, director, member or employee of the entity; and shall provide the identification, description or title of the new individual, and the matter(s) on which the individual will testify.
- (iv) Deposition testimony given pursuant to this Rule shall be usable against the entity on whose behalf the testimony is given to the same extent as provided in CPLR 3117(2).

- (v) The deposition of an entity shall be treated as a *single deposition* even though more than one person may be designated to testify on the entity's behalf. Notwithstanding the foregoing, the cumulative presumptive (seven hour) durational limit is in effect **but** may be enlarged by agreement of the parties or upon application for leave of Court, which shall be freely given.

Names of entities to be deposed:

- (i) For plaintiff(s): _____
- (ii) For plaintiff(s): _____
- (iii) For defendant(s): _____
- (iv) For defendant(s): _____

Please use additional sheets if necessary.

All entity depositions will be completed on or before: _____.

(6) IMPLAIDER:

Defendant shall serve its third-party summons and complaint no later than **45 days after the Preliminary Conference**.

(7) ELECTRONIC DISCOVERY AND PRIVILEGE LOGS

Discovery of Electronically Stored Information (ESI) is one of the most expensive and challenging discovery categories. The Rules, as it concerns electronic discovery, **22 NYCRR 202.12(b) and (c)(3)**, as well as the related privilege logs, are an attempt to rein in the cost and complexity of electronic discovery and related privilege logs. In assessing whether the matter before the Court will benefit from electronic discovery, the parties should consider: (i) is there potentially relevant ESI material in the case; (ii) do the parties intend to rely on ESI; (iii) are there less costly or less burdensome alternatives to secure the necessary information without recourse to discovery of the ESI;

(iv) is the cost of preserving and producing ESI proportionate to the amount in controversy; and (v) what is the likelihood that discovery of ESI will aid in the resolution of the dispute?

(a) Will there be Electronic Discovery in the case:
 YES NO NOT SURE

(b) Meet and Confer: Pursuant to Uniform Commercial Division Rule 8(b), 22 NYCRR 202.70(g)(8)(b), counsel **MUST** certify that they have *met and conferred* regarding electronic discovery, *before* the Preliminary Conference

(ii) Date(s) parties had their meet and confer conference(s):

(iii) Did the parties reach an agreement concerning electronic discovery? YES NO PARTIALLY

(iv) Are counsel at this Preliminary Conference sufficiently versed in matters related to their client's technological systems to discuss competently all issues relating to electronic discovery:
 YES NO

(c) Other directives concerning electronic discovery.

The following topics are to be updated and supplemented as new information becomes available.

(i) **Preservation:** 22 NYCRR 202.12(c)(3)(a), (c) and (g)

(ii) **Production:** 22 NYCRR 202.12(c)(3)(e), (d)

(v) **Claw Back Provisions** for inadvertent production

(vi) **Costs:** Each party shall bear its own costs of production pursuant to *U.S. BankNat'l Assoc. v. Greenpoint Mtge. Funding Inc.* 94 A.D.3d 58 (1st Dep't 2012). In the event that cost shifting becomes an issue, the parties shall write a letter to the Court of not more than two pages outlining the problem prior to setting up a conference call with the Court.

(d) Judicial Intervention

The parties anticipate the need for judicial intervention.

___ YES ___ NO ___ MAYBE

(e) Discovery of Electronically Stored Information from Non-Parties:

Parties and non-parties should adhere to the Commercial Division's Guidelines for Discovery of Electronically Stored Information (ESI) from non-parties which can be found in Appendix A to the Rules of the Commercial Division.

(8) END DATE OF FACT DISCLOSURE:

Fact Disclosure shall be completed by: _____.

(Generally within 6 months of the Preliminary Conference)

(9) EXPERT DISCOVERY (if any):

Pursuant to Rule 13(c), 22 NYCRR 202.70(g)(13(c)), the Court hereby ORDERS that if any party intends to introduce expert testimony at trial or in support of a motion for summary judgment, the parties, no later than thirty days prior to the completion of fact discovery, shall confer on a schedule for expert disclosure - including the identification of experts, the agreement to exchange expert reports and the timetable for the deposition of testifying experts. Expert disclosure shall be completed no later than four months after the completion of fact discovery.

In the event that a party objects to this procedure or timetable, the parties shall request a conference to discuss the objection(s) with the Court.

The Note of Issue and Certificate of Readiness may not be filed until the completion of expert disclosure.

Do the parties believe that there will be expert discovery in this case?

____ YES ____ NO

(10) END DATE FOR ALL DISCOVERY: _____.

(11) NOTE OF ISSUE:

_____ shall file a note of issue/certificate of readiness on or before _____.

(12) DISPOSITIVE MOTION(S):

All dispositive motion(s) shall be made on or before _____ or within 30 days after the filing of the Note of Issue.

***Please Note:** If a party intends to use documents in their dispositive motion that the party wishes to file in a redacted form or under seal, the party must make an application to the court under **Rule 216.1(a)** seeking an order that there is “good cause” for such document(s) to be filed in a redacted form or under seal. This should be done **PRIOR** to making a dispositive motion.*

Such dispositive motions may be filed by Order to Show Cause or Notice of Motion. The Court encourages the parties to confer and agree on the dates for the opposition and reply papers to be exchanged and e-filed.

(13) COMPLIANCE CONFERENCE:

Parties or their representatives **with knowledge of the case and this Preliminary Conference Order** shall appear for a Compliance Conference on: _____.

Parties or their representatives **with knowledge of the case and this Preliminary Conference Order** shall appear as well at *all* conferences.

V. ALTERNATIVE DISPUTE RESOLUTION

The 9th Judicial District has implemented a Presumptive Mediation Program. See Rules at:

<https://www.nycourts.gov/LegacyPDFS/courts/9jd/ADR/rules/DISTRICT-WIDE-RULES.pdf>

To that end, three Presumptive Mediation Forms are attached. Please consult with each side and choose a mediator from the 9th Judicial District Commercial Division Roster of Mediators, found at:

<https://www.nycourts.gov/LegacyPDFS/courts/9jd/ADR/ROSTERS-OF-9JD-MEDIATORS.pdf>

If you cannot agree on a mediator, the Court will select one for you. Please bring the **completed** Preliminary Conference Order and attached Presumptive Mediation Forms to the Preliminary Conference.

VI. ADDITIONAL DIRECTIVES:

Please follow the specific rules found under Justice Jamieson’s Commercial Division Part Rules.

Please be aware of and follow **all** the rules found at **22 NYCRR 202.70(g)**. Particularly, please comply with the following two rules:

Rule 2: Parties shall **immediately** inform the Court that an action has settled, been discontinued or disposed of by submission of a stipulation or a letter;

Rule 5: ALL counsel MUST sign up for the FREE *eTrack* court notification service to keep track of future court appearances. The *eTrack* service is separate and apart from the e-filing system. Counsel are also responsible for notifying all other counsel of future court appearances. Please review the *eTrack* “Frequently Asked Questions” for details.

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

PARTIES MUST BRING COPIES OF ALL DISCLOSURE ORDERS TO ALL CONFERENCES.

THIS PRELIMINARY CONFERENCE ORDER AND THE DATES CONTAINED HEREIN ARE:

Agreed to by:

Agreed to by:

Counsel for Plaintiff

Counsel for Plaintiff

Agreed to by:

Agreed to by:

Counsel for Defendant

Counsel for Defendant

Dated: _____

SO ORDERED:

HON. LINDA S. JAMIESON, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

Plaintiff,

Index No. _____

- against -

**ORDER OF REFERENCE
TO MEDIATION**

Defendant.

1. On Consent of the parties____ Order of the Court____ (Check One) the above-captioned proceeding qualifies for referral to Mediation which shall be conducted in accordance with the 9th JD Presumptive Mediation Program Rules.
2. The following party(s) is exempt from the fee component of mediation based on indigent status pursuant to CPLR § 1101: _____.
3. Within ten (10) business days of receipt of this Order, the parties shall designate a Mediator from the Court's Roster of Neutrals by completing a Mediator Selection Form and forwarding same together with a copy of this Order of Reference to the Mediator selected and to the County ADR Coordinator.
4. Within five days of the date of this Order, the parties shall initiate a conference call with the Mediator to confirm the Mediator's acceptance of this case, select a meeting date for the initial session and make arrangements for any submissions to be forwarded to the Mediator
5. The initial session must be held within 30 days of the date the Mediator confirms acceptance of the case and the Mediation shall be completed within 45 days of the date of this Order, unless otherwise permitted by the Court.
6. The parties shall notify the County ADR Coordinator of the date on which the Mediator accepted this case and the date of the initial session.
7. The parties shall exchange mandatory information based on the type of case to be mediated, as specified in the Mediation Disclosure Protocols for the Court.

8. Upon completion of the Mediation, the parties and counsel shall submit a mediation evaluation form to the County ADR Coordinator.

9. The parties and counsel shall return to Court on _____.

10. The attorneys for the parties herein are as follows:

For Plaintiff: _____

For Defendant: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

E-Mail: _____

E-Mail: _____

11. By signing below, the parties and/or their counsel agree that they shall comply with the 9th JD Presumptive Mediation Program Rules, including those provisions regarding confidentiality and immunity, the Mediation Fee Agreement which is incorporated by reference, and any applicable Court ADR Rules. Parties and/or their counsel further understand and agree that no attorney-client relationship exists between the Mediator and the parties, and that the Mediator may not provide legal advice to the parties.

Signature of Plaintiff

Signature of Defendant

Signature of Counsel for Plaintiff

Signature of Counsel for Defendant

SO ORDERED:

Dated: White Plains, New York
_____, 20____

Hon. Linda S. Jamieson, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

Plaintiff, Index No. _____

- against -

**MEDIATOR SELECTION
FORM**

Defendant.

-----X

This case qualifies for referral to mediation pursuant to the 9th JD Presumptive Mediation Rules on the following basis (Check One):

____ Referral by Court

____ Consent of the Parties

The Parties ____ or the Court ____ (Check One) hereby confirm(s) the selection of the following mediator to serve as the Mediator in the above-captioned case:

____ Roster Mediator

____ Non-Roster Mediator

Mediator: _____

Phone: _____

Email: _____

Fax: _____

The parties shall immediately forward a copy of this Mediator Selection Form and the Order of Reference to the Mediator and notify the County ADR Coordinator of the Mediator selected. Within five days of sending this form, the parties shall initiate a conference call with the Mediator to confirm the Mediator's acceptance of this case. The Parties shall also select a meeting date for the initial session, exchange required discovery pursuant to Part Disclosure Rules and make arrangements for any submissions to be forwarded to the Mediator. The initial session must be held within 30 days of the date the Mediator confirms acceptance of the case and the Mediation shall be completed within 45 days of that date. The Parties shall notify the County ADR Coordinator of the date the Mediator accepted this case and the date scheduled for the initial session.

For Plaintiff: _____

For Defendant: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

E-Mail: _____

E-Mail: _____

9th JD MEDIATION PARTICIPANT STATEMENT OF UNDERSTANDING

1. We understand that together, the parties may select a mediator on their own. We acknowledge that if we do not select a mediator, the Court may refer our matter to a Community Dispute Resolution Center (“CDRC”) or the Court may select a mediator from its roster. We understand that if a mediator is selected from the Court’s roster, we are allowed one free, 90 Minute initial mediation session.
2. We understand that mediation is voluntary; we can choose which points to discuss.
3. We understand that if we do not work out an issue or resolve our case, we can return to Court.
4. We understand that we are each free to talk with a lawyer now, during or after the mediation sessions.
5. We understand that the mediator is not acting as a lawyer for either of us, and will not be giving us legal advice or opinions on the law. The mediator may share with us legal information.
6. Except for allegations of child abuse or neglect, threats of imminent serious harm and information regarding the scheduling, attendance and participation at mediation sessions, and the mediator’s report, we understand that what is said during this process is confidential. The mediator agrees not to reveal any oral or written communications to others without the consent of all parties.
7. We agree that if we do go to court, we will not testify about what happened in the mediation, however, documents and information otherwise discoverable under the CPLR shall not be shielded from discovery merely because they are submitted or referred to in mediation.
8. We will not ask the mediator or the other party to testify or give evidence about what happened in the mediation and we will not demand anything prepared for the mediation or compel the mediator to produce any documents prepared for mediation or notes of the mediator unless it is allowed by law.
9. We understand that the mediator shall be immune from suit, indemnified and held harmless to the extent allowed by law.

Plaintiff/Petitioner

Defendant/Respondent

(Print Name)

(Print Name)

Attorney for Plaintiff/Petitioner

Attorney for Defendant/Respondent

(Print Name)

(Print Name)

Mediator

Date