SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____
----------X

_____
_____
_____
_____

Plaintiff(s)

- against -

_____
_____
_____
_____

Defendant(s)
----------X

Present: Hon._____

Part: _____

Index No.:_____ _____

RJI Filing Date: _____

PRELIMINARY CONFERENCE ORDER COMMERCIAL DIVISION

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 and (5) your e-mail address; and (6) the party you represent.

Plaintiff(s):

_____
_____
_____
_____
_____

Defendant(s):

_____
_____
_____
_____
_____

Please use additional pages, if necessary.

Please attach your business card(s) to the last page of this PC order and indicate on the card the name of the party you represent.

II. CONFIDENTIALITY ORDER:

The court recognizes that most cases in the Commercial Division involve facts which are highly sensitive. In such cases, in order to proceed to proper discovery, the Court *may order* the parties to enter into a Confidentially Agreement, which the court will "So Order." The parties are directed to use the model confidentiality agreement promulgated in the part before which they are appearing. If the Trial Part does not have as specific form it uses, the parties are referred to the model confidentiality agreement found at:
http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf

If the parties need to change *either* the Trial Part's model confidentiality agreement or the one found at *http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf*, the parties are to submit a **signed** *Confidentiality Agreement* with the changes and a red line copy for the Court to review.

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

The parties _____ WILL or ____WILL NOT be submitting a Confidentiality Agreement.:

If the parties WILL, please indicate when: _____

If the parties WILL NOT, please explain why:

_____

_____

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: _____ _____

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, Defendant _____, 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/Cross Claim: $_____

If there are multiple defendants:

(c) If issue has been joined, Defendant _____, 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/Cross Claim: $_____

Please use additional sheets, if needed.

IV. DISCOVERY PROVISIONS

It is hereby **ORDERED** that disclosure shall proceed pursuant to the Commercial Division Rules found at http://www.nycourts.gov/rules/trialcourts/202.shtml#70

(a) **BILL OF PARTICULARS** (See CPLR 3130(1)):

(1) Demand for a Bill of Particulars shall be served by _____ on of before _____.

(2) Responses to the Bill of Particulars shall be served by _____ on or before _____.

Comment:

_____

_____

_____

(b) **DOCUMENT PRODUCTION**

All documents produced by any and all parties must be Bates Stamped.

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

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

Comment:

_____

_____

_____

(c) **INTERROGATORIES**

(1) Interrogatories shall be served by all parties on or before

_____

(2) Answers to interrogatories shall be served on or before

_____.

Comment:

_____
_____
_____

(d) **DEPOSITIONS**:

Defendant's deposition of plaintiff(s) on or before _____

Plaintiff's deposition of defendant(s) on or before _____

If there are multiple parties, please use additional sheets. Please be sure to indicate the name of the case, the index number and question being answered. Please include the (1) name of the party to be deposed; (2) the name of the person who will be deposing the party; and (3) the date and time of the deposition.

Non-party's depositions on or before _____

All depositions shall be completed on or before _____

Comment:

_____
_____
_____

(e) **OTHER DISCLOSURE**:

_____
_____
_____
_____
_____
_____

(f) **IMPLEADER:**

Defendant shall serve his third-party summons and complaint no later than 15 days after the end of the last deposition of a named plaintiff and defendant and/or the last deposition of a representative of a named party's deposition.

(g) **ELECTRONIC DISCOVERY**

(1) Will there be Electronic Discovery in the case:

____ YES ____ NO _____ NOT SURE**

***If the parties are not sure about whether the case is reasonably likely to include electronically stored information (ESI), they should refer to the non-exhaustive list of considerations provided in [22 NYCRR 202.12 (b)(1)] (presently found at the nycourts.gov website.)*

(2) **Meet and Confer**: Pursuant to Uniform Commercial Division Rule 8(b) [22 NYCRR 202.70(g)(8)(b)] counsel certify that they have fulfilled their requirement to meet and confer regarding certain matters relating to electronic discovery, before the Preliminary Conference. Pursuant to Uniform Commercial Division Rule 1(b) [22 NYCRR 202.70(g)(1)(b)] and 22 NYCRR 202.12(b), counsel are reminded that to the extent they believe this case is reasonably likely to include electronic discovery, counsel must be sufficiently versed in matters relating to their clients' technological systems to discuss

competently all issues relating to electronic discovery or counsel have brought someone to address these issues on their behalf; and that pursuant to 22 NYCRR 202.12(c)(3), counsel have met and conferred to discuss these issues.

(i) Date(s) on which parties had their meet and confer conference(s): _____

(ii) Did the parties reach an agreement concerning electronic discovery

____ YES ____ NO _____ PARTIALLY

(3) **Directives concerning electronic discovery.**

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

(i) **Preservation**: [22 NYCRR 202.70(g)(8)(i)-(v)]: Please indicate for both the plaintiff(s) and each of the defendant(s) that the parties have created a preservation plan; have identified the relevant custodians for each computer/server and have designated the individual(s) responsible for the preservation of relevant ESI.

Please do not list the names of the custodians or the designated individuals – only the fact that it has been done or is in the process of being done.

_____
_____
_____
_____

(ii) **Production** [22 NYCRR 202.70(g)(8)(vi) and (ix)]: Please identify (1) that the parties have agreed on the scope and method for searching and reviewing ESI (i.e. the relevant

search terms or technology-assisted review); (2) that the parties have agreed on the extent, order and form of production; and (3) a projected production schedule.

Please 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.

_____
_____
_____
_____

(iii) **Privilege Logs and Redactions** [22 NYCRR 202.70(g)(8)(b)(vii)]. Please identify how the parties will provide for the identification, redaction, and logging of privileged or otherwise confidential ESI.

_____
_____
_____
_____

(iv) **Claw-Back Provisions** [22 NYCRR 202.70(g)(8)(b)(viii)] for inadvertent production:

_____
_____
_____
_____

(v) **Costs** [22 NYCRR 202.70(g)(8)(b)(x)] (*presently found at the nycourts.gov website*):

Each party shall bear its own costs of production pursuant to *U.S. Bank Nat'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 three (3) pages outlining the problem prior to setting up a conference call with the Court.

(4) **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:

_____
_____
_____
_____

(5) **Additional Directives**

Please set forth any additional directives or issues relation to ESI:

_____
_____
_____
_____

(h) **END DATE OF FACT DISCLOSURE:**

Fact Disclosure shall be completed by _____

(i) **EXPERT DISCOVERY (if any):**

Pursuant to the Commercial Division Rules 13(c) and 8 (*available at http://www.nycourts.gov/rules/trialcourts/202.shtml#70*), which mandate consultation with opposing counsel, 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 (30) 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 (4) 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 to the Court.

The note of issue and certificate of readiness may not be filed until the completion of expert disclosure.

(j) **END DATE OF ALL DISCOVERY:**

_____

V. ALTERNATIVE DISPUTE RESOLUTION

The Judges in the Commercial Division encourage all parties to work towards a proper and just resolution of the issues in the case. The judges of the Commercial Division believe that the parties are better served the earlier a proper and just resolution can be reached. Toward that end, the judges asks the litigants in this case, on a continuous basis going forward, to consider the following provisions:

(a) Counsel for the parties have discussed or will be discussing the use of the following alternate dispute mechanisms for use in this case: (i) a settlement conference; (ii) participation in the Commercial Division's Alternative Dispute Resolution Program (if applicable); and/or (iii) retention of a privately-retained mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case:

_____
_____
_____
_____

(b) Counsel for the parties recommend that the alternate dispute resolution mechanism set forth above be employed at the following point in the case: (e.g., within the next sixty (60) days; thirty (30) days after document and interrogatory discovery is completed; after the deposition of the parties are completed on or before _____; or after the close of fact discovery and before the commencement of expert discovery.)

Please indicate when the alternate dispute resolution mechanism should commence:

_____

_____

VI. FINAL DIRECTIVES

(a) NOTE OF ISSUE

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

A copy of this PC order and subsequent Compliance and Status Conference orders shall be served and filed with the note of issue.

(b) DISPOSITIVE MOTION(S):

All dispositive motion(s) shall be made on or before _____

Such 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.

(c) 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 *subsequent* Status Conferences.

(d) **ADDITIONAL DIRECTIVES:**

_____
_____
_____
_____
_____

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

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

SO ORDERED:

DATE: _____ _____
J.S.C.

ADDITIONAL PAGES