

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU: COMMERCIAL DIVISION: PART 8

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*Plaintiff(s)/Petitioner(s)*

Index No: \_\_\_\_\_

-against-

Preliminary Conference Order  
Commercial Division

*Defendant(s)/Respondent(s)*

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Hon. Sharon M.J. Gianelli

RJI FILING DATE: \_\_\_\_\_

**Appearances:**

Please include your name, your firm's name and address, your firm's telephone number, your direct telephone number, your email address and the party you represent. (Attach additional pages for appearances if necessary)

Counsel for Plaintiff(s)/Petitioner(s):

Counsel for Defendant(s)/Respondent(s)

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Counsel for Defendant(s)/Respondent(s)

Counsel for Defendant(s)/Respondent(s)

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**Nature of the Case:** Include claims, crossclaims, counterclaims and defenses (Attach additional pages if necessary)

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AMOUNT DEMANDED: \_\_\_\_\_

AMOUNT DEMANDED: \_\_\_\_\_  
(crossclaims or counterclaims, if any)

**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 Confidentiality Agreement, which the Court will “So Order”. The parties are referred to the Model Confidentiality Agreement found at <https://www.nycbar.org/pdf/report/ModelConfidentiality.pdf> and on the Commercial Division website.

If the parties need to change the Model Confidentiality Agreement, the parties are directed to submit the signed Confidentiality Agreement with the changes and a RED LINE copy for the Court to review.

Please indicate:

The Parties \_\_\_\_\_ HAVE or \_\_\_\_\_ HAVE NOT entered into a Confidentiality Agreement.

The Parties \_\_\_\_\_ WILL or \_\_\_\_\_ WILL NOT enter into a Confidentiality Agreement.

If the Parties plan to enter into a Confidentiality Agreement, please indicate when: \_\_\_\_\_

The Court \_\_\_\_\_ HAS or \_\_\_\_\_ HAS NOT previously so ordered a Confidentiality Agreement.

If so, please indicate when: \_\_\_\_\_

**Pre-Answer Motions:**

Please indicate:

There \_\_\_\_\_ ARE or \_\_\_\_\_ ARE NOT any Pre-Answer Motions currently pending.

**Discovery Provisions:**

It is hereby ORDERED that Discovery shall proceed pursuant to the Commercial Division Rules found at: <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70> and on the Commercial Division website.

**A. BILL OF PARTICULARS (CPLR 3130(1))**

1. Demands for a Bill of Particulars shall be served by all parties on or before \_\_\_\_\_.

2. Responses to Demands for a Bill of Particulars shall be served by all parties on or before \_\_\_\_\_.

**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 for discovery and inspection shall be served by all parties on or before \_\_\_\_\_.

**C. INTERROGATORIES**

1. Interrogatories shall be served by all parties on or before \_\_\_\_\_.
2. Answers to Interrogatories shall be served by all parties on or before \_\_\_\_\_.

**D. DEPOSITIONS:** (Attach additional pages if necessary)

Plaintiff's deposition shall be held on or before \_\_\_\_\_.

First named Defendant's deposition shall be held on or before \_\_\_\_\_.

Second named Defendant's deposition shall be held on or before \_\_\_\_\_.

Third named Defendant's deposition shall be held on or before \_\_\_\_\_.

All Depositions must be completed by: \_\_\_\_\_.

**E. OTHER DISCLOSURE:** Include any case specific issues. (Attach additional pages if necessary)

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**F. IMPLADER:**

Defendant shall serve his third-party summons and complaint, if any, 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.

**G. ELECTRONIC DISCOVERY:**

Do they parties expect Electronic Discovery in this case?

\_\_\_\_\_ YES

\_\_\_\_\_ NO

\_\_\_\_\_ NOT SURE \*The parties are referred to the non-exhaustive list provided in 22 NYCRR 202.12(b)(1) which can be found at: <http://ww2.nycourts.gov/rules/trialcourts/202.shtml#70> and on the Commercial Division website.

**-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.

Please indicate the date the parties met and conferred: \_\_\_\_\_

Did the parties reach an agreement? \_\_\_\_\_ YES \_\_\_\_\_ NO

**- DIRECTIVES CONCERNING ELECTRONIC DISCOVERY**

The following must be updated and supplemented as new information becomes available.

1. Preservation- [22 NYCRR 202.70(g)(8)(i)-(v)]: Please indicate for all Plaintiffs and all Defendants 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 ESI.

Please indicate the date the parties discussed a preservation plan. \_\_\_\_\_

2. Production- [22 NYCRR 202.70(g)(8)(vi)-(ix)]: Please indicate that the parties have agreed to the scope and method for reviewing ESI (including the relevant search terms or technology assisted review) and that the parties have agreed on the extent, order and form of production and the projected production schedule.

Please indicate the date the parties discussed a production plan. \_\_\_\_\_

3. 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.

Please indicate the date the parties discussed privilege logs and Redactions. \_\_\_\_\_

4. Claw-Back Provisions [22 NYCRR 202.70(g)(8)(b)(viii)] for inadvertent production.

Please indicate the date the parties discussed Claw-Back provisions. \_\_\_\_\_

5. Costs- [22 NYCRR 202.70(g)(8)(b)(x)]- Each party shall bear its own cost of production pursuant to *U.S. Bank Nat'l Assoc v. Greenpoint Mtge. Funding Inc.*, 94 A.D. 3d 58 (1<sup>st</sup> 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.

6. Judicial Intervention-

Do the parties anticipate the need for judicial intervention concerning the scope and methods for preserving and/or producing ESI? \_\_\_\_\_ YES \_\_\_\_\_ NO

7. Additional Directives regarding ESI

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**H. END OF FACT DISCOVERY:**

Fact disclosure shall be completed by: \_\_\_\_\_.

**I. EXPERT DISCOVERY (if any):**

Pursuant to Commercial Division Rules 13(c) and (8) 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 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 a party objects to this procedure or timetable, the parties shall request a conference to discuss any objections with the Court.

No Note of Issue/Certificate of Readiness shall be filed until the completion of expert disclosure.

**J. END DATE OF ALL DISCOVERY:**

All discovery shall be completed by: \_\_\_\_\_.

**K. ALTERNATIVE DISPUTE RESOLUTION:**

The Judges in the Commercial Division encourage all parties to work toward 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. To that end, the Judges ask the litigants in this case, on a continuous basis going forward, to consider the following provisions.

1. Counsel for the parties have discussed or will be discussing the use of the following alternative dispute mechanisms for this case: (Please indicate)

A Settlement Conference with the Judge \_\_\_\_\_ YES \_\_\_\_\_ NO

Participation in the Commercial Division's Alternative Dispute Resolution Program  
\_\_\_\_\_ YES \_\_\_\_\_ NO

Retention of a privately retained mediator \_\_\_\_\_ YES \_\_\_\_\_ NO

Other alternate dispute mechanism \_\_\_\_\_ YES \_\_\_\_\_ NO

2. Counsel for the parties recommend that the alternate dispute resolution mechanism set forth above be employed at the following point in the case:

Within the next 60 days \_\_\_\_\_ YES \_\_\_\_\_ NO

30 days after document discovery is completed \_\_\_\_\_ YES \_\_\_\_\_ NO

After Plaintiff's deposition \_\_\_\_\_ YES \_\_\_\_\_ NO

At the close of fact discovery, and prior to expert discovery \_\_\_\_\_ YES \_\_\_\_\_ NO

3. Mediations, Arbitrations and ADR **WILL NOT** stay discovery.

#### **I. FINAL DIRECTIVES:**

1. Note of Issue- A copy of this PC Order and subsequent Compliance and Status Conference Orders shall be served and filed with the Note of Issue.

\_\_\_\_\_ (indicate party) shall file a note if issue/certificate of

readiness on or before \_\_\_\_\_.

2. Dispositive Motions- 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. Pursuant to CPLR §3214(b), service of a Notice of Motion under Rule §3211, §3212 or §3213 shall NOT stay disclosure pending the determination of that motion.

All dispositive motions shall be file on or before \_\_\_\_\_.

3. Compliance Conference- Parties or their representative **with knowledge of the case and the Preliminary Conference Order** shall appear for a Compliance Conference on

\_\_\_\_\_.

**4. The dates set forth herein may not be adjourned except with the approval of the Court.**

5. The parties must bring copies of all disclosure orders to all conferences.

6. Additional directives:

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Attorney for Plaintiff(s) \_\_\_\_\_

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Attorney for Defendant(s) \_\_\_\_\_

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Attorney for Defendant(s) \_\_\_\_\_

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Attorney for Defendant(s) \_\_\_\_\_

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**DATE:** \_\_\_\_\_

**SO ORDERED:** \_\_\_\_\_

**Hon. Sharon M.J. Gianelli**