

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK: PART 3

-----X

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

Plaintiff(s)

- against -

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

Defendant(s)

-----X

Present:  
Hon. EILEEN BRANSTEN,

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

RJI Filing Date: \_\_\_\_\_

**NEW MODEL  
COMPLIANCE  
CONFERENCE  
STIPULATION AND ORDER  
(3-08-2017 For Part 3)**

**I. PRELIMINARY CONFERENCE:** A Preliminary Conference was held in this case and the Court signed the Preliminary Conference Order on:

\_\_\_\_\_, 20\_\_\_\_\_

*The purpose of this Compliance Conference is to assess the progress the parties have made and to determine what items are outstanding and what needs to be done to ensure that discovery is completed in a timely fashion.*

**II. APPEARANCES:** The parties entered their appearances at the Preliminary Conference.

(a) Counsel for Plaintiff \_\_\_\_\_ **HAS** or \_\_\_\_\_ **HAS NOT** changed.

(b) Counsel for Defendant \_\_\_\_\_

\_\_\_\_\_ **HAS** or \_\_\_\_\_ **HAS NOT** changed.

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(c) Counsel for Defendant \_\_\_\_\_

\_\_\_\_\_ **HAS** or \_\_\_\_\_ **HAS NOT** changed.

*Please use additional pages, if necessary.*

**FOR EACH NEW COUNSEL:**

Please include (1) your name; (2) your firm's name; (3) your address; (4) your firm's telephone number; (5) your direct telephone number; (6) your e-mail address; and (7) the party you represent.

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

*Please use additional pages, if necessary.*

**PLEASE INDICATE WHO IS APPEARING AT THIS COMPLIANCE  
CONFERENCE:**

(a) Counsel for Plaintiff: \_\_\_\_\_  
Firm name: \_\_\_\_\_

(b) Counsel for Defendant \_\_\_\_\_  
Firm name: \_\_\_\_\_

(c) Counsel for Defendant \_\_\_\_\_  
Firm Name: \_\_\_\_\_

*Please use additional pages, if necessary.*

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## II. CONFIDENTIALITY AGREEMENT:

At the Preliminary Conference, the parties indicated whether they had or had not entered into a Confidentiality Agreement. The Preliminary Conference Order included an explanation regarding the need for Confidentiality Agreements. The Preliminary Conference Order also stated:

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:

[https://www.nycourts.gov/rules/trialcourts/202.70\(g\)%20-%20Rule%2011-g%20\(attachment\).pdf](https://www.nycourts.gov/rules/trialcourts/202.70(g)%20-%20Rule%2011-g%20(attachment).pdf)

If the parties need to change *either* the Trial Part's model confidentiality agreement or the one found at the link listed above, 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 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: \_\_\_\_\_

If the parties **HAVE NOT** entered into a Confidentiality Agreement, please provide the Court with an explanation as to the reason(s) the parties decided not to enter into a Confidentiality Agreement.

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

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**III. DESCRIPTION OF THE CASE:**

(a) Plaintiff

In the Preliminary Conference Order, pursuant to 22 NYCRR 202.12(c)(1), the Plaintiff was asked to provide a brief description of the factual and legal issues of the case. Defendant(s), if issue had been joined, was/were also required to provide a brief description of the case.

- (1) If Plaintiff has filed an amended complaint, please inform the Court as to the changes to Plaintiff's factual and legal case since the Preliminary Conference Order:

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**and/or**

- (2) If the Court has issued an order on a Motion to Dismiss, please inform the Court as to which cause(s) of action remain in the case:

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- (3) Has a Notice of Appeal been filed? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

- (4) Was the Appeal perfected? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

- (5) Was the Appeal decided? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

- (6) What was the Appeal Court's decision:

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- (7) Because of the changes to the case, please indicate whether the amount of damages has changed:

Damages Amount has changed: \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

Please indicate the new Damages Amount: \$ \_\_\_\_\_.

(b) Defendant(s)

- (1) If not done in the Preliminary Conference, please describe Defendant \_\_\_\_\_'s, legal theory and salient facts in support of defenses, counterclaims and third-party claims.

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

Amount Demanded on the Counterclaim/Cross Claim: \$ \_\_\_\_\_

*If there is more than one defendant, please repeat Question No. III(b) for each defendant.*

- (2) Did a party make a Motion to Dismiss the counterclaims?  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

- (3) If the Court has issued an order on a Motion to Dismiss the counterclaims, please inform the Court as to which counterclaims remain in the Defendants' case:

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

- (4) Has a Notice of Appeal been filed? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

- (5) Was the Appeal perfected? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

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(6) Was the Appeal decided? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

(7) What was the Appeal Court's decision:

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

*Please use additional pages, if necessary.*

#### **IV. DISCOVERY**

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>

##### **(1) GENERAL ADMONITIONS:**

The Preamble to the Commercial Division Rules, **22 NYCRR 202.70(g)**, states that the Commercial Division is “mindful of the need to conserve client resources, ***encourage proportionality in discovery***, promote efficient resolution of matters, and increase respect for the integrity of the judicial process. Litigants and counsel who appear in this Court are directed to review the Rules regarding sanctions, including the provisions in Rule 12 regarding failure to appear at a conference, Rule 13(a) regarding adherence to discovery schedules, and Rule 24(d) regarding the need of counsel to be fully familiar with the case when making appearances.” (Emphasis added.)

Have you met and conferred concerning discovery?

\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**. If **YES**, **when** did you meet and confer? \_\_\_\_\_

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

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- If **YES**, please indicate what each party did to meet the “*proportionality in discovery*” requirement?

(a) Plaintiff:

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

(b) Defendants

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

**(2) DOCUMENT PRODUCTION:**

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

Pursuant to **Commercial Division 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.”*

In the *Preliminary Conference Order*, the parties were to exchange **Interrogatories, Document Production** and **Other Disclosure** pursuant to CPLR 3108, 3120 and 3123 by a date certain. Please indicate the date by which Interrogatories and Document Production was (is) to be completed by:

\_\_\_\_\_

Was this deadline met? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

(i) Has Document Discovery been completed?

\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

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(ii) If **NOT COMPLETED** at this time, please explain why:

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

(iii) By what date will be parties be able to **complete** Document Discovery:

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS** THE NEW DATE  
FOR THE COMPLETION OF  
DOCUMENT DISCOVERY

\_\_\_\_\_ **DOES NOT ACCEPT** THE  
DATE FOR THE COMPLETION  
OF DOCUMENT DISCOVERY

*(The Court should place its initial on the appropriate line.)*

If the New Date for the Completion of all Document Discovery is **NOT** agreed to by the Court, the Court hereby sets the following **date as the NEW DATE FOR THE COMPLETION OF ALL DOCUMENT DISCOVERY**

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

### (3) INTERROGATORIES

Pursuant to **Commercial Division 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



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material and necessary documentation, including pertinent insurance agreements, and other physical evidence.”

(i) Have the Interrogatories been completed?

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**

(ii) If **NOT COMPLETED** at this time, please explain why:

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

(iii) By what date will be parties be able to **complete** Interrogatories:

\_\_\_\_\_

The Court                      \_\_\_\_\_                      **ACCEPTS THE NEW DATE  
FOR THE COMPLETION OF  
INTERROGATORIES**

\_\_\_\_\_                      **DOES NOT ACCEPT THE  
DATE FOR THE COMPLETION  
OF ALL INTERROGATORIES**

*(The Court should place its initial on the appropriate line.)*

If the New Date for the Completion of all Interrogatories is **NOT** agreed to by the Court, the Court hereby sets the following **date as the NEW DATE FOR THE COMPLETION OF ALL INTERROGATORIES**

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

**(4) DEPOSITION OF INDIVIDUALS**

Pursuant to **Commercial Division Rule 11-d**, “(a) Unless otherwise stipulated to by the parties or ordered by the court: (1) the number of

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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.

(a) In the Preliminary Conference Order, the Plaintiff and Defendant(s) stated that they would complete the parties’ depositions by: \_\_\_\_\_ and complete non-parties’ depositions by \_\_\_\_\_.

(b) If the dates for depositions to be completed have not yet passed, please indicate whether you believe the deposition dates will be adhered to:

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**

(c) If Individual Depositions have **NOT BEEN COMPLETED** in a timely fashion, please explain why:

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

• Please indicate if the parties have met and conferred about the timing of the Individual Depositions:

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**;

• If **YES**, when did you meet and confer concerning the timing of the Depositions: \_\_\_\_\_

• By what date will be parties be able to **COMPLETE** the **Individual Depositions**:

**Plaintiff:** \_\_\_\_\_

**Defendant:** \_\_\_\_\_

**Defendant:** \_\_\_\_\_

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**Others:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Please use additional pages, if necessary.*

**ALL INDIVIDUAL Depositions will be COMPLETED on or before \_\_\_\_\_**

The Court	_____	<b>ACCEPTS THE NEW DATE FOR THE COMPLETION OF ALL INDIVIDUAL DEPOSITIONS</b>
	_____	<b>DOES NOT ACCEPT THE DATE FOR THE COMPLETION OF ALL INDIVIDUAL DEPOSITIONS</b>

*(The Court should place its initial on the appropriate line.)*

If the New Date for the Completion of all Individual Depositions is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW DATE FOR THE COMPLETION OF ALL INDIVIDUAL DEPOSITIONS**

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

**(5) 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

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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 **consent to testify** on its behalf. The named entity must identify the individual who will be testifying on the entity’s behalf, the 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 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 durational limit is in effect **but** may be enlarged by

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agreement of the parties or upon application for leave of Court, which shall be freely given.

- (a) At the Preliminary Conference, the parties designated the entities to be deposed. Since that time have the parties served a notice or subpoena enumerating those matters to be the subject of the deposition of the entity **“with reasonable particularity?”**

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**

If **YES**, *when* did you serve the notice or subpoena?

\_\_\_\_\_

If **NO**, *when will you serve* the notice or subpoena?

\_\_\_\_\_

- (b) Has the individual identified to represent the entity, **consented** to testify on behalf of the entity?

**Plaintiff:** Entity: \_\_\_\_\_  
Name of Individual(s) \_\_\_\_\_

\_\_\_\_\_

Title of the Individual: \_\_\_\_\_

Individual’s Consent:            \_\_\_\_\_ **YES**    \_\_\_\_\_ **NO**

**Defendant:** Entity: \_\_\_\_\_  
Name of Individual(s) \_\_\_\_\_

\_\_\_\_\_

Title of the Individual: \_\_\_\_\_

Individual’s Consent:            \_\_\_\_\_ **YES**    \_\_\_\_\_ **NO**

**Defendant:** Entity: \_\_\_\_\_  
Name of Individual(s) \_\_\_\_\_

\_\_\_\_\_

Title of the Individual: \_\_\_\_\_

Individual’s Consent:            \_\_\_\_\_ **YES**    \_\_\_\_\_ **NO**

*Please use additional pages, if necessary.*

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(c) By what date will the parties be able to **COMPLETE** the **Entity Depositions**:

- **Plaintiff:** \_\_\_\_\_
- **Defendant:** \_\_\_\_\_
- **Others:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Please use additional pages, if necessary.*

**ALL ENTITY depositions will be COMPLETED on or before**

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE NEW DATE FOR THE COMPLETION OF ALL ENTITY DEPOSITIONS**

\_\_\_\_\_ **DOES NOT ACCEPT THE DATE FOR THE COMPLETION OF ALL ENTITY DEPOSITIONS**

*(The Court should place its initial on the appropriate line.):*

If the New Date for the Completion of all Entity Depositions is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW DATE FOR THE COMPLETION OF ALL ENTITY DEPOSITIONS**

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**(6) OTHER DISCOVERY**

Please indicate what, if any, “Other Discovery” will be needed in this case pursuant to CPLR 3108 (Depositions by written questions or oral depositions obtained by commission or letters rogatory), CPLR 3120 (Inspection, testing, copying and photographing) and CPLR 3123 (Admissions as to matters of fact, paper, documents and photographs):

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

By what date will this “Other Discovery” be completed?

\_\_\_\_\_

**(7) DISCLOSURE DISPUTES**

Pursuant to **Commercial Division Rule 14**, discovery disputes will be resolved in the following manner:

1. If the Part Rules outline a mechanism to resolve discovery disputes, the Part Rules must be followed; or, if there are no Part Rules:
  
2. Follow the mechanism laid out in **Rule 14**, namely a party with a disclosure dispute shall write a letter to the Part, maximum 3-pages single spaced in length, outlining the issue(s); the other side(s) may submit response letter(s) of equal length. Necessary documents in support of the issue must also be attached to the letter. The Part will then schedule a (telephone) conference to, hopefully, resolve the dispute.
  - (a) Have either you or your opposition availed yourself of the mechanism outlined in Rule 14?

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**

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(b) (i) When was the first letter written:

\_\_\_\_\_

By whom?

\_\_\_\_\_

About what?

\_\_\_\_\_

When was the telephone conference held:

\_\_\_\_\_

Was the issue resolved?

\_\_\_\_\_

(ii) When was the second letter written:

\_\_\_\_\_

By whom?

\_\_\_\_\_

About what?

\_\_\_\_\_

When was the telephone conference held:

\_\_\_\_\_

Was the issue resolved?

\_\_\_\_\_

*Please use additional pages, if necessary.*



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**(8) IMPLEADER:**

Defendant(s) shall serve 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.

Defendant(s) **MUST SERVE** all third parties with copies of all pleadings; bates-stamped document discovery; interrogatories and deposition transcripts, as well as any other information no later than 14 DAYS after serving a third-party pleading.

- (i) If Depositions have been completed, has/have the Defendant(s) served a third party summons and complaint. \_\_\_\_ **YES** \_\_\_\_ **NO**

If so, against whom and please provide the Court with an updated caption.

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

- (ii) Please provide the Court with the name; the firm's name; the firm's address; the firm's telephone number; the attorney's direct telephone number; and the attorney's e-mail address, if you know it.

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

- (iii) If a third-party summons and complaint has been served, please indicate if:

Answer(s) have been served: \_\_\_\_ **YES** \_\_\_\_ **NO**

- (iv) If **YES**, has a schedule for discovery been completed:

(1) Interrogatories: \_\_\_\_\_  
(2) Document Discovery: \_\_\_\_\_

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(3) Depositions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(v) When is this Impleader discovery expected to be completed:

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE DATE FOR THE  
COMPLETION OF IMPLEADER  
DISCOVERY,**

\_\_\_\_\_ **DOES NOT ACCEPT THE  
DATE FOR THE COMPLETION  
OF IMPLEADER DISCOVERY**

*(The Court should place its initial on the appropriate line.):*

If the New Date for the Completion of Impleader Discovery is **NOT acceptable, the NEW DATE FOR THE COMPLETION OF ALL IMPLEADER DISCOVERY is:**

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

**(9) ELECTRONIC DISCOVERY and PRIVILEGE LOGS:**

Discovery of Electronically Stored Information (ESI) is one of the most expensive and challenging discovery categories. The new Commercial Division Rules, as it concerns electronic discovery privilege logs, **22 NYCRR 202.12(b) and (c)(3)**, attempt to rein in the cost and complexity of electronic discovery and related privilege logs.

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**A. ELECTRONIC DISCOVERY**

(a) Have the parties agreed that there will be Electronic Discovery in the case?

\_\_\_\_ YES                      \_\_\_\_ NO                      \_\_\_\_ NOT SURE

(b) **Meet and Confer:**

Pursuant to **22 NYCRR 202.12(b) and (c)(3)**

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

\_\_\_\_\_

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

\_\_\_\_ YES                      \_\_\_\_ NO                      \_\_\_\_ PARTIALLY

(iii) Are counsel at this Compliance 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) and (d)**

(iv) **Claw Back Provisions** for inadvertent production:

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(v) **Costs:** 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 follow the mechanism for Disclosure Dispute found in section (6).

**(d) Judicial Intervention**

The parties anticipate the need for judicial intervention regarding electronic discovery.

\_\_\_ YES                      \_\_\_ NO                      \_\_\_ MAYBE

**(e) Status of Electronic Discovery**

(i) What is the current status of Electronic Discovery Production:

- Have the parties agreed to the search terms?

\_\_\_\_\_ YES                      \_\_\_ NO

- Have the parties commenced production of documents?

\_\_\_\_\_ YES                      \_\_\_ NO

**(f) Judicial Intervention**

What, if anything, can the Court do to facilitate the successful competition of Electronic Discovery:

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**(g) Additional Directives**

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**(h) Anticipated Date of Completion of Electronic Discovery**

When do the parties anticipate completion of electronic discovery?

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE DATE FOR THE  
C O M P L E T I O N O F  
ELECTRONIC DISCOVERY.**

\_\_\_\_\_ **DOES NOT ACCEPT THE  
DATE FOR THE COMPLETION  
OF ELECTRONIC DISCOVERY.**

*(The Court should place its initial on the appropriate line.):*

If the New Date for the Completion of Electronic Discovery is **NOT acceptable, the NEW DATE FOR THE COMPLETION OF ELECTRONIC DISCOVERY is:**

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

**B. PRIVILEGE LOGS**

One of the most time-consuming and costly aspects of discovery in complex commercial litigation cases is the creation and maintenance of privilege logs. Privilege logs are governed by Commercial Division Rule 11(b) and CPLR 3122(b).

**THE CATEGORICAL or DOCUMENT-BY-DOCUMENT APPROACH**

- (a) **Commercial Division Rule 11-b, mandates** that the parties meet and confer at the outset of the case and from time to time thereafter to discuss:

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- the scope of the privilege review;
  - the amount of information to be set out in the privilege log;
  - the use of categories to reduce document-by-document logging;
  - whether categories of information can be excluded from the logging requirements;
  - any other issues pertinent to privilege review. (Rule 11-b(a))
- (b) (1) Rule 11(b) clearly states that the preference in the Commercial Division is for the parties to use **categorical designations** where appropriate to reduce the time and costs associated with preparing privilege logs. . . . (An example of such a **categorical designation** is the designation that all communications between the client and the client’s attorney AFTER the commencement of the action would be designated as exempt pursuant to the attorney-client privilege.) . . . The parties are encouraged to utilize a reasoned method of organizing the documents.

*There are specific rules that must be followed to ensure that the documents contained in a **categorical designation** were properly placed in that category.*

- (2) In the event the requesting party refuses to permit a **categorical approach**, and instead insists on a **document-by-document** listing on the privilege log then, the requirements of CPLR 3122 must be followed. In that circumstance, however, the producing party, upon showing of good cause, may apply to the Court for an allocation of costs, including attorneys’ fees, incurred with respect to preparing a **document-by-document** privilege log.
- (3) Even if a party insists on a **document-by-document** privilege log as contemplated by CPLR 3122, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include the following: (i) an indication that the e-mail chain represents an uninterrupted

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dialogue; (ii) the beginning and ending dates and times (as noted in the e-mails) of the dialogue; (iii) the number of e-mails in the dialogue; and (iv) the names of all the authors and recipients, together with sufficient identifying information about each person (e.g. name of the employer, job title, person's role in the case) to allow for a considered assessment of the privilege issue.

*While there are other important sections of the new Privilege Log Rule that will have to be considered and followed, these sections need not be repeated here.*

(c) In the Preliminary Conference Order, the parties chose:

**Categorical Privilege Log:**      \_\_\_ YES    \_\_\_ NO

*OR*    **Document-by-Document Privilege Log:**

   \_\_\_ YES    \_\_\_ NO

(d) Have the Parties prepared the Privilege Log using the chosen Categorical or Document-by-Document Privilege Log?

                                 \_\_\_ YES                                    \_\_\_ NO

If **YES**, what is the status of the Privilege Log?

\_\_\_\_\_

If **YES**, when will the Privilege Log be complete:

\_\_\_\_\_

If **NO**, please explain why the Privilege Log has not been commenced?

\_\_\_\_\_

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If **NO**, when will the privilege log be completed?

\_\_\_\_\_

(e) **FINAL DATE FOR THE COMPLETION OF THE PRIVILEGE LOG:**

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE DATE FOR THE COMPLETION OF THE PRIVILEGE LOG.**

\_\_\_\_\_ **DOES NOT ACCEPT THE DATE FOR THE COMPLETION OF THE PRIVILEGE LOG.**

*(The Court should place its initial on the appropriate line.):*

If the New Date for the Completion of Privilege Logs is **NOT acceptable, the NEW DATE FOR THE COMPLETION OF THE PRIVILEGE LOG. is:**

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

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

In the Preliminary Conference Order, it was anticipated that all Fact Disclosure would be completed by:

\_\_\_\_\_

Will this date be complied with: \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**



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If the original **END DATE FOR FACT DISCLOSURE** will **NOT** be met, what do the parties believe the **NEW END DATE FOR FACT DISCLOSURE** should be

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE NEW END DATE  
FOR FACT DISCLOSURE**

\_\_\_\_\_ **DOES NOT ACCEPT THE NEW END  
DATE FOR FACT DISCLOSURE**

*(The Court should place its initial on the appropriate line.)*

If the New End Date for Fact Disclosure is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW END DATE FOR FACT DISCLOSURE**:

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

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

Pursuant to **Commercial Division Rules 8 and 13(c)**, 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 with the Court.

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Do the parties anticipate EXPERT DISCOVERY

\_\_\_\_\_ YES \_\_\_\_\_ NO

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

- Was there an END DATE for Expert Discovery set in the Preliminary Conference Order, \_\_\_\_\_ YES \_\_\_\_\_ NO
- If YES, what was the date? \_\_\_\_\_

If the original **END DATE FOR EXPERT DISCOVERY** will **NOT** be met, what do the parties believe the **NEW END DATE FOR EXPERT DISCOVERY** should be

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE NEW END DATE FOR EXPERT DISCOVERY.**

\_\_\_\_\_ **DOES NOT ACCEPT THE NEW END DATE FOR EXPERT DISCOVERY**

*(The Court should place its initial on the appropriate line.)*

If the New End Date for Expert Discovery is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW END DATE FOR EXPERT DISCOVERY**:

\_\_\_\_\_ Court's Initial: \_\_\_\_\_

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

In the Preliminary Conference Order, it was anticipated that the END DATE FOR ALL DISCOVERY would be completed by:

\_\_\_\_\_

Will this date be complied with:  YES  NO

If the original END DATE FOR ALL DISCOVERY will **NOT** be met, when do the parties believe the **NEW END DATE FOR ALL DISCOVERY** should be: \_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE NEW END DATE FOR ALL DISCOVERY**  
\_\_\_\_\_ **DOES NOT ACCEPT THE NEW END DATE FOR ALL DISCOVERY**

*(The Court should place its initial on the appropriate line.)*

If the New END DATE FOR ALL DISCOVERY is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW END DATE FOR ALL DISCOVERY:**

\_\_\_\_\_ Court's Initial \_\_\_\_\_

**V. FINAL DIRECTIVES**

(a) **NOTE OF ISSUE**

In the Preliminary Conference Order, it was anticipated that the NOTE OF ISSUE would be filed on:

\_\_\_\_\_



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PLEASE REMEMBER that if the parties intend to submit documents in a redacted or sealed form, the party **MUST** make a “Sealing Motion” pursuant to 22 NYCRR §202.70, Rule 11-h or Section 216.1 of the Uniform Rules of the Supreme Court and County Court. Nothing may be used in any document submitted to the Court in a sealed or redacted form **WITHOUT** a separate and written Order of the Court.

(c) **STATUS CONFERENCE:**

Parties or their representatives **with knowledge of the case and the Preliminary Conference Order** shall appear for a Status Conference on

\_\_\_\_\_

Parties or their representatives **with knowledge of the case and the Preliminary Conference Order** shall also appear for all future Status Conferences.

(d) **ADDITIONAL DIRECTIVES:**

\_\_\_\_\_

\_\_\_\_\_

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## **VI. 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 any and all mechanisms to resolve the issues before them.

### **IN THE PRELIMINARY CONFERENCE ORDER THE PARTIES STATED:**

- (a) That they would be using the following alternative dispute mechanisms 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 private mediator. Counsel for the parties stated they planned to use the following alternative dispute resolution mechanism for this case:

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

- (b) The parties stated that they believed they would be ready to commence the proposed alternative dispute mechanism on or before the following event (e.g., within sixty (60) days of the Preliminary Conference; thirty (30) days after document and interrogatory discovery was completed; when the depositions of the parties are completed on or before \_\_\_\_\_; or after the close of fact discovery and before the commencement of expert discovery).

- (c) Please indicate when (as stated in the Preliminary Conference Order) the alternate dispute resolution mechanism is expected to commence:

\_\_\_\_\_

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(d) **PLEASE EXPLAIN *WHY* SETTLEMENT DISCUSSIONS OR  
ADR HAVE NOT COMMENCED:**

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

\* \* \* \* \*

**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.***

Agreed to by: \_\_\_\_\_  
Counsel for Plaintiff

Agreed to by: \_\_\_\_\_  
Counsel for Defendant \_\_\_\_\_

Agreed to by: \_\_\_\_\_  
Counsel for Defendant \_\_\_\_\_

*Please use additional pages, if necessary.*

**SO ORDERED:**

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

\_\_\_\_\_  
**J.S.C.**