

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

-----X

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

Present: Hon. Eileen Bransten

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

Plaintiff(s)

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

- against -

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

**NEW MODEL  
STATUS CONFERENCE  
STIPULATION AND ORDER**  
(Version dated 9-28-2017)

Defendant(s)

-----X

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

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

**THE COMPLIANCE CONFERENCE:** The Compliance Conference was held on this case:

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

*The purpose of this New Model Status Conference Stipulation and Order 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 and the Note of Issue is filed in a timely fashion.*

Plaintiff \_\_\_\_\_  
v. Defendant \_\_\_\_\_

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**II. APPEARANCES:** The parties entered their appearances at the Preliminary and Compliance Conferences. Since the last Conference:

- (a) Counsel for Plaintiff \_\_\_\_\_ **HAS** or \_\_\_\_\_ **HAS NOT** changed.
- (b) Counsel for Defendant \_\_\_\_\_  
\_\_\_\_\_ **HAS** or \_\_\_\_\_ **HAS NOT** changed.
- (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 STATUS  
CONFERENCE:**

- (a) Counsel for Plaintiff: \_\_\_\_\_  
Firm name: \_\_\_\_\_
- (b) Counsel for Defendant \_\_\_\_\_  
\_\_\_\_\_  
Firm name: \_\_\_\_\_

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

\_\_\_\_\_  
Firm Name: \_\_\_\_\_

*Please use additional pages, if necessary.*

### III. CONFIDENTIALITY AGREEMENT:

The Model Confidentiality Order which is currently favored by the courts can be 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)

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: \_\_\_\_\_

### IV. DESCRIPTION OF THE CASE:

In the Compliance Conference Order, the parties were asked what issues remained in the case AFTER the Motion to Dismiss was decided and the Appeal, if any, was perfected and/or decided.

In order to assess the status of the case after the preliminary motion practice, please describe what **causes of action remain** in the case and the **amount of money demanded**:

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

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

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

Have all the Appeals been decided? \_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

If **NO**: (1) whose appeal is it; (2) has the appeal been perfected; (3) when was the appeal argued or (4) when is the appeal scheduled to be heard?

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

If **YES**: (1) Please attach a copy of the Appellate Division's decision; (2) has a party decided to appeal the First Department's decision to the Court of Appeals, and if so, what is the status of that appeal; (3) what causes of action remain in the case; and (4) what is the amount of damages currently being sought on plaintiff's claims and/or defendant(s)' counterclaims?

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

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**V. DISCOVERY**

**(1) DOCUMENT DISCOVERY**

*Document Discovery was completed on:*

\_\_\_\_\_

(1)(a) If **NOT COMPLETED**, please explain why:

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

(1)(b) 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: \_\_\_\_\_

**THE NEW DATE OF \_\_\_\_\_ FOR THE  
COMPLETION OF DOCUMENT DISCOVERY IS  
ABSOLUTELY FINAL. NO FURTHER ADJOURNMENTS OF**

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***ANY KIND WILL BE PERMITTED UNLESS SO ORDERED BY  
THE COURT.***

**(2) DEPOSITIONS OF INDIVIDUALS**

*Depositions of Individuals were completed on:*

\_\_\_\_\_

(2)(a) If Depositions of Individuals have **not** yet been completed,  
please:

(i) Please explain **why** they have not been completed:

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

(ii) Please list the names of each individual persons, the  
names of all third-party witnesses and/or the names of all  
non-party persons who need to be deposed **AND** the date  
when those depositions will be held:

NAME	PLAINTIFF OR DEFENDANT OR 3d PARTY WITNESS AND/OR NON-PARTIES	DATE DEPOSITION IS SCHEDULED TO BE HELD
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*Please use additional pages, if necessary.*

- (iii) Please list the date when the depositions of **ALL INDIVIDUALS** will be completed:

\_\_\_\_\_

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

**THE NEW DATE OF \_\_\_\_\_ FOR THE  
COMPLETION OF INDIVIDUAL DEPOSITIONS IS  
ABSOLUTELY FINAL. NO FURTHER  
ADJOURNMENTS OF ANY KIND WILL BE PERMITTED  
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**(3) DEPOSITION OF ENTITIES**

**Commercial Division Rule 11-f** concerning Deposition of Entities went into effect on October 15, 2015. The new rule governs depositions of corporations, business trusts, estates, trusts, partnerships, limited liability companies, associations, joint ventures, public corporations, government, or government subdivisions, agencies or instrumentalities, or any other legal or commercial entities.

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 detailed at pages 12 and 13 of the Compliance Conference Stipulation and Order.

**(3)(a)** When did the parties serve the **required notice or subpoena** enumerating those matters to be the subject of the deposition of the entity **“with reasonable particularity”**?

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

Defendant \_\_\_\_\_

Defendant \_\_\_\_\_

*Please use additional pages, if necessary.*

**(3)(b)** Have the parties COMPLETED the Entity Depositions?

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

**(3)(c)** If **YES**, when were the Entity Depositions completed?

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



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Defendant \_\_\_\_\_  
\_\_\_\_\_

Defendant \_\_\_\_\_  
\_\_\_\_\_

*Please use additional pages, if necessary.*

**(3)(d) If NO, WHEN will the Entity Depositions BE COMPLETED?**

Plaintiff: Entities' Name \_\_\_\_\_  
Deposition will be completed on: \_\_\_\_\_

Defendant \_\_\_\_\_  
Entities' Name - \_\_\_\_\_  
Deposition will be completed on:- \_\_\_\_\_

Defendant \_\_\_\_\_  
Entities' Name \_\_\_\_\_  
Deposition will be completed on: \_\_\_\_\_

*Please use additional pages, if necessary*

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

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

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

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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 ENTITY DEPOSITIONS**

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

**THE NEW DATE OF \_\_\_\_\_ FOR THE COMPLETION OF ENTITY DEPOSITIONS IS ABSOLUTELY FINAL. NO FURTHER ADJOURNMENTS OF ANY KIND WILL BE PERMITTED UNLESS SO ORDERED BY THE COURT.**

**(4) 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):

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

Has ALL "Other Discovery" been completed?

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

If **NOT completed**, when will it BE COMPLETED?

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

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**(5) DISCLOSURE DISPUTES**

The Court reminds the parties of the **Commercial Division Rule 14** concerning discovery disputes.

**(5)(a)** If the parties have availed themselves of the provisions of Rule 14, please outline the use of the Letter Writing mechanism **SINCE the Compliance Conference Stipulation and Order** was signed.

(i) When was letter Number \_\_\_\_\_ written?

\_\_\_\_\_

By whom?

\_\_\_\_\_

About what?

\_\_\_\_\_

When was the telephone conference held:

\_\_\_\_\_

Was the issue resolved?

\_\_\_\_\_

(ii) When was Letter Number \_\_\_\_\_ written?

\_\_\_\_\_

By whom?

\_\_\_\_\_

About what?

\_\_\_\_\_

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When was the telephone conference held:

\_\_\_\_\_

Was the issue resolved?

\_\_\_\_\_

*Please use additional pages, if necessary.*

**(6) IMPLEADER:**

(i) When did Defendant \_\_\_\_\_ serve  
its third-party summons and complaint:

\_\_\_\_\_

(ii) Has Impleader Discovery been Completed?

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

(iii) If **YES**, when was it completed?

\_\_\_\_\_

(iv) If **NO**, what remains to be done?

\_\_\_\_\_

\_\_\_\_\_

(v) When will this Impleader discovery be completed?

\_\_\_\_\_

The Court \_\_\_\_\_

**ACCEPTS THE DATE FOR THE  
COMPLETION OF IMPLEADER  
DISCOVERY**

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\_\_\_\_\_ 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: \_\_\_\_\_

**THE NEW DATE OF \_\_\_\_\_ FOR THE  
COMPLETION OF IMPLEADER DISCOVERY IS  
*ABSOLUTELY FINAL. NO FURTHER  
ADJOURNMENTS OF ANY KIND WILL BE PERMITTED  
UNLESS SO ORDERED BY THE COURT.***

**(7) ELECTRONIC DISCOVERY AND PRIVILEGE LOGS**

**A. ELECTRONIC DISCOVERY**

(a) Has Electronic Discovery been completed?

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

(b) If **YES**, when was it completed?

\_\_\_\_\_

(c) If **NO**, what exactly remains to be done?

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

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(d) When will this Electronic Discovery be completed?

\_\_\_\_\_

The Court \_\_\_\_\_ **ACCEPTS THE DATE FOR THE  
COMPLETION OF  
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 Impleader Discovery is **NOT acceptable, the NEW DATE FOR THE COMPLETION OF ALL ELECTRONIC DISCOVERY is:**

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

**THE NEW DATE OF \_\_\_\_\_ FOR THE  
COMPLETION OF ELECTRONIC DISCOVERY IS  
*ABSOLUTELY FINAL. NO FURTHER  
ADJOURNMENTS OF ANY KIND WILL BE PERMITTED  
UNLESS SO ORDERED BY THE COURT.***

**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/or CPLR 3122(b).

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In the Compliance Conference Stipulation and Order, the Court outlined at pages 21 through 23 the differences between the Categorical versus Document-by Document approach to Privilege Logs. The court also included a recitation of what new Rule 11-b (a) includes for Categorical Privilege Logs and the requirements of CPLR 3122 for Document-by-Documents production.

- (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 concerning the requirements of the creation and maintenance of Privilege Logs:

Did the parties meet and confer concerning Privilege Logs?

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

If **YES**, please provide the court with the date(s) when the parties met and conferred concerning Privilege Logs:

\_\_\_\_\_

- (b) At the Preliminary Conference, the parties chose:

**THE CATEGORICAL** \_\_\_\_\_  
**or**  
**DOCUMENT-BY-DOCUMENT** \_\_\_\_\_

approach to the Privilege Logs.

- (c) (i) 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.

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

- (ii) 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.
  
- (iii) 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: (1) an indication that the e-mail chain represents an uninterrupted dialogue; (2) the beginning and ending dates and times (as noted in the e-mails) of the dialogue; (3) the number of e-mails in the dialogue; and (4) 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.*

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

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



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If **YES**, **when** was the Privilege Log completed and exchanged?

\_\_\_\_\_

If **NO**, please explain the current status of the Privilege Log(s):

\_\_\_\_\_

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

\_\_\_\_\_

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 Log is **NOT acceptable**, the **NEW DATE FOR THE COMPLETION OF THE PRIVILEGE LOG is:**

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

***PRIVILEGE LOGS SHOULD HAVE BEEN COMPLETED BY THE COMPLIANCE CONFERENCE.***

**THE NEW DATE OF \_\_\_\_\_ FOR THE COMPLETION OF THE PRIVILEGE LOG IS *ABSOLUTELY FINAL. NO FURTHER***

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***ADJOURNMENTS OF ANY KIND WILL BE  
PERMITTED UNLESS SO ORDERED BY THE  
COURT.***

**(8) END DATE FOR FACT DISCLOSURE**

In the Preliminary Conference Order, the parties anticipated that the End Date for Fact Disclosure would occur on:

\_\_\_\_\_

In the Compliance Conference Stipulation and Order, the parties predicted that the End Date for Fact Disclosure would happen on

\_\_\_\_\_

Will this date be complied with?      \_\_\_\_\_ YES      \_\_\_\_\_ NO

If the latest **END DATE FOR FACT DISCLOSURE** will **NOT** be met, then when 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.)*

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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: \_\_\_\_\_

**THE *NEW* END DATE FOR FACT DISCLOSURE OF  
\_\_\_\_\_ *IS ABSOLUTELY FINAL. NO  
FURTHER ADJOURNMENTS OF ANY KIND WILL BE  
PERMITTED UNLESS SO ORDERED BY THE COURT.***

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

Pursuant to **Commercial Division Rules 8 and 13(c)**, which mandate consultation with opposing counsel(s), 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 (and preferably earlier) *prior to* the completion of fact discovery shall confer on the identification of experts, the subject matter of the expert reports and the timetable for the deposition of testifying experts.

Unless otherwise stipulated or ordered by the Court, expert disclosure **MUST** be accompanied by a written report, prepared and signed by the witness. The witness shall state (1) that he or she is retained or specifically employed to provide expert testimony in the case or (2) the witness is a party's employee whose duties regularly involve giving expert testimony.

The expert report(s) **MUST** also contain:

- (A) a complete statement of all opinions the witness will express and the basis and reasons for them;

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- (B) the data or other information considered by the witness in forming the opinion(s);
- (C) any exhibits that will be used to summarize or support the opinion(s);
- (D) the witness' 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.

**(1) EXPERT-IN-CHIEF REPORTS**

- (i) If the litigants decide to retain experts to opine on the issues in the case, the "expert-in-chief" report(s), along with all necessary materials, information and disclosures must be exchanged *on the same date*, namely 30 days after the end of all FACT DISCOVERY or on a date the parties stipulate to exchange the reports AND the court has agreed to by so ordering the stipulation.
- (ii) Regardless of whether one or more of the litigants have decided **not** to retain experts to opine on the issues in the case, the litigants who have retained experts **MUST** provide their expert-in-chief report(s) (and all subsequent reports) to **ALL** litigants in the case.
- (iii) The litigant(s) who have exchanged expert-in-chief report(s) will have 15 days to exchange their rebuttal report(s) to their opposing party(ies)' expert-in-chief report(s).

**(2) REBUTTAL REPORTS**

- (i) The parties who have prepared and exchanged Expert-in-Chief reports may submit a Rebuttal Report within 15 days after receiving the opposition(s)' Expert-in-Chief report(s).
- (ii) If a litigant decides not to have an "expert-in-chief" opine on the issues in the case but, instead, decides to retain an expert **only to rebut** the expert-in-chief's report, that rebuttal expert, if any, will be strictly limited to answering the opinions in the expert-in-chief's report. The rebuttal expert will **not** be permitted to express any opinion other than to answer/rebut the opinions in the expert-in-chief's report.

The rebuttal expert's report must be exchanged 15 days after the expert-in-chief's report was disclosed.

- (iii) Finally, if a litigant decides only to use a rebuttal expert, the expert-in-chief will be permitted to submit a reply to the rebuttal expert's report within 15 days after the rebuttal report but no later than 60 days after the close of FACT DISCOVERY or on a date the parties stipulate to exchange the reports AND the court has agreed to by so ordering the stipulation..

**Expert disclosure including ALL expert depositions shall be completed no later than four (4) months after the completion of Fact Discovery.**

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

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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**(9)(a)** Do the Litigants anticipate preparing an **Expert-in-Chief** report?

Plaintiff: \_\_\_\_\_  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

Defendant: \_\_\_\_\_  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

Defendant: \_\_\_\_\_  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

*Please use additional pages, if necessary.*

**(9)(b)** If one party decides to prepare an Expert-in-Chief report, will the other party(ies) anticipate preparing a **Rebuttal Report(s)**?

Plaintiff: \_\_\_\_\_  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

Defendant: \_\_\_\_\_  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

Defendant: \_\_\_\_\_  
\_\_\_\_\_ **YES** \_\_\_\_\_ **NO**

*Please use additional pages, if necessary.*

**(9)(c)** The litigants who are preparing an Expert-in-Chief report **MUST** exchange that report along with all necessary materials, information and disclosures **ON THE SAME DATE** and 30 days after the close of Fact Discovery unless the parties stipulate to exchange the reports on a

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different day AND the court has agreed to this by so ordering the stipulation.

- (i) On what day will the parties be exchanging the Expert-in-Chief report:

\_\_\_\_\_

- (ii) Do the parties exchanging Expert-in-Chief reports understand that they are obligated to provide all the litigants in the case with copies of their Expert-in-Chief report (and all subsequent reports and rebuttals)?

Plaintiff:

\_\_\_\_\_ **YES**          \_\_\_\_\_ **NO**          \_\_\_\_\_ **N/A**

Defendant:

\_\_\_\_\_

\_\_\_\_\_ **YES**          \_\_\_\_\_ **NO**          \_\_\_\_\_ **N/A**

Defendant:

\_\_\_\_\_

\_\_\_\_\_ **YES**          \_\_\_\_\_ **NO**          \_\_\_\_\_ **N/A**

*Please use additional pages, if necessary.*

- (9)(d)** The parties who have received an Expert-in-Chief report may serve a **Rebuttal Report** on all litigants. Such a Rebuttal report may only address the opinions expressed in the Expert-in-Chief reports. The rebuttal reports must be served no later than 15 days after the Expert-in-Chief reports unless the parties stipulate to exchange the reports on a different day AND the court has agreed to this by so ordering the stipulation.

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- (i) On what day will the parties be exchanging the Rebuttal report to the Expert-in-Chief report:

\_\_\_\_\_

- (ii) Do the parties exchanging Rebuttal reports to the Expert-in-Chief's report understand that they are obligated to provide all the litigants in the case with copies of their Rebuttal report (and all subsequent reports and rebuttals)?

Plaintiff:

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**                      \_\_\_\_\_ **N/A**

Defendant:

\_\_\_\_\_

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**                      \_\_\_\_\_ **N/A**

Defendant:

\_\_\_\_\_

\_\_\_\_\_ **YES**                      \_\_\_\_\_ **NO**                      \_\_\_\_\_ **N/A**

*Please use additional pages, if necessary.*

- (9)(e)** The Experts who have prepared Expert-in-Chief reports are entitled to prepare **Reply reports** to the party(ies) who have submitted Rebuttal Reports. They must do so within 15 days of receiving the Rebuttal report.

- (i) On what day will the parties be exchanging the Reply report to the Rebuttal report(s):

\_\_\_\_\_



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(ii) Do the parties exchanging Reply report(s) to the Rebuttal report(s) understand that they are obligated to provide all the litigants in the case with copies of their Reply report(s)?

Plaintiff: \_\_\_\_\_  
\_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ N/A

Defendant: \_\_\_\_\_  
\_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ N/A

Defendant: \_\_\_\_\_  
\_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_ N/A

*Please use additional pages, if necessary.*

**(9)(f)** Pursuant the Commercial Division Rule 13(c), all persons who have submitted Expert-in-Chief reports; Rebuttal reports and/or Replies and who plan to be called to testify **MUST** make themselves available for depositions. The depositions must be conducted during the 4 months allocated to complete Expert Disclosure. Please indicate below when these Expert Depositions will take place.

NAME OF EXPERT	PLAINTIFF OR DEFENDANT(S)' EXPERT-IN-CHIEF OR REBUTTAL EXPERT	DATE DEPOSITION IS SCHEDULED TO BE HELD
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

*Please use additional pages, if necessary.*

**(9)(g)** Expert Disclosure must be completed within 4 months AFTER the close of FACT DISCLOSURE unless the parties stipulate to exchange the reports on a different day AND the court has agreed to this by so ordering the stipulation. The **END DATE for EXPERT DISCLOSURE** is:

The Court

\_\_\_\_\_ **ACCEPTS THE END DATE FOR  
EXPERT DISCLOSURE.**

\_\_\_\_\_ **DOES NOT ACCEPT THE END  
DATE FOR EXPERT  
DISCLOSURE**

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

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

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

**THE END DATE FOR EXPERT DISCOVERY OF  
\_\_\_\_\_ IS ABSOLUTELY FINAL. NO  
FURTHER ADJOURNMENTS OF ANY KIND WILL BE  
PERMITTED UNLESS SO ORDERED BY THE COURT.**





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If the **NEW NOTE OF ISSUE DATE** is **NOT** agreed to by the Court, the Court hereby sets the following date as the **NEW NOTE OF ISSUE DATE**

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

**THE NEW NOTE OF ISSUE DATE OF \_\_\_\_\_  
IS ABSOLUTELY FINAL. NO FURTHER ADJOURNMENTS  
OF ANY KIND WILL BE PERMITTED UNLESS SO ORDERED  
BY THE COURT.**

*A copy of the Preliminary Conference Order and subsequent Compliance Stipulation and Order and ALL Status Conference Stipulations and Orders MUST be served and filed with the Note of Issue.*

(b) **DISPOSITIVE MOTION(S):**

All dispositive motion(s) shall be made within **30 days** after the Note of Issue is filed.

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

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 Section 216.1 of the Uniform Rules of the New York State Trial Courts. 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.

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(c) **STATUS CONFERENCE:**

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

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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:**

**VII. 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 court 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 AND COMPLIANCE CONFERENCE STIPULATION AND 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

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(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:

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- (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 were completed on or before \_\_\_\_\_; or after the close of fact discovery and before the commencement of expert discovery).
- (c) Please indicate when the settlement discussions or alternate dispute resolution mechanism is expected to commence:
- 

If the latest **SETTLEMENT DISCUSSIONS OR ALTERNATIVE DISPUTE MECHANISM DATE** will **NOT** be met, when do the parties believe the **NEW SETTLEMENT DISCUSSIONS OR ALTERNATIVE DISPUTE MECHANISM DATE** will be

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The Court

\_\_\_\_\_ **ACCEPTS THE NEW  
SETTLEMENT AND/OR ADR  
DATE**

\_\_\_\_\_ **DOES NOT ACCEPT THE NEW  
SETTLEMENT AND/OR ADR  
DATE**

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

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If the ***NEW SETTLEMENT DISCUSSIONS OR ALTERNATIVE DISPUTE MECHANISM DATE*** is **NOT** agreed to by the Court, the Court hereby sets the following date as the ***NEW SETTLEMENT DISCUSSIONS OR ALTERNATIVE DISPUTE MECHANISM DATE***:

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

***THE NEW SETTLEMENT DISCUSSIONS OR ALTERNATIVE DISPUTE MECHANISM DATE OF \_\_\_\_\_ IS ABSOLUTELY FINAL. NO FURTHER ADJOURNMENTS OF ANY KIND WILL BE PERMITTED UNLESS SO ORDERED BY THE COURT.***

\* \* \* \* \*

**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.***

***Signatures of the parties and the Court are found on the following page.***



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The dates set forth in the \_\_\_\_ Status Conference Order are hereby:

Agreed to by: \_\_\_\_\_  
Counsel for Plaintiff  
\_\_\_\_\_  
Please Print Name of Counsel

Agreed to by: \_\_\_\_\_  
Counsel for Defendant \_\_\_\_\_  
\_\_\_\_\_  
Please Print Name of Counsel

Agreed to by: \_\_\_\_\_  
Counsel for Defendant \_\_\_\_\_  
\_\_\_\_\_  
Please Print Name of Counsel

*Please use additional pages, if necessary.*

**SO ORDERED:**

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

\_\_\_\_\_  
**EILEEN BRANSTEN, J.S.C.**