

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Hon. Emily Pines

Commercial Division - Part 46

Plaintiff(s)

Index No.: _____

- against -

RJI Filing Date: _____

**PRELIMINARY
CONFERENCE ORDER
COMMERCIAL DIVISION**

Defendant(s)

-----X

- 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.

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.

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II. CONFIDENTIALITY ORDER:

The court recognizes that most cases in the Commercial Division involve facts which are highly sensitive. In such cases, the court, in order to proceed to proper discovery, orders the parties to enter into a Confidentiality Agreement which the court will “so order.” The court recommends the City Bar Confidentiality Agreement found at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

If the parties need to change the City Bar Confidentiality Agreement, the parties are to submit a signed stipulation 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: _____

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: \$ _____

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- (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.

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IV. 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) **BILL OF PARTICULARS** (See CPLR 3130(1)):

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

(b) Bill of Particulars shall be served by _____
on or before _____.

Comment:

(2) **DOCUMENT PRODUCTION**

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

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

Comment:

(3) **INTERROGATORIES**

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

(b) Answer to interrogatories shall be served on or before _____.

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Comment:

4. DEPOSITIONS:

Defendant's deposition of plaintiff 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:

5. OTHER DISCLOSURE:

6. IMPLAIDER:

Defendant shall serve his third-party summons and complaint no

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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

7. **ELECTRONIC DISCOVERY**

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

___ YES ___ NO ___ NOT SURE

(b) **Meet and Confer:** Pursuant to Uniform Commercial Division Rule 8(b) [22 NYCRR 202.70(g)(8)(b)] counsel certify that they have fulfilled their requirement to have met and conferred regarding certain matters relating to electronic discovery, before the Preliminary Conference. Counsel also hereby certify that they are sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery or have brought someone to address these issues.

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

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

___ YES ___ NO ___ PARTIALLY

(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):
Please identify for both the plaintiff and each of the defendant(s) the

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relevant custodians for the computer/servers

(ii) **Production** (22 NYCRR 202.12(c)(3)(e),(d)):
Please identify relevant search terms and the general cut-off date of the discovery

(iii) **Creating Privilege Logs** (22 NYCRR 202.12(c)(3)(d)):

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

(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 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. Please consult the Part 3 rules.

(d) **Judicial Intervention**

The parties anticipate the need for judicial intervention regarding the

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following issues concerning the scope and methods of preserving electronically stored information:

8. END DATE OF FACT DISCLOSURE:

Fact Disclosure shall be completed by _____

9. EXPERT DISCOVERY (if any):

Pursuant to the proposed Rule 13 (c) and Commercial Division Rule 8 which mandates 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.

10. END DATE OF ALL DISCOVERY:

11. NOTE OF ISSUE:

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

A copy of this P.C. order shall be served and filed with the note of issue.

12. 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.

13. COMPLIANCE CONFERENCE:

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

Parties or their representatives **with knowledge of the case and this Preliminary Conference order** shall appear as well at all *subsequent* Status Conferences.

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14. 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: _____

EMILY PINES J.S.C.

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ADDITIONAL PAGES