

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiffs, :
-against- :
Defendants. :

RULE 16 IPTC SCHEDULING ORDER

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ANDREW J. PECK, United States Magistrate Judge:

Based on the Initial Pretrial Conference pursuant to Rule 16, Fed. R. Civ. P., held on _____ before Magistrate Judge Andrew J. Peck, IT IS HEREBY ORDERED THAT:

1. Any motion to join parties or amend the pleadings must be made by - _____.
2. All fact and expert discovery must be completed by _____.
Expert reports must be served by _____. Mandatory initial disclosure pursuant to Rule 26(a)(1), Fed. R. Civ. P., is due _____. The parties shall discuss any issues with respect to electronic discovery, complete the Joint Electronic Discovery Submission (Ex. B) (available on the S.D.N.Y. website under my Individual Practices) to the extent applicable to the case and submit it to the Court by _____.
3. Each party will notify this Court (and the District Judge) by _____ as to whether it intends to move for summary judgment and, if required by the District Judge's Individual Practices, request a pre-motion conference. Assuming pre-

motion clearance has been obtained from the District Judge where required, summary judgment motions must be filed by _____ if no date was set by the District Judge or, if a date was set by the District Judge, in accordance with the schedule set by the District Judge, and must comply with the Federal Rules of Civil Procedure, the S.D.N.Y. Local Rules, and the Individual Practices of the District Judge to whom this case is assigned (including any pre-motion conference requirements of the District Judge).

4. The parties are to submit a joint proposed pretrial order, in conformance with the Federal Rules of Civil Procedure, the S.D.N.Y. Local Rules, and the Individual Practices of the District Judge to whom this case is assigned, by _____ if neither party is moving for summary judgment, or 30 days after decision on the summary judgment motion. The case will be considered trial ready on 24-hours notice after the pretrial order has been submitted.

5. A status conference will be held before the undersigned on _____ at _____ M. in Courtroom 20D (500 Pearl Street).

6. The parties are directed to follow the "Individual Practices of Magistrate Judge Andrew J. Peck," a copy of which is available on the S.D.N.Y website.

SO ORDERED.

DATED: New York, New York
[DATE]

Andrew J. Peck
United States Magistrate Judge

Copies to:

(a) Estimated amount of Plaintiff(s)' Claims:

- Less than \$100,000
- Between \$100,000 and \$999,999
- Between \$1,000,000 and \$49,999,999
- More than \$50,000,000
- Equitable Relief
- Other (if so, specify) _____

(b) Estimated amount of Defendant(s)' Counterclaim/Cross-Claims:

- Less than \$100,000
- Between \$100,000 and \$999,999
- Between \$1,000,000 and \$49,999,999
- More than \$50,000,000
- Equitable Relief
- Other (if so, specify) _____

(2) **Competence.** Counsel certify that they are sufficiently knowledgeable in matters relating to their clients' technological systems to discuss competently issues relating to electronic discovery, or have involved someone competent to address these issues on their behalf.

(3) **Meet and Confer.** Pursuant to Fed. R. Civ. P. 26(f), counsel are required to meet and confer regarding certain matters relating to electronic discovery before the Initial Pretrial Conference (the Rule 16 Conference). Counsel hereby certify that they have met and conferred to discuss these issues.

Date(s) of parties' meet-and-confer conference(s): _____

(4) **Unresolved Issues:** After the meet-and-confer conference(s) taking place on the aforementioned date(s), the following issues remain outstanding and/or require court intervention: Preservation; Search and Review; Source(s) of Production; Form(s) of Production; Identification or Logging of Privileged Material; Inadvertent Production of Privileged Material; Cost Allocation; and/or Other (if so, specify) _____. To the extent specific details are needed about one or more issues in dispute, describe briefly below.

As set forth below, to date, the parties have addressed the following issues:

(5) Preservation.

- (a) The parties have discussed the obligation to preserve potentially relevant electronically stored information and agree to the following scope and methods for preservation, including but not limited to: retention of electronic data and implementation of a data preservation plan; identification of potentially relevant data; disclosure of the programs and manner in which the data is maintained; identification of computer system(s) utilized; and identification of the individual(s) responsible for data preservation, etc.

Plaintiff(s):

Defendant(s):

- (b) State the extent to which the parties have disclosed or have agreed to disclose the dates, contents, and/or recipients of "litigation hold" communications.

- (c) The parties anticipate the need for judicial intervention regarding the following issues concerning the duty to preserve, the scope, or the method(s) of preserving electronically stored information:

(6) Search and Review

- (a) The parties have discussed methodologies or protocols for the search and review of electronically stored information, as well as the disclosure of techniques to be used. Some of the approaches that may be considered include: the use and exchange of keyword search lists, "hit reports," and/or responsiveness rates; concept search; machine learning, or other advanced analytical tools; limitations on the fields or file types to be searched; date restrictions; limitations on whether back-up, archival, legacy, or deleted electronically stored information will be searched; testing; sampling; etc. To the extent the parties have reached agreement as to search and review methods, provide details below.

Plaintiff(s):

Defendant(s):

- (b) The parties anticipate the need for judicial intervention regarding the following issues concerning the search and review of electronically stored information:

(7) **Production**

- (a) Source(s) of Electronically Stored Information. The parties anticipate that discovery may occur from one or more of the following potential source(s) of electronically stored information [e.g., email, word processing documents, spreadsheets, presentations, databases, instant messages, web sites, blogs, social media, ephemeral data, etc.]:

Plaintiff(s):

Defendant(s):

- (b) Limitations on Production.** The parties have discussed factors relating to the scope of production, including but not limited to: (i) number of custodians; (ii) identity of custodians; (iii) date ranges for which potentially relevant data will be drawn; (iv) locations of data; (v) timing of productions (including phased discovery or rolling productions); and (vi) electronically stored information in the custody or control of non-parties. To the extent the parties have reached agreements related to any of these factors, describe below:

Plaintiff(s):

Defendant(s):

- (c) Form(s) of Production:**

- (1) The parties have reached the following agreements regarding the form(s) of production:

Plaintiff(s):

Defendant(s):

- (2) Please specify any exceptions to the form(s) of production indicated above (e.g., word processing documents in TIFF with load files, but spreadsheets in native form):

- (3) The parties anticipate the need for judicial intervention regarding the following issues concerning the form(s) of production:

(d) Privileged Material.

- (1)** Identification. The parties have agreed to the following method(s) for the identification (including the logging, if any, or alternatively, the disclosure of the number of documents withheld), and the redaction of privileged documents:

- (2)** Inadvertent Production / Claw-Back Agreements. Pursuant to Fed R. Civ. Proc. 26(b)(5) and F.R.E. 502(e), the parties have agreed to the following concerning the inadvertent production of privileged documents (e.g. "quick-peek" agreements, on-site examinations, non-waiver agreements or orders pursuant to F.R.E. 502(d), etc.):

- (3)** The parties have discussed a 502(d) Order. Yes ___; No ___

The provisions of any such proposed Order shall be set forth in a separate document and presented to the Court for its consideration.

(e) **Cost of Production.** The parties have analyzed their client's data repositories and have estimated the costs associated with the production of electronically stored information. The factors and components underlying these costs are estimated as follows:

(1) **Costs:**

Plaintiff(s):

Defendant(s):

(2) **Cost Allocation.** The parties have considered cost-shifting or cost-sharing and have reached the following agreements, if any:

The next scheduled conference with the Court for purposes of updating the Court on electronic discovery issues has been scheduled for _____. Additional conferences, or written status reports, shall be set every 3 to 4 weeks, as determined by the parties and the Court, based on the complexity of the issues at hand. An agenda should be submitted to the Court four (4) days before such conference indicating the issues to be raised by the parties. The parties may jointly seek to adjourn the conference with the Court by telephone call 48 hours in advance of a scheduled conference, if the parties agree that there are no issues requiring Court intervention.

Check this box if the parties believe that there exist a sufficient number of e-discovery issues, or the factors at issue are sufficiently complex, that such issues may be most efficiently adjudicated before a Magistrate Judge.

Additional Instructions or Orders, if any:

Dated: _____, 20__

SO ORDERED:

United States District Judge