

SAMPLE PROTOCOL FOR REMOTE DEPOSITIONS

Conducting in-person depositions is not always feasible, particularly under circumstances requiring social distancing. In such instances, the parties may need to or will choose to conduct depositions remotely. This form is an example of a stipulated order the parties can use in connection with arranging for and conducting remote depositions. In this example, the parties agree to use video conferencing through a third-party provider. The form can also be adapted for use in connection with depositions conducted by telephone, and for use without the services of a third-party provider. The parties are of course permitted to agree on whatever terms they see fit, consistent with the Federal Rules of Civil Procedure and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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_____,'

Plaintiff(s),

Case No. __ Civ. ____ () ()

-against-

_____,'

Defendant(s).

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**STIPULATION AND [PROPOSED] ORDER CONCERNING
PROTOCOL FOR CONDUCTING REMOTE DEPOSITIONS**

The Plaintiff(s) and Defendant(s) (collectively, the “Parties”) jointly stipulate to the following protocol for conducting depositions via remote means in the above-captioned matter:

1. All depositions shall be conducted remotely using videoconference technology, and each deponent shall be video-recorded.

2. The Parties agree to use [SERVICE PROVIDER] for court reporting, videoconference and remote deposition services. The Parties agree that a [SERVICE PROVIDER] employee may attend each remote deposition to video record the deposition, troubleshoot any technological issues that may arise, and administer the virtual breakout rooms.

3. The Parties agree that these video-recorded remote depositions may be used at a trial or hearing to the same extent that an in-person deposition may be used at trial or hearing, and the Parties agree not to object to the use of these video recordings on the basis that the deposition was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at trial.

4. The deponent, court reporter, and counsel for the Parties will each participate in the videoconference deposition remotely and separately. Each person attending a deposition shall be visible to all other participants, their statements shall be audible to all participants, and they should each strive to ensure their environment is free from noise and distractions.

5. Consistent with Local Civil Rule 30.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, no counsel shall initiate a private conference, including through text message, electronic mail, or the chat feature in the videoconferencing system, with any deponent while a question is pending, except for the purpose of determining whether a privilege should be asserted.

6. During breaks in the deposition, the Parties may use the breakout room feature provided by [SERVICE PROVIDER], which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded. The breakout

rooms shall be established by [SERVICE PROVIDER] prior to the deposition and controlled by [SERVICE PROVIDER].

7. Remote depositions shall be recorded by stenographic means consistent with the requirements of Rule 30(b)(3) of the Federal Rules of Civil Procedure, but given the COVID-19 pandemic, the court reporter will not be physically present with the witness whose deposition is being taken. The Parties agree not to challenge the validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the state where the deponent resides.

8. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record. [SERVICE PROVIDER] will simultaneously videotape the deposition and preserve the video recording. The court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript.

9. The Parties agree that the court reporter is an "Officer" as defined by Rule 28(a)(2) of the Federal Rules of Civil Procedure and shall be permitted to administer the oath to the witness via the videoconference. The deponent will be required to provide government-issued identification satisfactory to the court reporter, and this identification must be legible on the video record.

10. The Party that noticed the deposition shall be responsible for procuring a written transcript of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition.

11. The Party that noticed the deposition shall provide [SERVICE PROVIDER] with a copy of this Stipulation and Order at least 24 hours in advance of the deposition.

12. At the beginning of each deposition, consistent with Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure, the [SERVICE PROVIDER] employee responsible for video-recording the deposition shall begin the deposition with an on-the-record statement that includes: (i) the officer's name and business address; (ii) the date, time, and place of the deposition; (iii) the deponent's name; (iv) the officer's administration of the oath or affirmation to the deponent; and (v) the identity of all persons present.

13. [IF APPLICABLE: At the beginning of each segment of the deposition, consistent with Rule 30(b)(5)(B) of the Federal Rules of Civil Procedure, the [SERVICE PROVIDER] employee responsible for video-recording the deposition shall begin that segment of the remote deposition by reciting (i) the officer's name and business address; (ii) the date, time, and place of the deposition; and (iii) the deponent's name.]

14. The Parties agree to work collaboratively and in good faith with [SERVICE PROVIDER] to assess each deponent's technological abilities and to troubleshoot any issues at least 48 hours in advance of the deposition so any adjustments can be made. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition where the deponent cannot hear or understand the other participants or where the participants cannot hear or understand the deponent.

15. Every deponent shall endeavor to have technology sufficient to appear for a videotaped deposition (e.g., a webcam and computer or telephone audio), and bandwidth sufficient to sustain the remote deposition. Counsel for each deponent shall consult with the deponent prior to the deposition to ensure the deponent has the required technology. If not,

counsel for the deponent shall endeavor to supply the required technology to the deponent prior to the deposition. In the case of third-party witnesses, counsel noticing the deposition shall supply any necessary technology that the deponent does not have.

16. The Parties agree that this Stipulation and Order applies to remote depositions of non-parties under Rule 45 of the Federal Rules of Civil Procedure, and shall work in a collaborative manner in attempting to schedule remote depositions of non-parties. The Party noticing any non-party deposition shall provide this Stipulation and Order to counsel for any non-party under Rule 45 a reasonable time before the date of the deposition.

17. The Parties agree that any of the following methods for administering exhibits may be employed during a remote deposition, or a combination of one or more methods:

(i) Counsel noticing the deposition may choose to send physical copies of documents that may be used during the deposition to the deponent, the deponent's counsel, the other Party's counsel, and the court reporter. In that event, noticing counsel shall so inform the deponent's counsel, the other Party's counsel, and the court reporter prior to sending the documents and shall provide tracking information for the package. Such documents shall be delivered by 12:00 p.m. ET the business day before the deposition. Counsel for the deponent, the other Party's counsel, and the court reporter shall confirm receipt of the package by electronic mail to counsel noticing the deposition. If physical copies are sent, every recipient of a physical package shall keep the package sealed until the deposition begins and shall only unseal the package on the record, on video, and during the deposition when directed to do so by the counsel taking the deposition. This same procedure shall apply to any physical copies of documents any other counsel intends to use for examining the witness.

(ii) Counsel noticing the deposition may choose to send a compressed .zip file of the documents that may be used during the deposition via electronic mail to the deponent, the deponent's counsel, the other Party's counsel, and the court reporter. The .zip file shall be delivered by 12:00 p.m. ET the business day before the deposition. Counsel for the deponent, the other Party's counsel, and the court reporter shall confirm receipt of the .zip file by electronic mail to counsel noticing the deposition. The .zip file shall be password protected, and counsel taking the deposition shall supply the password via electronic mail immediately prior to the commencement of the deposition. Every recipient of a .zip file shall not open the .zip file until the deposition begins and when directed to do so by the counsel taking the deposition. If sending documents by electronic mail, counsel will be mindful of file size limitations, which presumptively should be less than 50 MB.

(iii) Counsel may introduce exhibits electronically during the deposition, by using the [SERVICE PROVIDER] document-sharing technology, by using the screen-sharing technology within the videoconferencing platform, or by sending the exhibit to the deponent and all individuals on the record via electronic mail.

18. All deponents receiving documents before or during a deposition, pursuant to Paragraph 17 above, shall return the documents to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Counsel noticing the deposition shall include a pre-paid return shipping label in any physical package of documents sent to a deponent.

19. Counsel for the Parties may keep any document or exhibit used during the deposition [IF APPLICABLE: consistent with the Stipulated Protective Order entered in this

case]. Counsel for the Parties shall return any documents not used during the deposition to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner.

20. [IF APPLICABLE: Counsel noticing the deposition shall provide any counsel for third-party witnesses with a copy of the Parties' Stipulated Protective Order.] Counsel for third-party witnesses may keep any document used during the deposition [IF APPLICABLE: in accordance with the Stipulated Protective Order], and shall return any documents not used during the deposition to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner.

STIPULATED TO:

[ATTORNEY SIGNATURE BLOCKS]

Dated: _____,
White Plains, New York

SO ORDERED.

ANDREW E. KRAUSE
United States Magistrate Judge