

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_

COMPANY A,

Plaintiff,

Civil Action No. \_\_\_\_\_

v.

**JURY TRIAL REQUESTED**

COMPANY B,

Defendant

**PARTIES' JOINT STIPULATION CONCERNING RELATED TO  
THE PROTOCOL FOR CONDUCTING REMOTE DEPOSITIONS**

Plaintiff Company A and Defendant Company B, by and through their respective counsel, jointly stipulate to the following protocol for conducting remote depositions in the above-captioned matter:

**WHEREAS**, the United States federal and state governments and courts have issued states of emergency, severe restrictions on travel and gatherings, and modified rules and procedures designed to slow the spread of the COVID-19 pandemic and

**WHEREAS**, Rule 1 of the Federal Rules of Civil Procedure states the Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding”; and

**WHEREAS**, Rule 30(b)(4) of the Federal Rules of Civil Procedure states “[t]he parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers

the questions”; and

**WHEREAS**, Rule 30(b)(3) of the Federal Rules of Civil Procedure permits deposition testimony to “be recorded by audio, audiovisual, or stenographic means”; and

**WHEREAS**, Rule 28(a)(2) of the Federal Rules of Civil Procedure defines the term “Officer” in Rules 30-32 as “a person appointed by the court under [Rule 28] or designated by the parties under Rule 29(a)”; and

**WHEREAS**, Rule 29(a) of the Federal Rules of Civil Procedure provides that, “[u]nless the court orders otherwise, the parties may stipulate that: . . . a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition”; and

**WHEREAS**, Rule 28(c) of the Federal Rules of Civil Procedure states that “[a] deposition must not be taken before a person who is any party’s relative, employee, or attorney; who is related to or employed by any party’s attorney; or who is financially interested in the action”; and

**WHEREAS**, Rule 32(d)(2) of the Federal Rules of Civil Procedure provides that “[a]n objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made: (A) before the deposition begins; or (B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known”; and

**WHEREAS**, Rule 32(c) of the Federal Rules of Civil Procedure provides that,

“[u]nless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well”; and

**WHEREAS**, Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure provides that, “[u]nless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must 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”; and

**WHEREAS**, Rule 30(b)(5)(B) of the Federal Rules of Civil Procedure provides that, “[i]f the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent’s and attorneys’ appearance or demeanor must not be distorted through recording techniques.”

**NOW, THEREFORE**, the Parties hereby stipulate and agree to the following procedures for conducting remote depositions in the above-captioned matter:

1. The Parties agree to work in a collaborative and cooperative manner in attempting to schedule remote depositions consistent with the admonition in Rule 1 of the Federal Rules of Civil Procedure that states the Rules “should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

2. The Parties agree that depositions may be “taken by telephone or other remote means” consistent with Rule 30(b)(4) of the Federal Rules of Civil Procedure.

3. The Parties agree that remote depositions may be recorded by audio and audiovisual” means consistent with the requirements of Rule 30(b)(3).

4. The Parties further agree that remote depositions shall be recorded by stenographic means consistent with the requirements of Rule 30(b)(3), but that it is not necessary for the court reporter to be physically present with the witness whose deposition is being taken unless state law expressly provides otherwise.

5. The Parties agree to treat the stenographer as an “Officer” as defined by Rules 28(a)(2) and 29(a) and shall be permitted to administer the oath and record the deposition in accordance state law.

6. The Parties agree that, consistent with Rule 28(c) of the Federal Rules of Civil Procedure, the designated “Officer” shall not be “any party’s relative, employee, or attorney, related to or employed by any party’s attorney, or financially interested in the action.”

7. Consistent with Rule 32(d)(2) of the Federal Rules of Civil Procedure, the Parties agree that they will waive any and all objections to the qualifications of the Officer before whom the deposition is taken, including any objection under Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure, so long as the Officer is a certified court reporter, or holds a substantially similar designation, under the laws of a state.

8. The Party that noticed the remote 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 of the remote deposition.

9. The Party that noticed the remote deposition shall provide the Officer with a copy of this Stipulation in advance of the remote deposition.

10. At the beginning of the remote deposition, consistent with Rule 30(b)(5)(A) of the Federal Rules of Civil Procedure, the Officer shall “begin the deposition with an on-the-record statement that includes: (i) the officer’s name and company affiliation; (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.”

11. At the beginning of each segment of the remote deposition, consistent with Rule 30(b)(5)(B) of the Federal Rules of Civil Procedure, the Officer 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.

12. The Parties agree that the requirements outlined in Paragraphs 10 and 11 shall be judged using a substantial compliance standard and that failure to strictly comply with these standards shall be not a basis for challenging the validity of the remote deposition.

13. The Parties agree to work collaboratively and cooperatively and in good faith with the court reporter to assess the witness’s technological abilities and to troubleshoot any issues sufficiently in advance of the deposition so any

adjustments can be made. The Parties also agree to work collaboratively and cooperatively to address and troubleshoot technological (including audio or video) 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 witness cannot hear or understand the other participants or where the participants cannot hear or understand the witness.

14. The Parties agree that this Stipulation applies to remote depositions of non-parties under Rule 45 and shall work in a collaborative and cooperative manner in attempting to schedule remote depositions of non-parties. The Parties shall endeavor to provide this Stipulation and the Protective Order to counsel for any non-party under Rule 45 as soon as practicable following notice of the deposition or identification of such counsel.

15. The Parties agree to introduce this Stipulation as an exhibit in any party or non-party depositions.

16. The Parties agree to revisit the terms of this Stipulation if it becomes necessary and desirable to do so.

17. The Parties agree that if any provision of this Stipulation is invalid or impermissible under the laws of a particular state or territory, the applicable laws of the State where the witness is located, or with the applicable rules of the relevant Court, all other terms in the Stipulation shall remain in full force and effect.