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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF [insert name of Court]**

In the matter of)
)
MANDATORY INITIAL DISCOVERY)
PILOT PROGRAM IN THE DISTRICT) STANDING ORDER 17-
OF [insert name])
_____)

IT IS HEREBY ORDERED: Effective _____, 2017, the United States District Court for the District of _____ will begin participation in a Mandatory Initial Discovery Pilot Program approved by the Judicial Conference of the United States.

The Mandatory Initial Discovery Pilot Program applies to all civil cases other than cases listed in Rule 26(a)(1)(B), actions under the Private Securities Litigation Reform Act (“PSLRA”), [if applicable: patent cases governed by local rule], and cases transferred for consolidated administration in the District by the Judicial Panel on Multidistrict Litigation. The discovery obligations addressed in this Standing Order supersede the disclosures required by Rule 26(a)(1) and are framed as court-ordered mandatory initial discovery pursuant to the Court’s inherent authority to manage cases, Rule 16(b)(3)(B)(ii), (iii), and (vi), and Rule 26(b)(2)(C). Unlike initial disclosures required by current Rule 26(a)(1)(A) & (C), this Standing Order does not allow the parties to opt out.

A. Instructions to Parties.

1. Any party seeking affirmative relief must serve a copy of the Notice to the Parties of Mandatory Initial Discovery Pilot Program, including this Standing Order and

1 the MIDP Checklist, on each new party when the Complaint, Counterclaim, Crossclaim,
2 or Third-Party Complaint is served.

3 2. The parties to this litigation are ordered to provide mandatory initial
4 discovery responses before initiating any further discovery in this case. The responses
5 are called for by the Court, not by discovery requests actually served by an opposing
6 party. Part B of this order sets forth the categories of information that must be provided
7 in each party's mandatory initial discovery responses. After the mandatory initial
8 discovery responses have been provided, additional discovery may proceed under the
9 Federal Rules of Civil Procedure and as set forth in a case management order to be
10 entered by the Court.

11 3. Each party's response must be based on the information then reasonably
12 available to it. A party is not excused from providing its response because it has not fully
13 investigated the case, it challenges the sufficiency of another party's response, or another
14 party has not provided a response. Responses must be signed under oath by the party,
15 certifying that it is complete and correct as of the time it was made, based on the party's
16 knowledge, information, and belief formed after a reasonable inquiry, and signed under
17 Rule 26(g) by the attorney.

18 4. Parties must provide the requested information as to facts that are relevant
19 to the claims and defenses in the case, whether favorable or unfavorable, and regardless
20 of whether they intend to use the information in presenting their claims or defenses. The
21 parties also must provide relevant legal theories in response to paragraph B.4 below. If a
22 party limits the scope of its response on the basis of privilege or work product, the party
23 must produce a privilege log as required by Rule 26(b)(5) unless the parties agree or the
24 Court orders otherwise. If a party limits its response on the basis of any other objection,
25 including an objection that providing the required information would involve
26 disproportionate expense or burden, it must explain with particularity the nature of the
27 objection and its legal basis, and provide a fair description of the information being
28 withheld.

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5. Parties must file answers, counterclaims, crossclaims, and replies within the time set forth in Rule 12(a)(1)-(3) even if they have filed or intend to file a motion to dismiss or other preliminary motion. The Court may defer the time for filing such pleadings, for good cause, while it considers a motion to dismiss based on lack of subject-matter jurisdiction, lack of personal jurisdiction, sovereign immunity, or absolute or qualified immunity of a public official. In that event, the time to answer, counterclaim, crossclaim, or reply shall be set by the Court in its Order deciding the motion, and the time to serve responses to the mandatory initial discovery under paragraph 6 shall be measured from that date. If the Court fails to set a time in its order, the time to respond shall be measured from the date established by Rule 12(a)(4).

6. A party seeking affirmative relief must serve its responses to the mandatory initial discovery no later than 30 days after the first pleading filed in response to its complaint, counterclaim, crossclaim, or third-party complaint. A party filing a responsive pleading, whether or not it also seeks affirmative relief, must serve its initial discovery responses no later than 30 days after it files its responsive pleading. However, (a) no initial discovery responses need be served if the Court approves a written stipulation by the parties that no discovery will be conducted in the case; and (b) initial discovery responses may be deferred, one time, for 30 days if the parties jointly certify to the Court that they are seeking to settle the case and have a good faith belief that it will be resolved within 30 days of the due date for their responses.

7. Unless the Court orders otherwise, initial responses and later supplements shall not be filed with the Court, but Parties shall file a notice of service of their initial responses and later supplements.

8. The duty to provide mandatory initial discovery responses set forth in this Order is a continuing duty, and each party must serve supplemental responses when new or additional information is discovered or revealed. A party must serve such supplemental responses in a timely manner, but in any event no later than 30 days after

1 the information is discovered by or revealed to the party. The Court normally will set a
2 deadline in its Rule 16(b) case management order for final supplementation of responses,
3 and full and complete supplementation must occur by the deadline. If the Court fails to
4 set a deadline, final supplementation must occur by the fact discovery deadline set by the
5 Court in its case management order. If new information is revealed in a written discovery
6 response or a deposition in a manner that reasonably informs all parties of the
7 information, the information need not be presented in a supplemental response.

8 9. Parties should include in the Rule 26(f) report to the Court a description of
9 their discussions of the mandatory initial discovery responses. The report should describe
10 the resolution of any limitations invoked by any party in its response, as well as any
11 unresolved limitations or other discovery issues. The parties shall attach the initial and
12 supplemental responses and any other discovery requests, objections, and responses
13 involved in any unresolved limitations or discovery issues. During the Rule 26(f)
14 conference, parties should discuss the mandatory initial discovery responses and seek to
15 resolve any limitations they have made or intend to make.

16 10. Production of information under this Standing Order does not constitute an
17 admission that information is relevant, authentic, or admissible.

18 11. Rule 37(b)(2) shall apply to mandatory discovery responses required by this
19 Order.

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21 **B. Mandatory Initial Discovery Requests.**

22 The parties must respond to the following Court-issued discovery requests without
23 awaiting discovery requests from the opposing parties, and at the times set forth above.

24 1. State the names and, if known, the addresses and telephone numbers of all
25 persons who you believe are likely to have discoverable information relevant to any
26 party's claims or defenses, and provide a fair description of the nature of the information
27 each such person is believed to possess.

28 2. State the names and, if known, the addresses and telephone numbers of all

1 persons who you believe have given written or recorded statements relevant to any
2 party's claims or defenses. Unless you assert a privilege or work product protection
3 against disclosure under applicable law, attach a copy of each such statement if it is in
4 your possession, custody, or control. If not in your possession, custody, or control, state
5 the name and, if known, the address and telephone number of each person who you
6 believe has custody of a copy.

7 3. List the documents, electronically stored information ("ESI"), tangible
8 things, land, or other property known by you to exist, whether or not in your possession,
9 custody or control, that you believe may be relevant to any party's claims or defenses.
10 To the extent the volume of any such materials makes listing them individually
11 impracticable, you may group similar documents or ESI into categories and describe the
12 specific categories with particularity. Include in your response the names and, if known,
13 the addresses and telephone numbers of the custodians of the documents, ESI, or tangible
14 things, land, or other property that are not in your possession, custody, or control. For
15 documents and tangible things in your possession, custody, or control, you may produce
16 them with your response, or make them available for inspection on the date of the
17 response, instead of listing them. Production of ESI will occur in accordance with
18 paragraph C.2 below.

19 4. For each of your claims or defenses, state the facts relevant to it and the
20 legal theories upon which it is based.

21 5. Provide a computation of each category of damages claimed by you, and a
22 description of the documents or other evidentiary material on which it is based, including
23 materials bearing on the nature and extent of the injuries suffered. You may produce the
24 documents or other evidentiary materials with your response instead of describing them.

25 6. Specifically identify and describe any insurance or other agreement under
26 which an insurance business or other person or entity may be liable to satisfy all or part
27 of a possible judgment in the action or to indemnify or reimburse a party for payments
28 made by the party to satisfy the judgment. You may produce a copy of the agreement

1 with your response instead of describing it.

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3 7. A party receiving the list described in Paragraph 3, the description of
4 materials identified in Paragraph 5, or a description of agreements referred to in
5 Paragraph 6 may request more detailed or thorough responses to these mandatory
6 discovery requests if it believes the responses are deficient. A party may also serve
7 requests pursuant to Rule 34 to inspect, copy, test, or sample any or all of the listed or
8 described items, to the extent not already produced in response to these mandatory
9 discovery requests, or to enter onto designated land or other property identified or
10 described.

11 **C. Disclosure of Hard-Copy Documents and ESI.**

12 1. *Hard-Copy Documents.* Hard-copy documents must be produced as they
13 are kept in the usual course of business.

14 2. *Electronically Stored Information (ESI).*

15 a. *Duty to Confer.* When the existence of ESI is disclosed or
16 discovered, the parties must promptly confer and attempt to agree on matters relating to
17 its disclosure and production, including:

- 18 i. requirements and limits on the preservation, disclosure, and
19 production of ESI;
20 ii. appropriate ESI searches, including custodians and search
21 terms, or other use of technology assisted review; and
22 iii. the form in which the ESI will be produced.

23 b. *Resolution of Disputes.* If the parties are unable to resolve any dispute
24 regarding ESI and seek resolution from the Court, they must present the dispute in a
25 single joint motion or, if the Court directs, in a conference call with the Court. Any joint
26 motion must include the parties' positions and the separate certification of counsel
27 required under Rule 26(g).

28 c. *Production of ESI.* Unless the Court orders otherwise, a party must

1 produce the ESI identified under paragraph B.3 within 40 days after serving its initial
2 response. Absent good cause, no party need produce ESI in more than one form.

3 d. *Presumptive Form of Production.* Unless the parties agree or the Court
4 orders otherwise, a party must produce ESI in the form requested by the receiving party.
5 If the receiving party does not specify a form, the producing party may produce the ESI
6 in any reasonably usable form that will enable the receiving party to have the same ability
7 to access, search, and display the ESI as the producing party.

8 DATED this _____ day of _____, 2017.

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_____, Chief Judge