# PROPOSED ORDER REGARDING REMOTE DEPOSITIONS

WHEREAS the COVID-19 pandemic has made conducting traditional in- person depositions difficult and inadvisable given health concerns and associated restrictions that have been put in place around the country;

WHEREAS it is uncertain when these health concerns will subside and when these associated restrictions will be lifted;

WHEREAS, pursuant to Rule 30(b)(4) of the Federal Rules of Civil Procedure, “[t]he parties may stipulate a deposition be taken by telephone or other remote means.”;

WHEREAS, pursuant to Rule 29(b) of the Federal Rules of Civil Procedure, 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 [] other procedures governing or limiting discovery be modified”;

WHEREAS the Parties have agreed that it will be necessary to conduct depositions remotely (the “Remote Depositions”), have agreed upon the means by which they will conduct the Remote Depositions until it is safe to conduct in-person depositions, and wish to memorialize their agreement;

NOW, THEREFORE, it is ORDERED that the Remote Depositions shall proceed subject to the following rules and procedures, which have been agreed upon by the Parties:

# DEFINITIONS

1. “Court Reporter” shall mean the individual(s) designated by the Court Reporting Agency to administer and transcribe the Remote Deposition. “Court Reporter” shall include the reporter administering and transcribing the deposition, as well as the videographer, if any, and any other staff of the Court Reporting Agency assisting with the administration, recordation, and transcription of the Deposition.
2. “Court Reporting Agency” shall mean TSG Reporting, Inc, and/or any other entity agreed to and designated by the Parties to select a Court Reporter for each Remote Deposition.
3. “Defending Attorney” shall mean any attorney representing the Witness at the Remote Deposition. If the Witness is a current or former employee of one of the Parties, any attorney appearing on behalf of that Party shall also be considered a Defending Attorney.
4. “Noticing Attorney” shall mean any attorney or of counsel listed below the signature block of the deposition notice corresponding to the Remote Deposition to which these rules and procedures apply, and/or any individual affiliated with that attorney’s law firm and authorized by that law firm to communicate about matters relating to the Remote Deposition.
5. “Participant” shall mean the Witness, any person providing in-room technical support to the Witness, the Questioning Attorney, the Defending Attorney, other attorneys or client representatives appearing on behalf of one of the Parties, paralegals or other individuals providing support to the attorneys, any expert(s) retained by any party, the Court Reporter, and any videographer hired by any party.
6. “Party Attorney” shall mean any attorney other than the Defending Attorney or the Questioning Attorney who represents one of the Parties at a Remote Deposition.
7. “Questioning Attorney” shall mean the attorney who questions the Witness on the record during the Remote Deposition for the purpose of eliciting sworn testimony.
8. “Remote Deposition Video Platform” shall mean Zoom, as used by Court Reporting Agency, or any other videoconferencing service platforms jointly agreed to and designated by the Parties for hosting the Remote Deposition.
9. “Remote Deposition Exhibit Platform” shall mean Zoom, as used by Court Reporting Agency, or any other software applications jointly agreed to and designated by the Parties for displaying exhibits during the Remote Deposition.
10. “Witness” shall mean the individual who gives sworn testimony on the record during the Remote Deposition.

# COURT REPORTER

1. Pursuant to Rule 30(b)(5) of the Federal Rules of Civil Procedure, Remote Depositions will be conducted before a Court Reporter (whether in person or over the Remote Deposition Video Platform) who shall have all of the authority of an officer appointed or authorized under Rule 28 to take Depositions.
2. The Court Reporter may administer the oath or affirmation to the Witness through the Remote Deposition Video Platform from a different physical location than the Witness, and such oath or affirmation shall be deemed valid and effective pursuant to applicable law to the same extent as if the oath or affirmation had been delivered in the physical presence of the Witness.

# REMOTE DEPOSITION PLATFORMS

1. Remote Depositions shall be conducted using the Remote Deposition Video Platform, as used by Court Reporting Agency and agreed by the Parties, and shall be accessed only through a secured connection to protect confidential information.
2. In order to facilitate reliable use of the Remote Deposition Video and Exhibit Platforms, each attorney shall be responsible for acquiring, maintaining, and utilizing computer, audio, and video equipment that meets the minimum requirements set forth in Appendix A.
3. The Parties agree to record the deposition by way of the Videographer and the Remote Deposition Video Platform. The Parties stipulate that the video recording created by the Videographer will be the official video record for use at trial.
4. If the Witness has no Defending Attorney, a Noticing Attorney shall determine whether the Witness has access to such equipment, and, if not, to use reasonable efforts to ensure the Witness has such access.
5. No less than 20 minutes prior to the commencement of each Remote Deposition, the Participants shall access the Remote Deposition Video and Exhibit Platforms and ensure that it and all Participants’ hardware, software, and internet connections are functioning properly, including that any required audio and video functionalities are functioning properly. The Remote Deposition shall not commence until all Participants complete this test and agree to proceed.
6. All private chat features on the Remote Deposition Video and Exhibit Platforms shall be disabled. The public chat features shall remain enabled for the purpose of marking and publishing exhibits.

# NOTICE

1. The Parties stipulate that the language set forth below shall be included in oral deposition notices served pursuant to Rule 30(b)(1) and provides sufficient notice with respect to Remote Depositions:

NOTICE IS FURTHER GIVEN that this deposition shall be conducted remotely pursuant to the Stipulated Order Regarding Remote Depositions.

1. For each Remote Deposition, the Defending Attorney shall provide the Noticing Attorneys with the names and e-mail addresses of the Witness and of any other Participants associated with the Party or non-Party it represents at least two (2) calendar days prior to the Remote Deposition for the sole purpose of the Deposition Reporting Agency providing the Witness and other Participants with the necessary links to access the Remote Deposition and Exhibit Platform. Such notification is without prejudice to a later modification of the list of Participants if circumstances or availability so require. If the Witness has no Defending Attorney, a Noticing Attorney shall gather the Witness’s name and e-mail address. This paragraph does not authorize the Noticing Attorney to directly contact a represented party, including the Witness.
2. A Noticing Attorney shall provide, or shall cause the Remote Deposition Video and Exhibit Platform(s) to provide, to the Defending Attorney and/or Party Attorney all details necessary to gain access to each Remote Deposition, including but not limited to any web addresses, login credentials, and hardware and software requirements at least 48 hours prior to the date and time at which the Remote Deposition is scheduled to commence.
3. Unless otherwise agreed to by the parties, Participants other than the Defending Attorneys, paralegals for the Defending Attorneys, party representatives, and the Witness shall be physically remote from one another. The Witness is permitted to have Defending Attorneys, paralegals for the Defending Attorneys, and party representatives physically present, as well as technical assistance from a non-attorney who is physically present with him or her. The presence of all such persons must comply with any applicable local law. Any person physically present with a Witness must be identified on the record and must be visible on the Remote Deposition Platform.

# CONDUCT OF THE REMOTE DEPOSITIONS

1. Except as otherwise provided herein, the Remote Depositions shall in all ways be governed by the rules regarding depositions by oral examination set forth in Rule 30 of the Federal Rules of Civil Procedure. The Remote Depositions shall satisfy the Parties’ and each Witness’s obligations to make the Witness available for deposition to the same extent as if the depositions had been conducted in person.
2. The Parties will use reasonable efforts to cause employee Witnesses, former employee Witnesses, and non-Party Witnesses to agree to the protocols set forth herein for Remote Depositions, however, insofar as any particular Witness cannot or will not agree, the Parties will discuss in good faith alternative protocols requested or required by such Witness.
3. At least 24 hours before the remote deposition is scheduled to begin, counsel, the witness, and the remote deposition vendor must conduct a test of the system, equipment, and internet connection that will be used to conduct the remote deposition, including running an internet speed test. See Appedix A for technical requirements.
4. Participants will connect to the secure video platform at least 20 minutes prior to the scheduled time for the deposition with a webcam equipped laptop, desktop or mobile device and an internet connection that meets the minimum requirements set forth in Appendix A. Immediately upon the commencement of the Remote Deposition, all Participants shall announce their names and affiliations on the record. After identification of Participants, Defending Attorney and Questioning Attorney shall stipulate on the record:
   * + Their consent to the conduct of this deposition according to this Stipulation;
     + Their waiver of any objection to the conduct of the deposition or the admissibility of deposition testimony deriving from the matters covered in this Stipulation; and
     + Pursuant to the Federal Rules of Civil Procedure, objections are waived unless promptly made on the record during the deposition, except as set forth in Rule 32.
5. The Witness, the Questioning Attorney, and any Participants physically present with the Witness, shall keep their cameras turned on while the Remote Deposition is being conducted, and other Party Attorneys and the Defending Attorney may do so if they choose. All other Participants shall keep their cameras off at all times, except as otherwise directed by the Court Reporter. The Court Reporter may also appear on camera as appropriate to facilitate the Remote Deposition. The Witness, and any Participants physically present with the Witness, will position his or her webcam to provide a wide angle sufficient to capture his or her hand and other movements, and to provide a clear picture of the Witness, and any Participants physically present with the Witness, to the Witness’ and Participants’ best ability.
6. The Witness, the Questioning Attorney, and the Defending Attorney and/or the Party Attorney shall use the audio either through their respective device or through a phone connection.
7. The Witness, while on the record, will power down all devices not being used for the deposition, including but not limited to: phones, tablets, laptops, and any other communication device.
8. Participants shall take care to minimize background noise during the course of the Remote Deposition. Participants other than the Witness, the Questioning Attorney, and the Defending Attorney shall place their microphones on mute except during times that they desire to speak on the record. Participants shall make best efforts to refrain from speaking at the same time as other Participants.
9. In order to minimize background noise, the Court Reporter may, at his or her discretion, mute individual Participants’ lines when those Participants are not speaking, except that in no event shall the Court Reporter mute the Court Reporter’s, Questioning Attorney’s, Witness’s, or Defending Attorney’s and/or Party Attorney’s line while the Remote Deposition is being conducted. Participants who have been muted shall retain the ability to unmute themselves during times when they desire to speak on the record.
10. The Parties stipulate that any puases, lags, or disruptions in technology, including but not limited to interruptions in internet connection, will not result in waiver of objections by any party. The Parties further stipulate that if any puases, lags, or disruptions occur, the resulting time lost, or the time spent resolving the issue, does not count against the allotted deposition time.
11. Unless otherwise agreed upon, the Questioning Attorney may use the Remote Deposition Exhibit Platform to mark and publish all exhibits that are used during the Remote Deposition. The Questioning Attorney shall confirm that the Witness and Defending Attorney can access each exhibit prior to questioning the Witness about that exhibit. The Witness shall have the right to review any exhibit in full prior to any question related to such exhibit.
12. Questioning Attorney will arrange to have delivered to Witness, Defending Attorney and Court Reporter copies of any potential deposition exhibits. If the parties agree, the exhibits may be delivered prior to the deposition as electronic PDF files via email to the Defending Attorney and the Witness. If the parties agree that the exhibits shall be provided prior to the deposition in hard copy, the parties agree that the box(es) containing the potential hard copy exhibits will remain sealed until Questioning Attorney instructs the witness to open a box. Defending Attorney will instruct Witness in advance not to remove any potential exhibit from the package or otherwise view an exhibit in any way unless and until that potential exhibit is in fact introduced during the deposition. The Questioning Attorney shall arrange for the admitted exhibits to be provided to the Court Reporter either before or at the conclusion of the deposition.
13. Upon Questioning Attorney’s request, Witness and Defending Attorney receiving copies of potential exhibits will destroy documents that were not used or introduced during the deposition.
14. Although Questioning Attorney will endeavor to deliver all potential deposition exhibits prior to the deposition, Questioning Attorney will not be precluded from electronically marking and introducing an exhibit during examination on the basis that the exhibit was not provided in advance to the witness or counsel in hard copy or electronically via email, provided that Defending Attorney and the Witness can view all pages of the Exhibit during the deposition.
15. Except as otherwise provided in this Stipulated Order or as otherwise agreed by the parties, no Participant shall permit anyone who is not a Participant to hear or view the Remote Deposition while it is being conducted.
16. If a Witness, Questioning Attorney, Defending Attorney and/or Party Attorney, Court Reporter or Videographer is unable to hear a Participant’s question or statement in its entirety, that Participant, or the Court reporter, shall, upon request from any of the above Participants, repeat the entire question or statement once the issue is resolved.
17. If a Participant is unable to view or access published exhibits, the Court Reporter shall, at the request of the Participant encountering such issue, suspend the Remote Deposition until the issue is resolved. Time spent resolving the issue shall not count against the allotted deposition time.
18. The Witness shall not communicate with any Participant or any third party while the deposition is in session by electronic or telephonic means other than the Remote Deposition Video Platform and as provided for in this Stipulation. At the commencement of the deposition, the Witness shall attest that the Witness will not communicate in any way with anyone not on the record during the deposition, that the Witness will not read any written communication that anyone attempts to send them during the deposition, and that if anyone attempts to communicate off the record, the Witness will immediately notify all parties. The Witness may communicate with third-parties during breaks, however. Furthermore, notwithstanding this provision, subject to all otherwise applicable rules, including Federal Rule of Civil Procedure 30(d)(1), the Defending Attorney may communicate privately with the Witness by any means any time during breaks in the Remote Deposition or if the Court Reporter otherwise suspends the Remote Deposition. The Witness or Defending Attorney may call for a break at any time to confer on an issue of privilege. The Witness or any attorney may call for a reasonable number of breaks when no question is pending.
19. If the Witness is alone in the room, the Witness will confirm on the record that no one else is present in the room and agree to notify all participants immediately if someone enters the room. Any person, other than the Witness, who is physically present in the room must identify themselves at the commencement of the deposition and on camera.
20. All Parties stipulate that an objection for one defendant shall be deemed an objection for all defendants, and an objection for one plaintiff shall be deemed an objection for all plaintiffs.
21. The Parties shall meet and confer regarding the timing for all Remote Depositions when the Participants are located in different time zones.
22. This Stipulated Order also shall govern any Remote Depositions of Non- Party witnesses.
23. The Parties may modify these procedures as appropriate by mutual agreement and reserve their rights to seek reasonable modifications of these procedures as appropriate in individual instances.

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| [PARTY] | | [PARTY] | |
| By: |  | By: |  |
|  | Attorney |  | David B. Markowitz, OSB #742046  DavidMarkowitz@MarkowitzHerbold.com  Kyle Busse, OSB #070994  KyleBusse@MarkowitzHerbold.com |

IT IS SO ORDERED.

DATED:

Honorable [Judge Name]

United States District Judge

# APPENDIX A

**MINIMUM TECHNICAL REQUIREMENTS FOR REMOTE DEPOSITIONS**

1. **Witness, Defending Attorney and Questioning Attorney**
   1. Computer with an internet connection (connected via ethernet if available)
   2. Internet connection with a minimum speed for downloads of 10 Megabits per second (“Mbps”) and uploads of 5 Mbps, as determined by an online speed test (*e.g.*, Speedtest.net) conducted in the precise location where the witness intends to sit for the deposition.
   3. Integrated or USB webcam.
   4. Integrated or external microphone, headset, or similar device.
   5. Telephone (landline if available).

# Other Participants

* 1. Computer with an internet connection.
  2. Internet connection with a minimum speed for both downloads and uploads of 5 Mbps.
  3. Telephone.