

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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CHRISTOPHER BRUMMER,

Index No.: 153583/2015

Plaintiff,

-against-

BENJAMIN WEY, FNL MEDIA LLC and NYG
CAPITAL LLC d/b/a NEW YORK GLOBAL
GROUP,

Defendants.

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**STIPULATION AND [PROPOSED] ORDER REGARDING REMOTE
DEPOSITION PROTOCOL (“STIPULATION”)**

Plaintiff Christopher Brummer, Defendants Benjamin Wey and NYG Capital LLC, and Non-Parties Financial Industry Regulatory Authority (“FINRA”), Richard Ketchum, and Robert Colby (each individually a “Signatory” and collectively the “Signatories”) jointly stipulate and propose, for adoption by the Court, the following protocol for conducting depositions of Non-Parties Messrs. Ketchum and Colby via remote means in this action, in light of the COVID-19 pandemic:

1. Depositions may be conducted entirely or partially remotely using videoconference technology. Non-Parties Messrs. Ketchum and Colby need not be present in the County of New York during the Depositions, notwithstanding anything to the contrary in the Stipulation for the Production of Documents and Deposition Testimony and Order dated August 9, 2019 (Doc. No. 1266).

2. Notwithstanding anything herein, as permitted under applicable public health guidelines, regulations, and orders, some or all of the participants in the deposition process (Signatories, deponents, court reporters, and counsel) may be physically present in the same location. No individual, however, may be physically present in the same location as the deponent without the consent of the deponent and his counsel.

3. The Signatories agree to use Veritext for court reporting, videoconference, and remote deposition services. The Signatories agree that a Veritext employee or agent may attend each remote Deposition to transcribe the Deposition, troubleshoot any technological issues that may arise, and administer the virtual breakout rooms. In order to facilitate email invitations for the deposition and the provision of exhibits to the deponent and all counsel, no later than five business days before the deposition, the Signatories shall provide to Veritext each attendee's name, email address, physical address for purposes of delivery of exhibits, and a phone number where they will be reachable on the day of the deposition.

4. The transcripts produced of the remote depositions taken pursuant to this protocol may be used at a trial or hearing to the same extent that any transcript of an in-person deposition may be used at trial or hearing, and the Signatories agree not to object to the use of these transcripts on the basis that the Deposition was taken remotely.

5. Subject to paragraph 2, the deponent, court reporter, and counsel for the Signatories may each participate in the videoconference Depositions remotely and separately. Each person attending a deposition shall be visible to all other participants, his or her statements shall be audible to all participants, and he or she should each strive to ensure his or her environment is free from noise and distractions.

6. 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, and only after the deponent has stated on the record that he needs to consult counsel regarding a question of privilege.

7. During breaks in the Depositions, the Signatories and the deponent may use the breakout room feature provided by Veritext, which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by Veritext before the Deposition and controlled by Veritext. Alternatively, during breaks in the Depositions, the Signatories and the deponent may use phones for breakout conversations.

8. Remote depositions shall be recorded by stenographic means but, given the COVID-19 pandemic, the court reporter may not be physically present with the witness whose deposition is being taken. The Signatories 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.

9. The Signatories agree that the court reporter is an “officer” within the meaning of CPLR 3113(b) and shall be permitted to administer the oath to the deponent 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 videoconference.

10. The court reporter will stenographically record the testimony, and the court reporter’s transcript shall constitute the official record. Veritext will not create or maintain a video record of the Depositions. Solely for the purposes of allowing the court reporter to ensure the

accuracy of the stenographic transcript, the court reporter may make an audio recording of the Depositions, which he or she may not share with any party or non-party absent a court order or the express written consent of all parties and the deponent. Veritext shall disable any video-recording feature on its platform for all participants and attendees at the Depositions. Other than as explicitly set forth above, every participant and attendee at the Depositions shall be prohibited from videotaping, filming, photographing, capturing, or otherwise creating any video or audio recording, in any manner whatsoever, of the Deposition or any participants in the Deposition. At the conclusion of the review period for the witnesses provided for under CPLR 3116, Veritext shall destroy its recording of the Depositions.

11. The Signatory that noticed the Depositions shall be responsible for procuring a written transcript of the Depositions. The Signatories shall bear their own costs in obtaining a transcript of the Depositions.

12. The Signatory that noticed the Depositions shall provide Veritext with a copy of this Stipulation at least forty-eight hours in advance of the Depositions.

13. At the beginning of each Deposition, consistent with CPLR 3113(b), the court reporter shall “put the witness on oath” (CPLR 3113(b)) and the Deposition shall begin with a statement on the record that includes: (i) the court reporter’s name and address; (ii) the name and address of the court reporter’s employer; (iii) the date, time, and place (or method) of the Deposition; (iv) the party on whose behalf the Deposition is being taken; and (v) the identity of all persons taking part in the Deposition.

14. At the beginning and end of each segment of the Deposition, consistent with 22 NYCRR 202.15(d), the Veritext representative shall announce the time at which the segment of

the remote Deposition is beginning or ending. No segment of any Deposition shall begin until all counsel have been joined to the session.

15. The defending attorney and other counsel shall make objections and interpose instructions not to answer in substantially the same manner as he or she would at an in-person deposition. If the defending attorney or other counsel is unable to make objections and interpose instructions not to answer by reason of technical difficulties, such a failure to object or to instruct shall not be construed as waiver, and the defending attorney or other counsel shall have an opportunity to object or to instruct as soon as the technical problem has been remedied. Objections and instructions not to answer shall be regarded as timely if made as soon as practicable.

16. Before the Deposition begins, the Veritext representative and the court reporter each shall provide counsel for each Signatory a cellular telephone number at which the Veritext representative and the court reporter can be contacted in the event that a participant becomes disconnected or develops technical problems. In addition, the Veritext representative shall monitor the audio and video transmission and shall stop the record if he or she determines that any remote participant has been dropped from the Deposition or is otherwise incapable of participating by reason of technical problems. The Veritext representative and/or court reporter shall stop the record as soon as he or she becomes aware that a remote participant has been dropped from the remote Deposition or cannot participate by reason of technical problems.

17. The Signatories agree to work collaboratively and in good faith with Veritext to assess each participant's technological abilities and to troubleshoot any issues at least 48 hours in advance of each Deposition so any adjustments can be made. The Signatories also agree to work collaboratively to address and troubleshoot technological (including audio or webcam) 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 Signatory 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 or the other participants. Any period on the record during which a deponent or questioner could not hear or understand the questions or answers due to technical difficulties shall not count toward any applicable time limitation for the Deposition.

18. Every deponent shall endeavor to have technology sufficient to appear for a remote Deposition (i.e., 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 it prior to the Deposition. In the case of third-party deponents, counsel noticing the Deposition shall supply any necessary technology that the deponent does not have.

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

- 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 Signatory's counsel, and the court reporter. In that event, noticing counsel shall so inform the deponent's counsel, the other Signatories' counsel, and the court reporter prior to shipping 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 Signatories' counsel, and

the court reporter shall confirm receipt of the package by electronic mail to counsel noticing the Deposition. If physical copies are mailed, every recipient of a mailed package shall keep the package sealed until the Deposition begins and shall unseal the package only when on the record, on live webcam, 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 that any other counsel intends to use for examining the deponent.

- 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 Signatories' 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 Signatories' 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 email immediately prior to the commencement of the Deposition. No recipient of a .zip file shall 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 Veritext's Exhibit Share 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. Any exhibit introduced pursuant to this subsection must be marked as an exhibit and be shared with and viewable in its entirety by all participants.
- iv. Regardless of which method of document-sharing is used, the deponent and the defending counsel shall have the right to private copies of the exhibits that allow the deponent and defending counsel to independently and fully navigate the exhibit while the Deposition is in progress on the record.

20. Counsel for the Signatories may keep any document or exhibit used during the Depositions, in accordance with the Stipulation and Order for the Production and Exchange of Confidential Information (Doc. Nos. 1087, 1088) entered by the Court in this action, and shall return any physical documents not used during the Depositions to the counsel who sent them originally within five business days following the completion of the Depositions, and shall not retain in any manner any documents not used during the Depositions. Counsel noticing the Depositions shall include a pre-paid return shipping label in any package of documents mailed to a deponent.

21. Nothing in this Stipulation is intended to supersede the August 2019 Stipulation for the Production of Documents and Deposition Testimony and Order, except to the extent that the August 2019 Stipulation for the Production of Documents and Deposition Testimony and Order requires the Depositions to be held within the County of New York.

22. This Stipulation may be executed in counterparts, and copies thereof furnished by facsimile or in electronic (.pdf or similar) format shall be deemed originals for all purposes.

Dated: December 2, 2020
New York, New York

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SO ORDERED:

J.S.C.