

**ARBITRATION  
NASHVILLE, TENNESSEE**

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Claimant,

v.

Respondent.

**ORDER AND PROCEDURES FOR A  
VIRTUAL HEARING VIA  
VIDEOCONFERENCE**

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The parties stipulate to and the arbitrator confirms the following Order and Procedures for a Virtual Hearing via Videoconference:

**1. Agreement to Videoconference:**

- A.** The parties and the arbitrator agree that the hearing in this case will be conducted via Zoom videoconference in light of the COVID-19 pandemic, stay-at-home orders, and travel limitations. This confirms that the hearing will be deemed to have taken place in Nashville, Tennessee.
- B.** The parties acknowledge that they have made their own investigation as to the suitability and adequacy of Zoom for its proposed use for the videoconferenced hearing and of any risks of using Zoom, including any risks regarding its security, privacy or confidentiality, and they agree to use Zoom for the hearing.

**2. Hearing Record and Recording:**

- A.** The parties and arbitrator agree that the hearing will be transcribed by a court reporter and that the court reporter's transcript will be the official record of the hearing. Regardless of physical or remote attendance, the court reporter may interrupt attorneys, witnesses, or the arbitrator as needed to clarify items for the record. The parties agree to split the cost of the court reporter.
- B.** The parties and arbitrator agree that the hearing's audio and video will not be recorded through Zoom or any other means. However, the court reporter shall be permitted to audio or video record for purposes of finalizing and certifying any transcript. Such audio or video recording will not be disseminated to any party unless there is a dispute about the accuracy of the transcript, and in that event, the court reporter will share only that portion of the recording necessary to verify the transcript. The court reporters transcript will be the official transcript for the hearing.
- C.** The parties and counsel agree that they will not record, via audio, video, or screenshot, or permit any other person to record, via audio, video or screenshot,

the hearing or any part of it, except as is provided for in this Order. The parties and counsel will ensure that each additional attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording.

**3. Technical Aspects:**

**A. Invitations to Access Hearing:** The AAA case manager will invite attendees via email to join the Zoom hearing. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees should not forward or share the hearing link or password.

In order to facilitate e-mail invitations for the hearing, no later than September 21, 2020, the parties shall circulate to the AAA a list of each attendee's name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the hearing).

**B. Advance Testing of System:**

i. On September 18, 2020 at 8:00 am (Central), counsel and the arbitrator will test the videoconferencing system to ensure that all arbitrators and counsel can connect and that their video and audio systems work (and noting camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions).

ii. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually (as opposed to in counsel's offices). Each party also is responsible for ensuring that all logistical requirements of this Order are satisfied.

iii. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants.

iv. Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.

**C. Back-Up Conference Call Line:**

The parties/AAA shall reserve an optional dial-in conference call number in case one or more participants has poor quality computer audio (after trying the audio connection through the computer-- with and without a headset – and by phone).

**D. Hearing Participants:**

- i. Each party will inform the AAA host/arbitrator and all other parties/counsel 7 days before the hearing the names of all persons who will attend, participate in or will be able to hear any communications in the hearing using Zoom, including any technicians assisting the party or counsel. The parties agree that no persons will attend, participate or be allowed to listen in on the hearing without the prior consent of all parties and the arbitrator.
- ii. If the arbitrator plans to have a technician present with them or available to assist them in person, they will communicate to counsel the technician's name and affiliation at least 7 days before the hearing.
- iii. Each attendee of the virtual hearing shall disclose at the start of each hearing session all people in the room with the attendee. Should an individual join the attendee after the hearing session has begun, that individual should be identified to counsel and the arbitrator at the earliest opportunity.
- iv. During the videoconference, the participants or the witness shall always be in view of the camera. If two or more people are attending the hearing together in a room, they shall each be on a single or separate camera (to allow for social distancing) at all times, which camera(s) shall be placed to provide a view of a reasonable part of, if not the entire, room.
- v. At the arbitrator's request, unknown participants shall identify themselves by showing a piece of identification to the camera or by responding to the arbitrator's questions regarding their identity.

**E. Ensuring Good Audio/Video:** Hearing participants shall make best efforts to ensure that there will be clear video and audio transmission during the hearing. Participants should:

- i. consider steps that may be taken to establish a high-speed internet connection (*e.g.*, if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);
- ii. use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the platform (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);
- iii. eliminate any background noise;
- iv. consider camera positioning and lighting (*e.g.*, avoid sitting near a window, positioning a light in front of (instead of behind) the participant);
- v. access Zoom via desktop or laptop rather than by smartphone or tablet;

- vi. ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
  - vii. not join the hearing from a public setting or using unsecured, public wifi to ensure the privacy and security of the hearing.
- F.** All counsel shall endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.
- G.** All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, shall maintain their audio on mute to limit potential interruptions and/or background noise. The video hearing host and co-host, if any, also will have the ability to mute and unmute any participant if needed.
- H.** For each person participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the accurate transcription or recording of the participant's speech as appropriate.
- I.** Each participant in the hearing should endeavor to have accessible a computer or other device with email and a printer to which the device can print exhibits or other documents if needed.
- 4. Witnesses and Exhibits:**
- A.** With the exception of the parties, the parties' corporate representatives, and expert witnesses, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify.
- B.** All witnesses must appear by video conference using the platform link provided by the AAA host. Inability to connect or technical issues shall not be a basis to provide testimony via audio only. In the event of technical issues preventing presentation of evidence via video, the parties and arbitrator shall consider paragraph 6.C. below.
- C.** Witnesses should follow the below practices:
- i. A witness shall give evidence sitting at an empty desk or table, and the witness' face shall be clearly visible in the video.
  - ii. To the extent possible, the webcam should be positioned at face level, relatively close to the witness (e.g., by positioning a laptop on a stack of books).

- iii. Witnesses may not use a “virtual background.” Instead, the remote venue from which they are testifying must be visible.
  - iv. Witnesses are not permitted to communicate with anyone (other than counsel examining them or the arbitrator) while providing testimony, including counsel or other third-parties, whether by in-person communications, writings of any kind, chat functions, text messages, or email. In some circumstances, it may be necessary to email a witness an exhibit to print. In that event, counsel shall copy all other counsel and the arbitrator on such email, and once accessed and printed, the witness shall minimize or close out of the email inbox.
  - v. Witnesses should speak directly to the camera while testifying.
  - vi. Witnesses should avoid making quick movements.
  - vii. All non-party or expert witnesses shall sign-off from the Zoom session at the conclusion of their testimony.
  - viii. Witnesses shall not use any documents of any nature to aid in providing testimony without first disclosing the presence/use of such documents and obtaining permission from counsel and the arbitrator to use those documents.
- D.** At any time, counsel or the arbitrator may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue in order to confirm that no unauthorized persons or materials are present; any authorized persons (counsel, etc.) in the room with the witness must be identified at the start of the witness’ testimony.
- E.** In accordance with the provisions of this Order, the AAA host shall instruct each witness about: (i) what to do in the event of a disconnection or other technical failure; and (ii) the impermissibility of any unauthorized observers or recordings of the hearing.
- F.** In advance of trial, Counsel shall notify their party/witness that the oath in this case shall be supplemented to add that the witness affirms that during their testimony they are not consulting any outside sources or information such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with their testimony.
- G. Hearing exhibits:**
- i. No later than seven (7) days before the hearing, counsel shall agree on stipulated and proposed exhibits to be included in an exhibit binder. Each

party shall be responsible for providing each witness it intends to call at the hearing with a clean, unannotated hard copy set of all exhibits, as well as a clean, unannotated copy of his or her witness statement [if any]. At any time, counsel or the arbitrator may ask a witness to display the set of exhibits and/or witness statement and verify that they do not bear any annotations. Claimant will be responsible for providing a copy of the exhibit notebook to the arbiter, which will include an exhibit index and chart for tracking admitted exhibits.

- ii. In light of the existence of native file spreadsheets in this matter, the parties agree that relevant portions of those spreadsheets will be printed and included in hard copy in the exhibit notebooks. However, the parties will also include the entire electronic native file on flash drives in those exhibit notebooks so that witnesses (and the arbitrator) may refer to and/or pull up the entirety of the file in the event necessary.
- iii. With the AAA's guidance, the parties may agree on utilizing a shared virtual document repository (*i.e.*, document server) to be made available via computers at all participants' locations, provided that the parties use best efforts to ensure the security of the documents (*i.e.*, from unlawful interception or retention by third parties). If available, a separate display screen/window (other than the screen/window used to display the video transmission) may be used to show and display the relevant documents to the witness during the course of questioning.
- iv. Nothing in this Section 4 shall prevent or prohibit the parties from using or displaying electronic demonstratives. If demonstratives include any portion of an exhibit/proposed exhibit, the demonstrative shall reference the bates number of the document from which the content was derived.

**5. Hearing Schedule & Logistics:**

- A. The hearing shall commence on September 28, 2020, and it will begin at 9:30 a.m. (Central Time), with morning, lunch, and afternoon recesses at such times as the arbitrator determines in its discretion are appropriate, and the hearing shall continue on for four days as may be necessary. Additionally, because of the Zoom medium being used to conduct the trial, breaks will be taken more frequently, on the hour, and at the change up of attorneys examining a witness, and the change up of witnesses. It is recommended that all participants access the virtual hearing room early each day of hearing. The arbitrator may take additional recesses and adjust the hearing schedule, in his discretion, to facilitate a smooth and efficient hearing.

- B.** The hearing schedule, and the daily schedule, will take into account that extra time may be needed if there are technical problems that cause delays.
- C.** Upon joining the Zoom hearing, participants will be admitted to a virtual Waiting Room. The AAA host will admit all participants to the hearing at the same time. To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the Zoom meeting during any recess. However, lines may be muted during this time, and the arbitrator may move participants to “break-out” and/or the virtual Waiting Room.
- D.** The AAA host will disable the private “chat” function in Zoom. The AAA host may use a virtual “break-out” room to confer privately. The AAA host may also use virtual break-out rooms to facilitate private conversations between other case participants as may be appropriate (e.g., upon request, to allow members of a party’s legal team to confer with each other directly, outside of the presence of the arbitrator and witnesses).

**6. Technical Failure:**

- A.** Should one party’s or participant’s videoconferencing connection fail, the arbitrator will ask the counsel remaining on the videoconference to mute their audio and to turn off their video to avoid concerns regarding potential *ex parte* communications. Once the arbitrator sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.
- B.** If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 5-minute interval:
  - i.** the arbitrator may take steps to “pause” the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms, and the parties agree to pause proceedings as needed to accommodate any reconnections or technical issues;
  - ii.** the parties and participants shall use telephone communication to indicate if any party, attorney, or witness has been dropped from the hearing due to a connection problem or other technical issue. Unless agreed otherwise, [name and number] is the designated person and number to contact in the event that parties, counsel, or witnesses are disconnected.
- C.** If the videoconferencing system fails to work such that the hearing cannot take place as scheduled, or if the arbitrator determines that the videoconferencing system otherwise does not allow the parties to adequately present their case or that it would be unfair to any party to continue the hearing via videoconference, the

arbitrator may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings. Notwithstanding the foregoing, the parties and arbitrator agree that under no circumstances shall the hearing continue telephonically only.

7. Costs of Videoconferencing: For Consumer or Employment cases – The parties agree that the costs of using the secure videoconferencing platform for the hearing will in the first instance be borne 100% by the business/employer.
8. Other:
  - A. Designation of Videorecorded Testimony: By September 15, 2020, any party wishing to designate portions of deposition transcripts for use in their case in chief may do so by highlighting in yellow all such designated testimony and providing the opposing party and the AAA with a color copy. By September 22, 2020, all objections to the designations and any counterdesignations shall be made by the opposing party in green and a color copy provided to the opposite party and the AAA. The parties shall confer regarding these designations and objections on September 23, 2020.
  - B. Pretrial Brief: By September 25, 2020, the parties shall submit a pretrial brief to the Arbitrator and copy opposing counsel.

Respectfully submitted,

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## Use of Zoom Video Conferencing For Court Proceedings

**Tennessee Law on the Use Of Zoom Video Conferencing** – Generally, in Tennessee “witnesses testify live” in-person in the courtroom. *State ex rel. Malmquist v. Malmquist*, No. W201700893COAR3JV, 2018 WL 6261863, at \*3 (Tenn. Ct. App. Nov. 29, 2018), *appeal denied* (Mar. 28, 2019).

There are important reasons why live, in-person testimony is more desirable than remote testimony. One frequently cited list explains that a witness's personal appearance in court (1) assists the trier of fact in evaluating the witness's credibility by allowing his or her demeanor to be observed first-hand; (2) helps establish the identity of the witness; (3) impresses upon the witness the seriousness of the occasion; (4) assures that the witness is not being coached or influenced during testimony; (5) assures that the witness is not referring to documents improperly; and (6) in cases where required, provides for the right of confrontation of witnesses.

*Kelly v. Kelly*, 445 S.W.3d 685, 694 (Tenn. 2014) (citations omitted).

Despite the preference for live in-person testimony in Court, Rule 43.01 of the Tennessee Rules of Civil Procedure does permit a Court to allow testimony via videoconferencing under certain circumstances.

In all actions at law or equity, the testimony of witnesses shall be taken pursuant to the Tennessee Rules of Evidence. Also, for good cause shown in compelling circumstances and with appropriate safeguards, the court may permit presentation of testimony in open court by contemporaneous audio-visual transmission from a different location.

TENN. R. CIV. P. 43.01 (West 2020).

In determining whether the Court should allow videoconferencing in lieu of in-person testimony, the Court must make a finding that the following conditions are satisfied: good cause, compelling circumstances, and adequate safeguards.

In addition to live testimony, this rule contemplates the use of contemporaneous audio-visual (but not audio only) transmissions. And even then, good cause, compelling circumstances, and adequate safeguards must be established before testimony by video conferencing may be allowed. *See* Tenn. R. Civ. P. 43.01 Advisory Comm. Cmt. The parties

have pointed to no Tennessee law or rule that would permit testimony by telephone in cases such as this one.

*Kelly v. Kelly*, 445 S.W.3d 685, 693–94 (Tenn. 2014).

If the following conditions are satisfied then the Court may proceed to allow testimony via videoconferencing. However, as noted by the Tennessee Supreme Court testimony pursuant to Rule 43.01 is generally limited to videoconferencing and does not typically permit the Court to allow live testimony via telephone in lieu of in-person testimony. “Tennessee law permits testimony by telephone in only a handful of narrowly drawn circumstances.” *Kelly v. Kelly*, 445 S.W.3d 685, 693 (Tenn. 2014). In *Kelly v. Kelly*, the Tennessee Supreme Court cited only limited examples where testimony via telephone pursuant to Rule 43.01 have been authorized. 445 S.W.3d 685, 693, n. 1 (Tenn. 2014) (“*See, e.g.*, Tenn.Code Ann. § 24–7–121(d) (2000) (permitting telephonic testimony regarding payment records in child support cases); Tenn.Code Ann. § 34–8–106(b) (Supp.2013) (permitting witnesses located in other states to testify by telephone in conservatorship or guardianship proceedings); Tenn.Code Ann. § 36–1–113(f)(3) (2010 & Supp.2013) (permitting an incarcerated parent or guardian to participate by telephone in a hearing to terminate parental rights); Tenn.Code Ann. § 36–5–2316(f) (2010) (permitting a witness located in another state to testify by telephone in cases under the Uniform Interstate Family Support Act); Tenn.Code Ann. § 36–6–214(b) (2010) (permitting a witness located in another state to testify by telephone in cases under the Uniform Child Custody Jurisdiction and Enforcement Act).”).

### **Zoom Logistics For Court Proceedings**

- 1. Mute and Stop Video Button** – One shortcut for unmuting yourself is to hold down the spacebar. Once you release it, you will be back on mute. If you have difficulty at any time during the Zoom session with connectivity you may be able to fix it by stopping your video for about 5 seconds.
- 2. Renaming Yourself** – There is a small blue box up in the top right hand corner of your video box with a “...” Click that and you should have an option to “Rename”.
- 3. Speaker View vs. Gallery View** – In “Speaker View” you will see the current speaker. In “Gallery View” you will be able to see all the participants in the meeting in side-by-side boxes.

- a. Hide Self View – There is a small blue box up in the top right hand corner of your video box with a “...” Click that and you should have an option to “Hide Self View”. To turn this function off, go up to top right of main screen and click the button that says “Show Self View.” This function will allow you to remove your video box so it is not visible to you but will still be visible to the rest of the meeting participants.
- b. Pinning a Video – Go to the video box that you want to Pin. Click the “...” button in that video box and then click Pin Video. To stop this function go to the top left of the “Pinned video” box and click the button that says “Unpin Video.” This will allow you to view one participant in your primary window even when they are not speaking.

#### **4. Chat Function**

- a. Be careful to only chat with the person you want to chat with everyone.
- b. You can send a file through chat similar to attaching a document through e-mail. This is found in the chat box with the button labeled “File.”

#### **5. Share Screen Function**

##### **a. Drawing/Highlighting on Share Screen**

- i. Annotate function – The annotate function allows you to draw/highlight on a document. The participant sharing the screen can annotate on the document as well as other participants as well.
- ii. View Options – You may enlarge the Shared Screen for easier viewing by clicking Zoom ratio and making the shared screen bigger or smaller. This will only affect your individual screen and will not affect any other participants view of the shared screen.
- iii. Screenshot of Shared Screen – During the shared screen function any participant can take a “screenshot” of the shared screen by clicking on the annotate function and saving the shared screen to your computer.

- b. **Videos on Shared Screen – enable audio settings** – If you want to share a video that contains audio on the shared screen you need to click the small icon boxes in the shared screen function at the bottom left that says “Share Computer Sound” and “Optimize Screen Sharing For Video Clip.”

#### **6. Breakout Rooms**

##### **a. Manually assign them**

- i. Screen will pop up that says “The host is inviting you to join Breakout Room.”
  - ii. During court breaks, stay in the breakout room and the Zoom Court Administrator will bring a participant back in when it is time to start back court. The participant will see a timer for 60 seconds and each participant’s breakout room will automatically close at the end of 60 seconds or the participant can leave the breakout room once the participant see the prompt on your screen.
  - iii. There may be a time that the Zoom Court Administrator may broadcast a message to you in the breakout room and that will appear at the top of the screen in blue.
  - iv. Ask For Help Button – At the bottom of the screen there is an “ask for help” button where you can request the host to come into your breakout room if you have a problem.
  - v. Leave Breakout Room versus Leave Meeting buttons – When leaving the breakout room make sure that you click the correct button so that you only leave the breakout room and do not exit the entire meeting.
7. **How We Handle Court Breaks** – Generally, the Court will take a one hour lunch break and take a break every hour or hour and 15 minutes due to zoom fatigue. During these breaks, the Court will keep the Zoom live on YouTube and each participant will be sent to breakout rooms during the breaks.
8. **YouTube** – Part III livestreams the Zoom proceedings on a YouTube channel to ensure public access to the Court proceedings.
- a. Screen Crowding – Depending on the number of participants in the proceeding the Court may require some participants to view the proceeding on the YouTube channel.
  - b. Rule of Sequestration – Depending on the type of proceeding, Counsel will need to advise their clients/witnesses on the rule of sequestration and how it might apply to their witnesses testimony and ability to view the proceedings on YouTube. If the rule of sequestration is in place, then attorneys need to make sure that if the witness is not a party, corporate representative or expert witness, they may not access the YouTube channel until after their testimony.

**9. Recording Function** – If attorneys/court reporters want to record the proceedings on their computer or the cloud they will need to request this from the Zoom Court Administrator prior to the proceeding so that the function may be enabled at the beginning of the proceeding.

**10. Remote Witness Oath** – In order to comply with Tennessee law on testimony in open court by contemporaneous audio-visual transmission from a different location as provided in Rule 43.01 of the Tennessee Rules of Civil Procedure, the Court requires witnesses to confirm their identification with the Court by showing an official photo identification prior to testifying. *See, e.g., In re Leroy H.*, No. M201702273COAR3PT, 2018 WL 3700917, at \*6 (Tenn. Ct. App. Aug. 3, 2018) (“The court also required Mother to provide her driver’s license so that all parties were satisfied as to her identity.”). Additionally, the Court has added additional language to the witness oath to account for the witness testifying remotely:

Do you solemnly swear or affirm that the testimony you are about to give in this case is the truth, the whole truth and nothing but the truth so help you God.

Do you solemnly swear or affirm that while you are testifying during the trial you are not consulting any outside sources or information such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with your testimony.

Do you solemnly swear or affirm that you have not accessed the YouTube channel live streaming the trial of this case to view the testimony of other witnesses or the proceedings.

**11. Connection Issues** – If any participant has a connection issue during the proceeding first try turning off your video for approximately five seconds and then turn it back on. If multiple participants experience a connection issue then the Zoom Court Administrator with an issue we will all leave the meeting and rejoin.

**12. Zoom Link** – Attorneys are responsible for forwarding the Zoom link to their witnesses and the court reporter. The Zoom Court Administrator will provide Counsel with a separate Zoom link for each day of the trial so it is important that

the attorneys forward the correct Zoom link to their witnesses for access to the trial.

**13. Court Proceedings** – Generally, court proceedings on Zoom will go from 9:00 a.m. to 4:00 p.m. with a one hour lunch break. Attorneys and parties should join the Zoom meeting at 8:55 a.m. to enable the Zoom Court Administrator to work through any connectivity issues.

**14. Formal Court Proceeding/Background Distractions** – This is a formal court proceeding. As a result, it is important for everyone who is participating in the Zoom court proceeding to consider their dress attire, lighting/setup for participating by video, ceiling fans, and how to handle children, pets or other potential distractions.

**15. Exhibits** – Attorneys shall discuss with the Court in a pretrial conference how they intend to present any exhibits during the trial. In order to be deferential and fair to the witnesses, the Court may require Counsel to provide a hard copy notebook of exhibits to any witnesses prior to their testimony. In addition to any hard copy use for exhibits, it is preferable to also put up your exhibits on the shared screen for everyone to see during the proceeding.

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III**

<b>LIQUID METAL LLC,</b>	)	
	)	
<b>Plaintiff/Counter-Defendant,</b>	)	
	)	
<b>VS.</b>	)	<b>No. 18-726-III</b>
	)	
<b>BUSINESS AIRCRAFT</b>	)	
<b>LEASING, INC.,</b>	)	
	)	
<b>Defendant/Counter-Plaintiff.</b>	)	

**ORDER FROM APRIL 20, 2020 PRETRIAL CONFERENCE**

After conferring with Counsel in another Pretrial Conference conducted on April 20, 2020, the following is ORDERED.

1. Counsel will prepare a stipulation and file it with the Court containing a list of prenumbered trial exhibits. The stipulation shall specify the exhibits to which Counsel stipulate admissibility, authenticity, relevance, and/or that each side may use an exhibit for any purpose at trial. Also, a paper copy of the exhibits identified in the stipulation shall be placed in a Trial Notebook and shall be delivered by FedEx to the Chancellor and the Docket Clerk, Mrs. Smith, on or before April 25, 2020.

2. In addition to the Trial Notebook, Counsel shall collect documents, such as depositions, they may refer to during trial for impeachment or other purposes. Counsel have agreed that this Second Collection of Documents shall be delivered to the witnesses/parties along with the Trial Notebook, prior to trial, for them to have in their

possession to refer to at trial. This Second Collection of Documents shall not be delivered to the Chancellor or Docket Clerk.

3. Further, the exhibits in the Trial Notebook and the documents in the Second Collection of Documents shall be emailed to the Zoom Administrator, Justin Seamon, for him to have access to during the trial if needed for display on the screen.

4. A list of the exhibits in the Trial Notebook shall be provided to the Court Reporter in advance of the trial, and shall be emailed to the Docket Clerk, Mrs. Smith, in a Word format for use by the Clerk in keeping, during trial, a list of trial exhibits and in preparing the official list of exhibits at the conclusion of the trial.

5. The Court shall not admit into evidence as a trial exhibit depositions. To the extent deposition testimony is referred to during the trial for impeachment or other purposes, the depositions can be filed as part of the court file record after the trial in the event they are needed for reference by the Court of Appeals.

6. The Plaintiff's claim to quantify attorneys fees is severed from the trial of the case, and held in abeyance. In its judgment from the trial, the Court will rule whether the Plaintiff is entitled to recover its attorney fees but quantification shall be conducted in a separate proceeding after the Court has issued its trial ruling. A final order will not be issued until quantification of attorneys fees has been completed if the Plaintiff prevails.

7. Because of the Court's familiarity with the case from extensive pretrial motion proceedings, a fifteen minute opening statement for each side shall be sufficient with the Plaintiff, Liquid Metal, going first.



8. The order of proof at trial, Counsel have agreed, shall be, first, with Defendant's Counsel examining their corporate representative/witness, Mr. Mulle, on both the Counterclaim and defenses to the Complaint. Leading questions may not be used. Plaintiff's Counsel shall then cross-examine Mr. Mulle, on defenses to the Counterclaim and on the claims in the Complaint, and leading questions may be used throughout the examination of Mr. Mulle by Plaintiff's Counsel.

After Mr. Mulle's testimony is concluded, Plaintiff's Counsel shall examine its corporate representative/witness, Mr. Meyer, on both the claims in the Complaint and defenses to the Counterclaim. Leading questions may not be used. Defendant's Counsel shall then examine Mr. Meyer, and may use leading questions throughout, on their defenses to the Complaint and on the Counterclaim. This order of proof, with the Defendant's Counsel asking questions first, is agreed to by all to develop the testimony in chronological sequence with the events in issue.

9. With respect to Tennessee Civil Procedure Rule 41.02, the Court concludes that the triggering event of the Rule—"After the plaintiff . . . has completed the presentation of plaintiff's evidence"—will, given the order of proof specified in paragraph 8 above, coincide with the close of all the evidence. Accordingly, if any motions for involuntary dismissal are made by Counsel, that shall be done at the close of all proof.

10. Because of the Zoom medium being used to conduct the trial, breaks will be taken more frequently, on the hour, and at the change up of attorneys examining a witness, and the change up of witnesses. The trial is scheduled for two days. It shall begin April 28,

2020, at 9:00 a.m. and shall proceed through 4:30 p.m. with a one-hour lunch break, on each day.

11. Public access to the trial shall be provided by YouTube in conjunction with Zoom and may be accessed by:

[https://www.youtube.com/channel/UCuNineZn10V2mXhMr6WqFwx/videos?view\\_as=subscriber](https://www.youtube.com/channel/UCuNineZn10V2mXhMr6WqFwx/videos?view_as=subscriber)

12. An appointment with Counsel, the Court Reporter and the parties/witnesses is scheduled for April 21, 2020, at 3:00 p.m. with the Zoom Administrator, Justin Seamon, on Zoom logistics and to familiarize all with the capabilities and options of the Zoom medium in preparation for trial.

13. In advance of trial, Counsel shall each notify their party/witness that at the beginning of their testimony the party/witness will be required to produce and display their driver's license to confirm identity. *See, e.g., In re Leroy H.*, No. M201702273COAR3PT, 2018 WL 3700917, at \*6 (Tenn. Ct. App. Aug. 3, 2018) (“The court also required Mother to provide her driver's license so that all parties were satisfied as to her identity.”). In addition, Counsel shall notify their party/witness in advance of trial that the oath in this case shall be supplemented to add that the witness affirms that during their testimony they are not consulting any outside sources or information such as cell phone, smartphone, computer, the internet, any text or instant messaging service, e-mail, any chat room, blog, or website such as Facebook, Myspace, LinkedIn, YouTube, or Twitter to communicate with anyone or to obtain any information or consultation in conjunction with their testimony.

s/ Ellen Hobbs Lyle  
ELLEN HOBBS LYLE  
CHANCELLOR

cc: Due to the pandemic, and as authorized by the March 25, 2020, Tennessee Supreme Court Order *In Re: COVID-19 Pandemic*, through April 30, 2020, copies will be sent only electronically to those whose email addresses are on file with the Court. If you fit into this category but nevertheless require a mailed copy, call 615-862-5719 to request a copy by mail.

For those who do not have an electronic address on file with the Court, your envelope will be hand-addressed and mailed with the court document enclosed, but if you have an email address it would be very helpful if you would provide that to the Docket Clerk by calling 615-862-5719.

Griffin S. Dunham  
Henry E. (“Ned”) Hildebrand, IV  
Thor Urness  
Jeffrey L. Allen  
Brian H. Meldrum

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

NISSAN NORTH AMERICA, INC., )  
)  
Plaintiff, )  
)  
vs. ) No. 16-0883-BC  
)  
WEST COVINA NISSAN, LLC; )  
UNIVERSAL CITY NISSAN, INC.; )  
GLENDALE NISSAN/INFINITI, INC.; )  
MICHAEL SCHRAGE; ALEXIS )  
SCHRAGE, THE NAMED EXECUTOR )  
OF THE ESTATE OF JOSEPH SCHRAGE;) )  
STACY STEPHENS; JEFF HESS and )  
EMIL MOSHABAD, and LEONARD )  
SCHRAGE, )  
Defendants. )  
\_\_\_\_\_)  
)  
WEST COVINA NISSAN, LLC, )  
)  
Third- Party Plaintiff, )  
)  
vs. )  
)  
KEITH JACOBS, )  
)  
Third-Party Defendant. )

**INSTRUCTIONS FOR 4/23/2020 10:30 A.M. HEARING**  
**TO BE CONDUCTED BY ZOOM**

On April 23, 2020, at 10:30 a.m. CDT, oral argument shall be conducted on summary judgment motions filed in this case.

Pursuant to the March 25, 2020 Order of the Tennessee Supreme Court *In Re: COVID-19 Pandemic*, No. ADM2020-00428, the oral argument shall not be conducted in the courtroom in person. The oral argument shall be conducted by using Zoom.

The Court's Zoom administrator is staff attorney Justin Seamon. He will email a link to Counsel to access and participate in the Zoom hearing. In addition, Counsel may forward that link to persons who wish to watch and listen to the oral argument.

Chancellor Lyle will have at her location exhibits that have been filed to access and view during the hearing. Also Zoom has the capability for documents to be displayed on the screen during the argument. If you wish to use that function or have other questions about Zoom logistics, contact the Docket Clerk (615-862-5719) for her to schedule a time for Mr. Seamon to provide you instructions.

s/ Ellen Hobbs Lyle  
ELLEN HOBBS LYLE  
CHANCELLOR  
BUSINESS COURT DOCKET  
PILOT PROJECT

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Eugene N. Bulso, Jr.  
Paul Krog  
Steven A. Nieters  
Attorneys for Nissan North America, Inc.

Sam D. Elliott  
Wade K. Cannon  
Louis W. Pappas  
Attorneys for Jeff Hess

Todd E. Panther  
Attorney for Keith Jacobs

Mark Freeman  
Michael Wrenn  
Attorneys for Stacy Stephens

Steven A. Riley  
Milton S. McGee, III  
David Thomas Bartels  
Attorneys for Michael Schrage and Alexis Schrage, the Named Executor of the  
Estate of Joseph Schrage

Byron R. Trauger  
Paul W. Ambrosius  
Kathryn A. Stephenson  
Steven M. Goldberg  
Kishan H. Barot  
Edward S. Zusman  
Attorneys for Leonard Schrage

Charles Cook III  
Ori Samuel Blumenfeld  
Attorneys for the Receiver

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

NISSAN NORTH AMERICA, INC., )  
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Plaintiff, )  
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vs. ) No. 16-0883-BC  
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WEST COVINA NISSAN, LLC; )  
UNIVERSAL CITY NISSAN, INC.; )  
GLENDALE NISSAN/INFINITI, INC.; )  
MICHAEL SCHRAGE; ALEXIS )  
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EMIL MOSHABAD, and LEONARD )  
SCHRAGE, )  
Defendants. )  
\_\_\_\_\_)  
)  
WEST COVINA NISSAN, LLC, )  
)  
Third- Party Plaintiff, )  
)  
vs. )  
)  
KEITH JACOBS, )  
)  
Third-Party Defendant. )

**ORDER ON 4/23/2020 SUMMARY JUDGMENT ORAL ARGUMENT**

On April 23, 2020, at 10:30 a.m. CDT, oral argument shall be conducted by use of

Zoom on the following summary judgment motions:

- *Defendant Leonard Schrage's Motion for Partial Summary Judgment on Nissan's Claims that He Is the Alter Ego of the Entities of Which He Is a Partial Owner*, filed February 21, 2020;

- *Defendant Leonard Schrage’s and Receiver Byron Moldo’s Motion for Partial Summary Judgment on the Plaintiff’s Eighth Count for Violation of Tennessee’s Uniform Fraudulent Transfer Act*, filed February 21, 2020;
- *Defendant Leonard Schrage’s and Receiver Byron Moldo’s Motion for Partial Summary Judgment Concerning Damages Arising from Universal City Nissan, LLC and Glendale Nissan/Infiniti, Inc.*, filed February 21, 2020; and
- *Defendant Leonard Schrage’s Motion for Summary Judgment on the Grounds that the Court Lacks Personal Jurisdiction*, filed February 24, 2020.

With respect to conducting the oral argument the following is ORDERED.

1. All the summary judgment motions shall be presented together at the outset.

Counsel for Leonard Schrage and Byron Moldo can determine the order in which they shall present the motions.

2. Following argument in support of all the summary judgment motions, Plaintiff shall present its opposition to all the motions. In addition, Plaintiff shall provide the Court its detailed surreply to the evidentiary objections stated in the replies filed by the Movants on April 20, 2020.

3. Three and one-half hours from 10:30 a.m. to 2:15 p.m. have been reserved for oral argument, with two hours allotted to the Movants for direct and reply argument, and an hour and one-half to Plaintiff for opposition, and a fifteen minute break.



4. Only the Movants and the Plaintiff shall present oral argument. Counsel for other parties may view the oral argument by using the link emailed by the Court Staff Attorney.

s/ Ellen Hobbs Lyle  
ELLEN HOBBS LYLE  
CHANCELLOR  
BUSINESS COURT DOCKET  
PILOT PROJECT

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# EXHIBIT A

**IN THE CHANCERY COURT FOR  
THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT**

SAVE OUR FAIRGROUNDS Individually )  
and EX REL, NASHVILLE FLEA MARKET )  
VENDORS ASSOCIATION, NEIL CHAFFIN, )  
SHANE SMILEY, DUANE DOMINY, RICK )  
WILLIAMS, JAMES TACKER, and )  
GEORGE GRUHN, )

Plaintiffs, )

v. )

Case No. 18-952-III )  
Chancellor Ellen Hobbs Lyle )

METROPOLITAN GOVERNMENT OF )  
NASHVILLE AND DAVIDSON COUNTY, )  
TENNESSEE, )

Defendant, )

and )

NASHVILLE SOCCER HOLDINGS, LLC, )  
and WALSH MANAGEMENT LLC, )

Intervening Defendants. )

---

**[PROPOSED] ORDER SETTING DEPOSITION PROCEDURES**

---

Having considered the written submissions of the parties and the hearing on Intervening Defendants’ motion, and in light of the COVID-19 pandemic, the federal state, and local guidelines related to mitigation and social distancing currently in force, and for the safety of the litigants, witnesses, and third parties, this Court is ordering the following procedures for the taking of depositions in this matter. These procedures shall be in effect until the Court issues an order revoking them.

In ordering these procedures, the Court has made its best efforts to comply with the letter and spirit of Rules 26, 28, and 30 of the Tennessee Rules of Civil Procedure. To the extent these procedures directly conflict with any of those rules, these procedures shall govern. Nothing in this order shall be construed to otherwise effect any other rule of civil procedure or evidence.

### **DEPOSITION PROCEDURES**

1. Depositions shall be taken via video conference, with each witness, attorney, court reporter, and any others in attendance in separate locations (“Participants”).
2. Depositions shall be hosted by and conducted upon Zoom Video Communications, Inc.’s, platform, which can be found at <https://www.zoom.us>.
3. The notice of deposition shall provide a link to use to login to the video conference.
  - a. The noticing party must password protect each video conference and shall provide that password in the notice of deposition.
  - b. The noticing party may use the recording feature to record the deposition. If the noticing party intends on using the recording feature, it must state as much in the notice of deposition.
  - c. The video conference should begin at least 15 minutes before the deposition is scheduled to start to allow any technical issues to be resolved prior to the start of the deposition.
4. The noticing party must enable the feature that overlays and records the date and time on the video.
5. Participants should login to the video conference at least 10 minutes before the deposition is scheduled to start to allow any technical issues to be resolved prior to the start of the deposition.
6. Any Participant that will speak on the record during the deposition shall appear via video, as opposed to appearing via audio only.
7. At the outset of each deposition, the court reporter shall:
  - a. State his / her name, business name, and business address;
  - b. State the current date and time;
  - c. State the caption of the case;
  - d. State the name of the witness;

- e. State the name of the party on whose behalf the deposition is being taken;
- f. State any stipulations of the parties;
- g. Request each Participant state his / her name for the record;
- h. Request the witness to display appropriate identification close enough to the camera for the court reporter to read; and
- i. Administer the oath to the witness.

8. If a break is taken during the deposition, the court reporter shall announce the time the break is taken and the time the deposition resumes. If the deposition is being recorded, the recording shall be paused at the time of any break and resumed when the break is over.

9. Exhibits shall be displayed to Participants through the screen sharing feature.

- a. If the examining attorney wishes to show the witness any document, the document shall both be displayed via the screen sharing feature and simultaneously provided to Participants via the file transfer feature.
- b. In Zoom, the file transfer feature is accessed by clicking on “Chat,” clicking on “More” next to the “To:” line, and then clicking on “Share file in meeting.”
- c. As requested by the examining attorney, the court reporter shall mark exhibits consecutively, starting with the #1.

10. No attorney shall engage in any private chat with the witness during the deposition. In addition, no attorney will use any other means of communication to communicate with the witness during the deposition except if there is a medical emergency, the witness can no longer continue the deposition, or if there are technical issues whereby the examining and defending attorneys agree separate communications with the witness are necessary. To the extent the witness’s attorney wishes to communicate with the witness during breaks, that is allowed, subject to any applicable rules of evidence, procedure, or common law.

11. If the attorneys need to have a discussion away from the witness, a Zoom “break out” room should be utilized for this purpose. Alternatively, the attorneys may have a conference call outside the presence of the witness.

12. The attorney for the noticing party shall be responsible for making sure Participants are present and logged on during the deposition. If any Participant drops off, the attorney for the noticing party shall ask for a break until all Participants are back.

- a. In Zoom, the noticing attorney can view current Participants during the meeting by clicking “Manage Participants” in the “Meeting Control” bar.

13. If the attorney for the noticing party experiences any technical difficulties during the deposition, he / she may advise Participants that he / she will clicking the “End Meeting” button and advise Participants to use the meeting link provided in the notice to rejoin the meeting five minutes later.

- a. If this occurs, for depositions being recorded, a new recording file will be created. As a result, recordings of depositions may consist of more than one file.
- b. If the technically difficulty cannot be resolved, the deposition shall be continued to a later date to be agreed upon by the parties.

IT IS SO ORDERED this \_\_\_\_ day of April, 2020.

---

Chancellor Ellen Hobbs Lyle

Submitted for entry by:

/s William N. Helou

William N. Helou (#22839)

WSMLEGAL PLLC

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and

/s John J. Hamill

John J. Hamill (admitted *pro hac vice*)

Kenneth M. Schmetterer (same)

Mary Shepro (same)

Matthew Freilich (same)

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*Attorneys for Nashville Soccer Holdings, LLC,  
and Walsh Management LLC*

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

HUNTER DEMSTER, EARLE J. )  
FISHER, JULIA HILTONSMITH, )  
GINGER BULLARD, JEFF BULLARD, )  
ALLISON DONALD, and )  
#UPTHEVOTE901, )  
Plaintiffs, )  
vs. )  
TRE HARGETT, MARK GOINS )  
WILLIAM LEE, and HERBERT )  
SLATERY III, each in his )  
official capacity for the State of Tennessee, )  
Defendants. )

Docket No. 20-0435-I(III)

Method of Service:  
 Davidson County Sheriff  
 Commissioner of Insurance  
 Secretary of State  
 Out of County Sheriff  
 Attorney

**ORDER SETTING 5/28/2020 TEMPORARY INJUNCTION HEARING**

It appearing to the Court that the Plaintiffs have filed an application for a temporary injunction pursuant to Rule 65.02, Tennessee Rules of Civil Procedure, it is therefore ORDERED that a hearing shall be conducted on the 28th day of May 2020 at 11:00 a.m., before Part III of this court. No oral testimony shall be presented at the May 28, 2020 hearing. The hearing shall be conducted on affidavits and/or declarations, and argument of Counsel, as per Local Rule 19.04. Opposition to the application for a temporary injunction shall be filed by noon on May 22, 2020. The Reply deadline is May 27, 2020 at noon.

Additionally, Counsel are ORDERED to provide in their filings an e-mail address for the Court Staff Attorney to send a Zoom invitation link as the hearing shall be conducted by Zoom video-conferencing, which requires a smart phone, tablet, or a computer with a camera, or alternatively participation by telephone (audio only). Plaintiffs' Counsel is responsible for securing proper service of process of this Order.

*s/ Ellen Hobbs Lyle*  
ELLEN HOBBS LYLE  
CHANCELLOR

Issued this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ .M.

MARIA SALAS, Clerk and Master By \_\_\_\_\_ D.C. & M.

ATTORNEY FOR \_\_\_\_\_ – PHONE NUMBER \_\_\_\_\_

Received this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Sheriff – Deputy Sheriff

**RETURN ON SERVICE**

I hereby certify and return that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I served a true copy of this order upon \_\_\_\_\_ as follows: \_\_\_\_\_

\_\_\_\_\_  
Sheriff – Deputy Sheriff – Special Officer