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 15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN FRANCISCO DIVISION

18 NEWCAL INDUSTRIES, INC., *et al.*,

Civil No. 04-2776 JSW

19 Plaintiffs,

20 v.

21 IKON OFFICE SOLUTIONS, INC., *et al.*,

22 Defendants.

23 GLOBAL SERVICES, LLC, *et al.*,

Civil No. 10-5974 JSW

24 Plaintiffs,

25 v.

26 IKON OFFICE SOLUTIONS, INC., *et al.*,

27 Defendants.

**~~PROPOSED~~ STIPULATION AND  
 PROTECTIVE ORDER  
 REGARDING EXPERT DISCOVERY  
 FOR RELATED CASES**

Judge: Hon. Jeffrey S. White

1 In order to avoid consuming the parties' and the Court's time and resources on potential  
 2 discovery issues relating to experts, plaintiffs Newcal Industries, Inc., CPO, Ltd., Pinnacle  
 3 Document Systems, Inc., Pacific Office Automation, Inc. and Kearns Business Solutions, Inc.  
 4 (collectively the "Newcal Plaintiffs"), plaintiffs Global Services, LLC, Simile Imaging Solutions,  
 5 Wood Business Systems, New England Copy Specialists, Inc., Ray Morgan Company,  
 6 Documation of Austin, Inc., Documation of East Texas, Inc., Documation of North Texas, Inc.,  
 7 Documation of San Antonio, Inc., Copytex, Inc., and ASI Business Solutions, Ltd. (collectively,  
 8 "Global Services Plaintiffs") and defendants IKON Office Solutions, Inc. ("IKON") and General  
 9 Electric Capital Corporation ("GECC") d/b/a IKON Financial Services (collectively,  
 10 "Defendants" and, together with Newcal Plaintiffs and Global Services Plaintiffs, the "Parties")  
 11 have agreed to certain limitations on the scope of expert-related discovery. Subject to the  
 12 Court's approval, the Parties hereby stipulate to the following Stipulation and Protective Order  
 13 Regarding Expert Discovery ("Expert Discovery Stipulation").

14 1. Rule 26(b)(4), Fed. R. Civ. P., including amendments that became effective on  
 15 December 1, 2010, shall govern the scope of expert discovery in both *Newcal Industries, Inc. v.*  
 16 *IKON Office Solutions, Inc.*, No. 04-2776 JSW and in the related case of *Global Services, LLC v.*  
 17 *IKON Office Solutions, Inc.*, No. 10-5974 JSW.

18 2. In addition to the protections set forth in Rule 26(b)(4), Rules 26(b)(3)(A) and  
 19 (B), Fed. R. Civ. P., shall protect the following:

20 a. Communications (regardless of their form) between any witness required  
 21 to provide a report under Rule 26(a)(2)(B) (the "Expert") and the Expert's assistants or staff,  
 22 other experts, or non-testifying expert consultants, except to the extent that the communications:  
 23 (i) relate to compensation for the Expert's study or testimony; (ii) identify facts or data that were  
 24 provided to the Expert and that the Expert considered in forming the opinions to be expressed in  
 25 these matters; or (iii) identify assumptions that were provided to the Expert and that the Expert  
 26 relied on in forming the opinions to be expressed in these matters; and

27 b. Notes, memoranda, and writings taken or prepared by the Expert in  
 28 connection with these matters, except to the extent that they: (i) relate to compensation for the

1 Expert's study or testimony; (ii) identify facts or data that the Party's attorney provided and that  
2 the Expert considered in forming the opinions to be expressed in these matters; or (iii) identify  
3 assumptions that the Party's attorney provided and that the Expert relied on in forming the  
4 opinions to be expressed in these matters; or

5 c. Preliminary, intermediate or draft materials (including, but not limited to,  
6 draft reports, draft studies, draft work papers; preliminary or intermediate calculations,  
7 computations or data runs) prepared by, for or at the direction of the Expert; provided, however,  
8 that any documents, data or materials relied on by the Expert or customized computer programs  
9 used to generate final results relied on by the Expert shall be subject to discovery and shall be  
10 produced.

11 3. In addition to the limitations on discovery set forth in Paragraphs 1 and 2 above,  
12 the Parties agree that any data or information that may have been considered by the Expert but  
13 was not relied on by the Expert in forming his or her opinions in these matters need not be  
14 disclosed or produced. Nothing in Paragraphs 1, 2, or 3, however, shall be construed to prevent  
15 substantive deposition questions with respect to any non-privileged data or information that may  
16 be relevant to the substance of the Expert's opinions, including, but not limited to, alternative  
17 theories, methodologies, variables, or assumptions that the Expert may have considered in  
18 formulating his or her opinions or in preparing his or her report.

19 4. The Parties agree that no Party may discover or permit testimony about facts  
20 known, opinions held or documents prepared, collected or considered by a non-testifying expert  
21 or consultant, unless they were provided to and considered by the testifying Expert in forming  
22 his or her opinions in these matters.

23 5. Neither the terms of this Expert Discovery Stipulation nor the Parties' agreement  
24 to them implies that any of the information restricted from discovery in this stipulation would  
25 otherwise be discoverable.

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1           6.       The Parties agree to comply with this Expert Discovery Stipulation pending the  
2 Court's approval and entry of this order.<sup>1</sup>

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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

5 DATED: August 26, 2011

6 BINGHAM McCUTCHEN LLP

7  
8 By: \_\_\_\_\_ /s/  
9 Holly A. House  
10 Attorneys for Defendant  
11 IKON Office Solutions, Inc.

12 DATED: August 26, 2011

13 MUNGER TOLLES & OLSON LLP

14 By: \_\_\_\_\_ /s/  
15 Joseph D. Lee  
16 Attorneys for Defendant  
17 General Electric Capital Corporation


18 DATED: August 26, 2011

19 HENNEFER, FINLEY & WOOD, LLP

20 By: \_\_\_\_\_ /s/  
21 James A. Hennefer  
22 Attorneys for Plaintiffs

23 IT IS SO ORDERED:

24 DATED: August 29 \_\_\_\_\_, 2011

25 By:  \_\_\_\_\_  
26 Jeffrey S. White  
27 United States District Court Judge

28  
<sup>1</sup> Holly A. House, counsel for IKON, has obtained the consent of Joseph D. Lee and James A. Hennefer to file this document.