

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	Chapter 11
)	Case No. 12-10202 (ALG)
Debtors.)	(Jointly Administered)
SHUTTERFLY, INC.,)	
v.)	
)	Adv. Proc. No. 13-01310 (ALG)
KODAK IMAGING NETWORK, INC. and EASTMAN KODAK COMPANY,)	
Defendants.)	

JOINT PROPOSED DISCOVERY PLAN

Pursuant to Rule 7026 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 26(f) of the Federal Rules of Civil Procedure, Plaintiff Shutterfly, Inc. (“**Shutterfly**”) and Defendants Kodak Imaging Network, Inc. and Eastman Kodak Company (collectively, “**Kodak**” and, together with Shutterfly, the “**Parties**”), respectfully propose the following discovery plan for the above-captioned adversary proceeding:

A. Disclosures Under Federal Rule of Civil Procedure 26(a)

The Parties shall exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) on **September 3, 2013**. At present, the Parties do not believe any changes to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.



the timing, form or requirement for disclosures under Federal Rule of Civil Procedure 26(a)(2)-(4) are necessary. Each Party reserves the right to propose any such changes that they later deem appropriate.

B. Discovery Subjects and Timing

1. Potential Discovery Subjects

At present, the Parties believe that the subjects on which discovery may be needed include²:

1. The Transfer Agreement including:
 - a. The Parties' negotiations preceding the execution of the Transfer Agreement
 - b. The terms of section 5.6 of the Transfer Agreement
 - c. Disputes between the Parties concerning the Transfer Agreement following its execution
2. The Kodak Gallery business including:
 - a. The scope of services offered during its operation
 - b. The technology used in its operation
3. The "My Kodak Moments App" including:
 - a. Its conception, development and creation
 - b. Its public launch
 - c. The scope of services offered
 - d. The technology used in its operation
 - e. Revenues generated through its operation
4. Kodak's Retail Systems Solutions business, including:
 - a. Its business lines and services

² Capitalized terms used herein and not otherwise defined have the meanings ascribed in Shutterfly's complaint filed in this adversary proceeding [Docket No. 1].

- b. Kodak's public and internal descriptions of its business lines
- 5. The period of time that preceded Shutterfly taking steps to address Kodak's alleged breach of the Transfer Agreement; and
- 6. Any Shutterfly services that are allegedly affected by the "My Kodak Moments App"

The enumeration of potential discovery subjects herein is without prejudice to either Party's ability to (i) object to any discovery request when made or (ii) seek discovery on any subject permitted under the Bankruptcy Rules, the Federal Rules of Civil Procedure or the Federal Rules of Evidence.

2. Discovery Timing

Unless otherwise agreed by the Parties or ordered by the Court, the Parties agree that discovery in this adversary proceeding shall be governed by the Bankruptcy Rules and any applicable Federal Rules of Civil Procedure. The Parties agree that they may serve discovery pleadings by email so long as the pleading is emailed to at least two attorneys of record representing each party being served. The dates set forth herein are without prejudice of any Party to seek an extension of time for any discovery deadline.

The Parties propose that fact discovery (including each Party's production obligations) shall commence on **September 6, 2013** and shall be completed by **November 27, 2013**.

After each Party has had a reasonable opportunity to review the documents produced in response to initial document requests, the Parties shall exchange a list of non-expert witnesses that each Party wishes to initially depose, and the Parties shall meet and confer to discuss the scheduling of such depositions no later than **October 21, 2013**. The foregoing exchange of lists shall not prejudice any Party's right to seek additional depositions based on information subsequently obtained through discovery.

To the extent expert discovery is pursued by either Party, the Parties propose that such discovery be completed by **December 20, 2013**.

C. Discovery of Electronically Stored Information

The Parties agree to produce electronically stored information in a mutually acceptable electronic format, including “.tiff” image files. Each Party will bates number the documents it produces in a uniform manner.

D. Protection of Privileged and Confidential Materials

The Parties intend to request that this Court enter an order incorporating the terms of the Parties’ agreement regarding, *inter alia*, the confidentiality of materials produced during discovery and the assertion of privilege following any inadvertent production or disclosure of any document or other material protected by the attorney-client privilege, work product protection or a joint defense/common interest privilege.

E. Other Agreed Upon Items

Shutterfly shall be allowed to join additional parties and to amend its pleadings until October 14, 2013.

Kodak shall be allowed to join additional parties and to amend its pleadings until October 28, 2013.

All potentially dispositive motions shall be filed by February 10, 2014.

Dated: August 8, 2013
New York, New York

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