

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

NITRO DISTRIBUTING, INC., et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 03-3290-CV-S-RED
)	
ALITCOR, INC., et al.,)	
)	
Defendants.)	

STIPULATED ORDER

Now pending before the Court is the parties' Joint Motion for Entry of Stipulated Order (Doc. 25). Upon due consideration, the motion is **GRANTED**. Upon the joint stipulation of the plaintiffs and defendants in the above-styled action, the Court hereby enters the following Stipulated Order:

IT IS HEREBY ORDERED

1. In light of the dismissal without prejudice of the arbitration proceeding pursued by Defendants before JAMS/Endispute, Inc., Plaintiffs' Motion to Stay Arbitration Pending Determination of Arbitrability (Doc. 20) is **DENIED AS MOOT**. Defendants agree not to refile the arbitration action against any of the respondents named in the current arbitration which is being dismissed without prejudice, unless or until the Court rules on Defendants' Motion to Dismiss or in the Alternative to Stay the Case and Compel Arbitration, consistent with the Court's decision on said motion.

2. Discovery pursuant to Fed. R. Civ. P. 26 is stayed, with the exception of discovery

related to issues of arbitrability, which has been raised in Defendants' Motion to Dismiss, or in the Alternative, to Stay the Case and Compel Arbitration. Absent leave of Court, each side may take up to five depositions on issues of arbitrability and pursue full written discovery, including interrogatories and document requests, with the limitation that each side may serve no more than fifteen (15) interrogatories related to arbitrability. Subject to these limitations, the parties retain all rights to object to discovery on grounds recognized by the Federal Rules of Civil Procedure.

3. In furtherance of this stipulation, the following schedule is hereby entered:
 - A. Between now and March 31, 2004, the parties shall engage in discovery, including depositions and written discovery, related to arbitrability issues, subject to paragraph 2 above.
 - B. On March 31, 2004, discovery on arbitration issues shall close.
 - C. On or before March 10, 2004, Plaintiffs shall file their suggestions in opposition to Defendants' Motion to Dismiss or in the Alternative to Stay Litigation and Compel Arbitration.
 - D. On or before April 7, 2004, Defendants shall file their reply suggestions in support of their Motion to Dismiss or in the Alternative to Stay Litigation and Compel Arbitration.
 - E. If Plaintiffs elect to file a sur-reply brief in opposition to Defendants' Motion to Dismiss or in the Alternative to Stay Litigation and Compel Arbitration, Plaintiff shall seek leave of court to do so by April 14, 2004.
 - F. If the Court denies Defendants' Motion to Dismiss or in the Alternative to Stay Litigation and Compel Arbitration in whole or in part, then consistent with the Court's decision on said motion, the partial stay of Rule 26 shall immediately cease and the parties shall hold their Rule 26(f) conference on the merits of their respective claims and defenses within twenty (20) days after entry of such ruling.
 - G. Within ten (10) days after the parties' Rule 26(f) conference, the parties shall make their Rule 26(a)(1) disclosures.
 - H. Within twenty (20) days after the parties' Rule 26(f) conference, the parties

shall file a proposed scheduling order with the Court. The proposed Plan shall comply with Local Rules, including 16.1(d), 16.1(f), 26.1(c) and 26.1(d). The proposed Plan shall also state whether the case will be tried to the Court or to a jury and the anticipated length of the trial. In accordance with Local Rule 16.1(d), Plaintiffs' counsel shall take the lead in preparing the proposed Plan.

IT IS SO ORDERED.

DATE: October 24, 2003

/s/ Richard E. Dorr
RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT