IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, FLORIDA

Division: Civil Jury

In Re: All Pending Civil Cases
Assigned To Judge Metzger-Civil Jury Division

_____/

CIVIL JURY DIVISION STANDING ORDER ON ELECTRONICALLY STORED INFORMATION DISCOVERY

In all cases assigned to this division in which Plaintiff designated on Form 1.997 (Civil Cover Sheet) this matter constitutes a business tort, products liability matter, professional malpractice, antitrust/trade regulation, business transaction, intellectual property, shareholder derivative action, securities litigation or otherwise may involve trade secrets, the Court sua sponte, pursuant to Fla. R. Civ. P. 1.200, hereby ***orders*:**

1. Plaintiff shall serve this order upon counsel for Defendant within **20 days** of the first appearance of counsel for Defendant and shall schedule a meet and confer with counsel for Defendant within sixty (60) days of such service.

2. At the meet and confer, both counsel for Plaintiff and Defendant shall be prepared to discuss in detail, and will actually discuss:

   a. Whether this matter should be considered Complex Litigation pursuant to Rule 1.201, including the factors in Rule 1.201(2) as to which there is mutual agreement;

   b. The identity, employment position and employment address of electronically stored information (ESI) custodians who exist for each of their respective clients;

c. The structure of each of their client's respective computer systems and a descriptive identification of all relevant software, including the identity and number of servers, computers, electronic devices, and email accounts that may contain relevant information or information that would potentially lead to the discovery of admissible evidence in this matter;

d. The existence and nature of ESI preservation policies, whether, when, and how a litigation hold was placed on ESI, the possibility of agreements regarding the extent to which ESI should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources;

e. The need for an ESI disclosure clawback agreement beyond Fla. R. Civ. P. 1.285;

f. The scope, estimated cost, and estimated time for completion of ESI discovery required for the claims/counterclaims alleged in accordance with Fla. R. Civ. P. 1.280;

g. Whether any ESI issues may significantly protract this litigation, and if so, how such issues may be most efficiently mitigated; and

h. Whether the parties can case manage their own electronical discovery by a written stipulation or an Agreed Court Order. To facilitate the discussion, a detailed *Stipulation Establishing Electronic Discovery Protocol,* available on the website of the Business Law Section of The Florida Bar, is attached hereto as Exhibit A. In addition, a copy of the Stipulation in Word format can be found on the Court's website. In the event the parties are unable to agree on the form of such a

Stipulation or Agreed Order, the parties shall present their respective proposed orders to the Court for consideration (per Judge Metzger's guidelines) within 15 days of the meet and confer. The Court prefers, if possible, a single proposed order in Microsoft Word format with "redline" or "blackline" annotations indicating to the Court the areas of disagreement within the proposed order between the parties and any alternative provisions proposed by the objecting party. Any party may request a hearing to make argument regarding the form of the proposed order **after** proposed orders with "redline" or "blackline" annotations have been submitted to the Court for consideration.

3. Counsel for the Parties shall jointly prepare and file a short Notice of Compliance confirming they have met the requirements of paragraphs 1 and 2 of this order. If the Report is filed within 15 days of the meet and confer, counsel for the parties need take no further action to comply with this Order, absent further motion by the parties or order of this Court. If the Notice of Compliance is not filed within 15 days of the meet and confer, Plaintiff shall schedule a 15-minute Case Management Conference pursuant to 1.200(a) to address specific issues that have resulted in the lack of compliance.

Done and Ordered in Chambers, at Stuart, Martin County, Florida.

Elizabeth A. Metzger
Circuit Judge

A copy of this order is being served on the following parties via the e-filing portal: (Include the parties with email addresses)

Counsel for (insert the moving party, e.g. plaintiff, defendant, etc.) shall serve a copy of this order on the following parties immediately and file a certificate of service in this court file: (Include parties with physical addresses)

STIPULATION ESTABLISHING
ELECTRONIC DISCOVERY PROTOCOL

I. Definitions

A. "Electronically stored information:" or "ESI," as used herein, means, and refers to computer generated information or data of any kind, stored in or on any storage media located on computers, files servers, disks, tape or other real or virtualized devices or media. Non limiting examples of ESI include:

- Digital Communications (e.g., e-mail, voice mail, instant messaging, tweets, etc.);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB);
- Word Processed Documents (e.g., Word or WordPerfect files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TFF, .JPG, .GIF images);
- Sound Recordings (e.g., .WAV and .MP3 files);
- Video and Animation (e.g., .AVI and .MOY files);
- Databases (e.g., Access, Oracle, SQL Server data, SAP, other);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations);
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and
- Backup and Archival Files (e.g., Veritas, Zip, GHQ).

B. "Native data format" means and refers to the format of ESI in which it was generated and/or as used by the producing party in the usual course of its business and in its regularly conducted activities.

C. "Metadata" means and refers to information about information or data about data, and includes, without limitation: (i) information embedded in or associated with a native file that is not ordinarily viewable or printable from the application that generated, edited, or modified such

native file which describes the characteristics, origins, usage and/or validity of the electronic file and/or (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.

D. "Static Image" means or refers to a representation of ESI produced by converting a native file into a standard image format capable of being viewed and printed on standard computer systems.

E. "Documents" includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data, data records or data compilations-stored in any medium (including cloud-based or cloud sourced media) from which information can be obtained.

F. "Media" means an object or device, real or virtualized, including, but not limited to a disc, tape, computer, or other device, on which data is or was stored.

II. Search Terms for Electronic Documents

The parties agree that they will cooperate in good faith regarding the disclosure and formulation of appropriate search methodology, terms, and protocols in advance of any ESI search. With the objective of limiting the scope of review and production, and thereby reducing discovery burdens, the parties agree to meet and confer as early as possible, and in advance of any producing party search commencement, to discuss, *inter alia:*

- Search methodology (Boolean, technology assisted review)
- Pre-search-commencement disclosure of all search terms, including semantic synonyms. Semantic synonyms shall mean without limitation code words, terms, phrases or illustrations, acronyms, abbreviations, or non-language alphanumeric associational references to relevant ESI, or information that may lead to relevant ESL
- Search protocol (algorithm selection, etc.)
- Post-search error sampling and sampling/testing reports.

The parties will continue to meet and confer regarding any search process issues as necessary and appropriate. Nothing in this protocol, or the subsequent designation of any search terms, shall operate to limit a party's obligations under the Florida Rules of Civil Procedure and applicable decisional authority to otherwise search for and produce any requested non-privileged relevant evidence, or information that could lead to relevant evidence. This ESI protocol does not address or resolve any other objection to the scope of the parties' respective discovery requests.

III. Format Of Production

A. Native File Format. The parties agree that production will be made in native format, as the ESI exists on the producing party's computer system. Where structured data (e.g., data from a database) is requested, appropriate queries will be used to extract relevant data from any such database, which data shall match specified criteria, and returning specified fields, in a form and format that is verifiably responsive and readable by the use of commonly available tools. If a producing party asserts that certain ESI is inaccessible or otherwise unnecessary or inadvisable under the circumstances, or if the requesting party asserts that, following production, certain ESI is not reasonably usable, the parties shall meet and confer with their respective technology experts to discuss resolving such assertions. If the parties cannot resolve any such disputes after such a meet and confer has taken place, the issue shall be presented to the Court for resolution.

B. Document Image Format. Unless otherwise agreed to in writing by a requesting party, ESI shall be produced in native data format, together with all associated metadata. In such cases where production in native format is not possible or advisable (e.g., redacted documents), native format files shall be converted to static images and each page thereof saved electronically as a single page "TIFF" image that reflects how the source document would have appeared if printed out to a printer attached to a computer viewing the file. Accompanying this TU:F shall be

a multipage text (.TXT) file containing searchable text from the native file, and the metadata as discussed later in this document. Load files of the static images should be created and produced together with their associated static images to facilitate the use of the produced images by a document management or litigation support database system. If voluminous TIFF production is anticipated, the parties shall meet and confer to determine how such production is to be made reasonably usable by the requesting party. The parties shall meet and confer to the extent reasonably necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software.

C. Production of Physical Documents. Documents or records which either were originally generated or instantiated as ESI but now only exist in physical hard-copy format, or documents or records that were originally generated in hard-copy format shall be converted to a single page .TIFF file and produced following the same protocols set forth herein or otherwise agreed to by the parties.

D. Document Unitization. For files or records not produced in their native format, each page of a document shall be electronically saved as an image file. If a document consists of more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image files.

E. Duplicates. To the extent that exact duplicate documents (based on MD5 or SHA-I hash values) reside within a party's ESI dataset, each party is only required to produce a single copy of a responsive document or record. ESI with differing file names but identical hash values shall not be considered duplicates. Exact duplicate shall mean bit-for-bit identicality with both document content together with all associated metadata. Where any such documents have attachments, hash values must be identical for both the document-plus-attachment (including

associated metadata) as well as for any attachment (including associated metadata) standing alone. If requested, the parties will produce a spreadsheet identifying additional custodians who had a copy of the produced document.

F. Color. For files not produced in their native format, if an original document contains color, the producing party shall produce color image(s) for each such document if reasonably feasible.

G. Bates Numbering and Other Unique Identifiers. For files not produced in their native format, each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically "burned" onto the TIF image in such a manner that information from the source document is not obliterated, concealed, or interfered with. There shall be no other legend or stamp placed on the document image unless a document qualifies for confidential treatment pursuant to the terms of a Protective Order entered by this Court in this litigation or has been redacted in accordance with applicable law or Court order. In the case of confidential materials as defined in a Protective Order, or materials redacted in accordance with applicable law or Court order, a designation may be "burned" onto the document's image at a location that does not obliterate or obscure any information from the source document. Any ESI produced in native data format shall be placed in a Logical Evidence Container that is Bates numbered, or the storage device (i.e., CD, USB, hard drive) containing such files shall be so Bates numbered. For purposes of further use in depositions, discussions or any court proceedings, the hash value of any document or ESI will constitute its unique controlling identifier. Alternatively, if Bates numbers per document are desired, a spreadsheet may be create providing a Bates number to hash relationship.

H. Production Media. Documents shall be produced on CD-ROM, DVD, external hard drive (with standard PC compatible interface), or such other readily accessible computer or

electronic media as the parties may hereafter agree upon (the "Production Media"). Each item of Production Media shall include: (1) text referencing that it was produced m _____ (*:**cv****), (2) the type of materials on the media (e.g., "Documents," "OCR Text," "Objective Coding," etc.) (3) the production date, and (4) the Bates number range of the materials contained on such Production Media item. The documents contained on the media shall be organized and identified by custodian, where applicable.

I. Electronic Text Files. For files not produced in their native format, text files for produced documents shall be produced reflecting the full text that has been electronically extracted from the original, native electronic files ("Extracted Text"). The Extracted Text shall be provided in ASCII text format and shall be labeled and produced on Production Media in accordance with the provisions of paragraph II.H above, "Production Media." The text files will be named with the unique Bates number of the first page of the corresponding document followed by the extension ".txt."

J. Metadata. The parties agree that the production of Metadata produced will be provided in connection with native data format ESI requested, and includes without limitation, file, application and system metadata. Where non-native format data is produced, the following list identifies the Metadata fields that will be produced (to the extent available):

- Document number or Production number (including the document start and document end numbers). This should use the standard Bates number in accordance with those used in previous productions;
- BeginAttach;
- EndAttach;
- Title/Subject;

- Sent/Date and Time (for emails only);
- Last Modified Date and Time Created Date and Time (for E-docs);
- Received Date and Time (for emails only);
- Author;
- Recipients;
- cc:;
- bcc:;
- Source (custodian);
- Hash Value;
- File Path;
- Media (type of media that the document was stored on when it was collected);
- Page Count;
- Original File Name;
- Doc extension;
- Full text;
- Accessed Date & Time; and
- Last Print Date.

K. Attachments. Email attachments and embedded files must be mapped to their parent by the Document or Production number. If attachments and embedded files are combined with their parent documents, then "BeginAttach" and "EndAttach" fields listing the umque beginning and end number for each attachment or embedded document must be included.

L. Structured data. To the extent a response to discovery requires production of discoverable electronic information contained in a database, in lieu of producing the database, the parties agree to meet and confer to, with an understanding of which fields are relevant, agree upon a set of queries to be made for discoverable information and generate a report in a reasonably usable and exportable electronic file (e.g., Excel or CSV format) for review by the requesting party or counsel. Upon review of the report(s), the requesting party may make reasonable requests for additional information to explain the database schema, codes, abbreviations, and different report formats or to request specific data from identified fields.

IV. Objections To Esi Production

A. For files not produced in their native format, documents that present imaging or format production problems shall be promptly identified and disclosed to the requesting party; the parties shall then meet and confer to attempt to resolve the problems.

B. If either party objects to producing the requested information on the grounds that such information is not reasonably accessible because of undue burden or cost, or because production in the requested format is asserted to be not reasonably accessible because of undue burden or cost, and before asserting such an objection, the responding party will inform the requesting party of the format in which it is willing to produce it, the nature and location of the information claimed to not be reasonably accessible, the reason(s) why the requested form of production would impose an undue burden or is unreasonably costly, and afford the requesting party 10 business days from receipt of such notice to propose an alternative means of compliance with the request. Such proposal may include alternative cost estimates for ESI discovery production, may offer a proposal for ESI discovery cost allocation, or both. Notwithstanding anything contained herein to the contrary, a producing party shall not produce ESI in a format not

requested or designated by the requesting party unless (i) the parties have met and conferred, and, having been unable to resolve such format production conflict at such meet and confer session, (ii) prior to referral to and resolution of such issue by the court.

C. If a party believes that responsive ESI no longer exists in its original format, or is no longer retrievable, the responding party shall explain where and when it was last retrievable in its original format, and disclose the circumstances surrounding the change in status of that ESI, including the date of such status change, the person or persons responsible for such state change, the reason or reasons such ESI is no longer retrievable in that format, and whether any backup or copy of such original ESI exists, together with the location and the custodian thereof.

V. Designated Esi Liaison

The parties shall identify a person ("Designated ESI Liaison") who is familiar with a party's:

A. Email systems; biogs; social networking systems, instant messaging; Short Message Service **(SMS)** systems; word processing systems; spreadsheet and database systems (including the database's dictionary, and the manner in which such program records transactional history in respect to deleted records); system history files, cache files, and cookies, graphics, animation, or document presentation systems; calendar systems; voice mail systems, including specifically, whether such systems include ESI; data files; program files; internet systems; and intranet systems.

B. Information security systems, including access and identity authentication, encryption, secure communications or storage, and other information and data protection and technology deployments, where appropriate.

C. Storage systems, including whether ESI storage is cloud, server based, or otherwise virtualized, and also including, without limitation, individual hard drives, home computers, "laptop" or "notebook" computers, personal digital assistants, pagers, mobile telephones, or removeable/portable storage devices, such as CD-ROMs, DVDs, "floppy" disks, zip drives, tape drives, external hard drives, flash thumb or "key" drives, or external service providers.

D. Backup and archival systems, whether physical or virtualized, and including without limitation continuous data protection, business continuity, disaster recovery systems, whether such systems are onsite, offsite, maintained using one or more third-party vendors, or cloud based. The parties, including the designated ESI person(s), shall meet and confer to the extent necessary to discuss the back-up routine, application, and process and location of storage media, whether the ESI is compressed, encrypted, and the type of device or object in or on which it is recorded (e.g., whether it uses sequential or random access), and whether software that is capable of rendering it into usable form without undue expense is within the party's possession, custody, or control.

E. Obsolete or "legacy" systems containing ESI and the extent, if any, to which such ESI was copied or transferred to new or replacement systems.

F. Current and historical website information, including uncompiled source code used to generate such web site information, customer information inputted by or through such current or historical web site information, and also including any potentially relevant or discoverable information contained on that or those site(s), as well as systems to back up, archive, store, or retain superseded, deleted, or removed web pages, and policies regarding allowing third parties' sites to archive client website data.

G. ESI erasure, modification, or recovery mechanisms, such as metadata scrubbers, wiping programs, and including without limitation other programs that destroy, repeatedly overwrite or otherwise render unreadable or uninterpretable all of or portions of real or virtualized storage media in order to render such erased information irretrievable, and all policies in place during the relevant time period regarding the use of such processes and software, as well as recovery programs that can defeat scrubbing, thereby recovering deleted, but inadvertently produced ESL.

H. Policies regarding document and record management, including the retention or destruction of relevant ESI for any such time that there exists a reasonable expectation of foreseeable litigation in connection with such documents and records.

I. "Litigation hold" policies that are instituted when a claim is reasonably anticipated, including all such policies that have been instituted, and the date on which they were instituted.

J. The identity of custodians of relevant ESI, including "key persons" and related staff members, and the information technology of information systems personnel, vendors, or subcontractors who are best able to describe the client's information technology system. The identity of vendors or subcontractors who store ESI for, or provide services or applications to, Defendant or any person acting on behalf of Defendant; the nature, amount, and description of the ESI stored by those vendors or subcontractors; contractual or other agreements that permit Defendant to impose a "litigation hold" on such ESI; whether or not such a "litigation hold" has been placed on such ESI; and, if not, why not.

VI. Privilege And Work Product Claims

In an effort to avoid unnecessary expense and burden, the parties agree that, for documents redacted or withheld from production on the basis of attorney-client privilege, work product

doctrine and/or any other applicable privilege, the producing party will prepare a summary privilege log containing the file, system and application metadata information set forth herein, for each document, record, etc. (except for full text), to the extent such information exists.

Within a reasonable time following the receipt of such a summary privilege log, a receiving party may identify particular documents that it believes require further explanation. The receiving party seeking further information shall explain in writing the need for such information and state precisely each document (by Bates number) for which it seeks this information. Within fourteen (14) days of such a request, the producing party must either (i) produce a full privilege log for the requested documents or (ii) challenge the request. If a party challenges a request for further information, the parties shall meet and confer to try to reach a mutually agreeable solution. If they cannot agree, the matter shall be brought to the Court. All other issues of privilege, including the inadvertent production of privileged or protected documents or information, shall be governed by the Protective Order entered by the Court in this litigation.

Dated: By: _____

Dated: By. _____