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J.S.C.

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LITIGATION

This Document Relates to all Cases

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 624
MASTER DOCKET NO. BER-L-_7859-17_ MCL
CIVIL ACTION

ORDER ESTABLISHING PROTOCOL
GOVERNING PRODUCTION OF
DOCUMENTS AND ELECTRONICALLY
STORED INFORMATION ("ESI")

THIS MATTER having been presented to the Court on consent of the parties, and for good cause shown;

IT IS ON THIS ___17___ th day of November, 2017;

ORDERED that

Documents produced by the Parties in the above-captioned proceedings, and any other related actions assigned to this Court, except as otherwise provided in this Order, shall be produced in accordance with the following Protocol:

I. GENERAL PROVISIONS

1. **Reservation of Rights, Obligations, and Responsibilities.** Nothing in this Protocol alters a Party's rights, obligations, and responsibilities under the applicable New Jersey Court Rules, Federal Rules of Civil Procedure, and other applicable law, nor does anything in this Protocol impose additional burdens beyond those imposed by the New Jersey Court Rules, the Federal Rules of Civil Procedure, and other applicable law. The Parties reserve all objections under the New Jersey Court Rules, the Federal Rules of Civil Procedure and other applicable law for matters relating to the production of data that are not specifically addressed in this Protocol.

2. **Custodians and Data Repositories.** The Parties may identify hard copy documents or Electronically Stored Information ("ESI") by identifying custodians and data repositories reasonably likely to possess potentially relevant, responsive documents and making reasonable efforts to locate potentially relevant, responsive documents within those sources. Each Producing Party may, at its election, review hard copy documents or ESI that contain any agreed upon search terms for responsiveness and privilege prior to production to the Receiving Party.

3. **Privilege Logs.** For documents either withheld from production or produced in a redacted form pursuant to a claim of attorney-client privilege, work product protection, or other applicable privilege or immunity, the designating party shall produce one or more privilege logs in Excel or a similar electronic form that allows text searching and organization of data. Privilege logs will be produced within 45 days following the production of the documents from which the privileged documents are withheld. The log shall contain the following information for each item not produced or redacted for reasons of attorney-client privilege, work product protection, or other applicable privilege or immunity, to the extent known and to the extent providing this information will not destroy the privilege: (1) the name(s) of the person(s) who created and received the document or a copy of it; (2) the date of the document; (3) a description of the nature of the document sufficient to enable the receiving party to assess the applicability of the privilege or protection; (4) privilege(s) claimed; and (5) the names and titles or designation as in-house or outside counsel of legal personnel on whom the claimed privilege is based. If a document is redacted, the log will contain the Bates range for the document. If a document is withheld from production in its entirety, no Bates range will be provided on the log. The log shall also contain the following extracted metadata from ESI withheld or redacted on the basis of

attorney-client privilege, work product protection, or other applicable privilege or immunity, to the extent known and to the extent providing this information will not destroy the privilege: (a) Custodian/Source; (b) File Name; (c) SourceFilePath; (d) DateTimeLastMod; (e) To; (f) From; (g) CC; (h) BCC; (i) DateTimeSent; (j) DateTimeRecvd; and (k) EmailSubject.

4. **Applicability of Protective Order.** The parties understand that this Protocol contemplates the production of large volumes of documents, and they acknowledge that nothing in this Order waives, restricts, or eliminates the parties' "claw-back" rights pursuant to any Protective Order(s) in this case, or governing law, rules, orders, or agreements regarding inadvertently produced documents. Pursuant to Federal Rule of Evidence 502(d), any inadvertent production of a privileged or work product-protected document or ESI is not a waiver in the pending case or in any other Federal or State proceeding.

5. **Obligation to Meet and Confer.** The parties shall meet and confer and endeavor to resolve any disputes arising hereunder, before submitting such disputes to the Court for determination.

II. PRODUCTION OF PHYSICALLY AND ELECTRONICALLY STORED INFORMATION

The procedures and protocols set forth below shall govern the production of Physically Stored Information ("PSI" or "Hard Copy Documents") and ESI in this matter, unless the Parties agree in writing to change them or they are changed by the Court at the request of a Party:

1. Documents originating from physically stored information, or Hard Copy Documents are to be produced in Group IV TIFF format (black and white, 300 dpi) with corresponding searchable OCR text, along with the agreed upon metadata fields, to be provided in a standardized load file compatible with Concordance or Summation (load file specifications

can be found in Appendix I infra), with a bates number field included on the load file so that text and metadata can be matched with TIFF images. A complete list of the Hard Copy and ESI metadata and index fields with example values can be found in Appendix III infra. The unitization and scanning protocol to be utilized can be found in Appendix II infra. Redacted documents will be produced in TIFF format with corresponding searchable OCR text and the associated metadata for the document, ensuring the redacted content is fully protected from disclosure.

2.   Documents originating from electronically stored information ("ESI"), except those documents as noted in Paragraphs 4 and 5, are to be produced in TIFF format with extracted text directly from the electronic file, along with the agreed upon metadata fields when available, to be provided in a standardized load file compatible with Concordance or Summation (load file specifications can be found in Appendix I infra), with a bates number field included on the load file so that text and metadata can be matched with TIFF images. A complete list of the Hard Copy and ESI metadata and index fields with example values can be found in Appendix III infra. ESI files with compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP, etc.) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files. Redacted documents will be produced in TIFF format with corresponding searchable OCR text and the associated metadata for the document, ensuring the redacted content is fully protected from disclosure.

3.   Each of the metadata fields set forth in Appendix III that can be reasonably extracted from a document shall be produced for that document. If either of the parties becomes aware of a problem extracting metadata or any other problem with the metadata fields or processing, the party who becomes aware of the problem will notify the other party and use the

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party's best efforts to meet and confer with the other party to arrive at a mutually acceptable resolution to the issue. The parties are not obligated to populate manually any of the fields in Appendix III if such fields cannot be extracted from a document, however; the Custodian-Source shall be identified for all produced documents.

4.	Spreadsheets will be produced as native files unless redactions are required. Spreadsheets that require redactions will be converted to TIFF images as follows: remove user-defined print areas; unhide and expand all columns, rows and sheets; expand/outline groupings; print to TIFF each sheet across (left to right) and then down; set for landscape orientation; and remove blank pages as possible. Slide shows will be produced as native files unless redactions are required. Slide shows that require redactions will be converted to color TIFF images as follows: the conversion to single page color TIFF image (compression set to high quality JPEG, with 300 dpi resolution) will be done utilizing the software's print feature; background will be turned off so all text is visible; hidden slides will be revealed; and if any slides in the presentation contain speaker notes, then all slides will be printed in Slide view (one slide per page). Any autodate macros within any electronic documents will be indicated as "<autodate>".

5.	For documents and ESI that do not convert well to TIFF (e.g. oversized drawings, picture files, audio and video files), the producing party will either produce the document in native format or will ask the receiving party to meet and confer regarding a reasonable alternative form of production. The file name for the documents produced in native form will consist of a Bates number. Confidentiality designation, if applicable, will be provided in the metadata field designated in Appendix III. For native files included in a production, the corresponding placeholder TIFF image will also be provided and will reflect the document's Bates number and Confidentiality designation (if applicable). In the event that either party

produces either an ESI or Hard Copy document that the TIFF image is of poor quality, obscured in some way or otherwise illegible, the parties agree that the producing party will make best efforts to help the receiving party receive a more useful production of the document including but not limited to producing the native file.

6.   To the extent a response to discovery requires production of discoverable electronic information contained in a database, the producing party shall consider methods of production best suited to providing the relevant, responsive information, including but not limited to, where reasonable, duplication of databases, and production of reports of the relevant information from a database used in the ordinary course of business. Where appropriate, parties should consider the most effective, efficient, and appropriate methods to produce the relevant information from a database, including but not limited to, querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic file (for example, Excel, MDB, CSV or SQL format). To the extent a particular format is agreed upon for a given database or application, where reasonable to do so, a document reference sheet shall be provided to describe the purpose of the database and meaning of the tables and column headers produced to the degree that such information is available to the Producing Party and would be beneficial to the Requesting Party to understand and make use of that database or application. Such production shall be governed by separate stipulation of the parties or Order of the Court.

7.   Deduplication of ESI will be performed within and across custodians according to MD5Hash values at the family level. (See Appendix III for further details.) Only a single copy of an exact duplicate ESI family needs to be produced. Within 10 days of a Duplicate Custodian being identified, a metadata overlay will be provided updating the Duplicate Custodian and

Duplicate Custodian Filepath fields for the documents identified as duplicative.

8.   Parent-child relationships (the association between an attachment and its parent document) shall be preserved to the extent possible.

9.   Individual pages of TIFF documents and documents produced in native format shall be assigned a Bates number for ease of reference and to preserve the integrity of the documents and avoid modification of any documents or information. Bates numbers shall be unique across the entire document production and sequential within a given document.

III.   DATA SEARCH AND CULLING

HOC is not currently planning on using technology assisted review, search terms, or other automated technology-based identification or culling methods in connection with the collection and production of documents. A Producing Party shall meet and confer with the Receiving Party before relying on technology assisted review, search terms, or other automated technology-based tools to facilitate its identification of potentially responsive documents. Absent an agreement among the Parties as to such use, the matter may be presented to the court for resolution.

IT IS SO ORDERED:

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Rachelle L. Harz, J.S.C.

APPENDIX I: FILE FORMATS

A. Image Load Files

- Every document referenced in a production image load file shall have all corresponding images, text, and data logically grouped together.

- Documents shall be produced in only one image load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.

- The name of the image load file shall mirror the name of the delivery volume, and should have an .lfp, .opt or .dii extension (e.g., ABC001.lfp). (If .dii file is produced, the accompanying metadata load file shall be separate from the .dii file and not contained within the .dii file.)

- The volume names shall be consecutive (i.e., ABC001, ABC002, et. seq.).

- The load file shall contain one row per Tiff image.

- Every image in the delivery volume shall be contained in the image load file.

- The image key shall be named the same as the Bates number of the page.

- Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.), i.e., a separate volume shall be created for each piece of media delivered.

B. Metadata Load Files

- The metadata load file shall use the following delimiters:
  Columns/Comma (ASCII: 20)
  Quote þ (ASCII: 254)

- Data for documents shall be produced in only one data load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.

- The first row shall contain the field names as set forth in Appendix IIIof the Order Establishing Protocol Governing Production of Documents and ESI.

- All date and time fields are populated in the mm/dd/yyyy and hh:mm AM/PM (GMT) formats without leading zeros. For example, the month of April would be a "4" rather than a "04".

- A carriage-return line-feed shall be used to indicate the start of the next record.

- Load files shall *not* span across media (e.g., CDs, DVDs, Hard Drives, etc.); a separate

volume shall be created for each piece of media delivered.

- The name of the metadata load file shall mirror the name of the delivery volume, and shall have a .dat, .csv or .txt extension (i.e., ABC001.dat).

- The volume names shall be consecutive (i.e., ABC001, ABC002, et. seq.).

APPENDIX II: SCANNING AND UNITIZATION

- Original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). When subjecting physical documents to an OCR process, the settings of the OCR software shall maximize text quality over process speed. Settings for "Auto-Skewing", "Auto-Rotation" and "Zone Location" should be turned on when documents are run through the process.

- Physical document boundary determination will be based on the smallest physical binding element. The following binding elements will be used to determine document boundaries:

  o Staples, Clips, Rubber Bands, Binder Clips — These binding elements at the smallest level will be used to determine the document boundary.

  o Consecutive Single/Loose Pages — If a series of loose pages exist, each loose page will be captured as an individual document

  o Bound Items — All bound items will be broken down logically as they appear and will be tracked as a single unit for identification.

  o Computer Forms — Non-perforated computer paper will be captured as one document.

  o Post-It Notes — Post-It Notes will be captured.

- Physical attachment associations are determined by common physical barriers. Where there are nested common physical barriers, the inner-most barrier will be captured as the attachment association. The following physical barriers will be used to determine the physical attachment association:

  o Manila File Folder

  o Parent Clip

  o Hanging File Folder

  o Redweld File

  o Binder

  o Parent Rubber Band

APPENDIX III: ESI AND HARDCOPY METADATA FIELDS

Field Name	Field Description	Populated For (Email, EDoc, Attachment, Hard Copy)	Example Values
ProdBeg	Production or Bates Number for the first page of the document.	All	Prefix0000000001
ProdEnd	Production or Bates Number for the last page of the document.	All	Prefix0000000002
BegAttach	Production or Bates Number of the first production Bates number of the first document of the attachment.	All	Prefix0000000003
EndAttach	Production or Bates Number of the last production Bates number of the last document of the attachment.	All	Prefix0000000005
Custodian/Source	Custodian name produced in format: **Lastname, Firstname**. Where redundant names occur, individuals should be distinguished by an initial which is kept constant throughout productions. For instance: Smith, John A. and Smith, John B.	All	Smith, John B.
Record Type	Descriptor for the type of document: "**EDOC**" for electronic documents not attached to emails; "**EMAIL**" for all emails; "**ATTACHMENT**" for files that were attachments to emails; and "**HARDCOPY**" for hard copy physical documents that have been scanned and converted to an electronic image.	All	EMAIL
FileName	File name of the E-document, email, or E-attachment including the native file extension.	Email, EDocs, Attachments	Text of the subject line.htm
DocExt	The file extension of the document is defined as the substring of the file name which follows the last	Email, EDocs, Attachments	Htm

Field Name	Field Description	Populated For (Email, EDoc, Attachment, Hard Copy)	Example Values
	occurrence of the dot character.		
NativeFile	Represents that this file is produced in its native file format.	EDocs, Attachments	Native File
Subject	Subject line of an email.	Email	Text of the subject line
To	All SMTP addresses of all recipients that were included on the "To" line of the email. Multiple recipients should be delimited by the semicolon character.	Email	larry.murphy@email.com
From	The name and email address of the sender of the email.	Email	Bart.Cole@email.com
CC	All recipients that were included on the "CC" line of the email. Multiple recipients should be delimited by the semicolon character.	Email	sstephens44@email.com
BCC	All recipients that were included on the "BCC" line of the email. Multiple recipients should be delimited by the semicolon character.	Email	ceo-gs@email.com
DateTimeSent	Date and time an email was sent.	Email	mm/dd/yyyy hh:mm:ss AM
DateTimeRcvd	Date and time an email was received.	Email	mm/dd/yyyy hh:mm:ss AM
PrimaryDateTime	Date of native file.	Email, EDocs, Attachments	mm/dd/yyyy hh:mm:ss AM
DateTimeCreated	Date and time the document was created.	Email, EDocs, Attachments	mm/dd/yyyy hh:mm:ss AM
Title	Any value populated in the Title field of the document properties.	EDocs, Attachments	Title
Subject	Any value populated in the Subject field of the document properties.	E-documents, E-attachments	Subject
Author	Any value populated in the Author field of the document properties.	EDocs, Attachments	Author
DateTimeMod	Date and time the document was last modified to the file system of the original media from which it was collected.	Email, EDocs, Attachments	mm/dd/yyyy hh:mm:ss AM
Importance	Priority.	Email	Priority
MD5Hash	Checksum for a file, a	Email, EDocs,	e4d909c290d0fb1ca068ff

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Field Name	Field Description	Populated For (Email, EDoc, Attachment, Hard Copy)	Example Values
	128-bit value.	Attachments	addf22cbd0
Redacted	Descriptor for documents that have been redacted. "Redacted" for redacted documents; nothing for unredacted documents.	All	Redacted
Replacement	Descriptor for documents that are replacements for previously-produced documents. "Replacement" for replacement documents, nothing for non-replacement documents. If the pages of the replacement document exceed the pages of the document being replaced, a suffix will be used or the native document will be provided.	All	Replacement
FilePath	The directory structure of the original file(s). If a file is inside of a container, the container name is included in the path. For email, this will include email foldering.	Email, EDocs, Attachments	\ C:\Documents and Settings\ jsmith\ My Documents\ CLE material\ SearchTermAnalysisRepor t.pdf
AttachmentCount	The total number of attachments including any attachments that were not processed and the contents of additional attached containers. A value of zero (0) should be returned for any files/documents without attachments.	All	3
Duplicate Custodian	Identity of each Custodian that possessed the file that was identified by deduplication.	Email, EDocs, Attachments	Smith, Jane; Smith, John A.; Smith, John B.; Taylor, Michael
Duplicate CustodianFilepath	The information for Source File Path for each duplicate file that was identified by deduplication shall be set forth in this field.	Email, EDocs, Attachments	C:\Documents and Settings\canderson\My Documents\Contracts and Proprosals\To Client\SearchTermAnalysi sReport.pdf; C:\Documents and Settings\jsmith\My Documents\CLE material\SearchTermAnal ysisReport.pdf

Field Name	Field Description	Populated For (Email, EDoc, Attachment, Hard Copy)	Example Values
Confidentiality	Descriptor for documents that have been designated as "Confidential". "Confidential" (or any other statement permitted by the Protective Order) for documents designated confidential. Nothing for documents not designated confidential.	All	Confidential
PgCount	Number of printed pages in the document.	All	2
ProdVol	Name of media that data was produced on.	All	Wave 001 – Hard Drive
Size	Size (in bytes) of the original file.	Email, EDocs, Attachments	1408