

# eDiscovery Model Orders



**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Case Number: C XX-XXXX

[MODEL] STIPULATED ORDER RE:  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION FOR  
STANDARD LITIGATION

Plaintiff(s),

VS.

Defendant(s).

## 1. PURPOSE

This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

## 2. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI.

### 3. LIAISON

The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

#### 4. PRESERVATION

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- a) Only ESI created or received between \_\_\_\_\_ and \_\_\_\_\_ will be preserved;
- b) The parties have exchanged a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing manager.” The parties shall add or remove custodians as reasonably necessary;
- c) The parties have agreed/will agree on the number of custodians per party for whom ESI will be preserved;
- d) These data sources are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced: [e.g., backup media of [named] system, systems no longer in use that cannot be accessed];
- e) Among the sources of data the parties agree are not reasonably accessible, the parties agree not to preserve the following: [e.g., backup media created before \_\_\_\_\_, digital voicemail, instant messaging, automatically saved versions of documents];
- f) In addition to the agreements above, the parties agree data from these sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: \_\_\_\_\_.

#### 5. SEARCH

The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

#### 6. PRODUCTION FORMATS

The parties agree to produce documents in ☐ PDF, ☐ TIFF, ☐ native and/or ☐ paper or a combination thereof (check all that apply)] file formats. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

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Following the initial production, the parties will continue to prioritize the order of subsequent productions.

- a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.
- b) The parties have agreed upon a “quick peek” process pursuant to Fed. R. Civ. P. 26(b)(5) and reserve rights to assert privilege as follows \_\_\_\_\_.
- c) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

Dated: \_\_\_\_\_

Counsel for Plaintiff

Dated: \_\_\_\_\_

Counsel for Defendant

Dated: \_\_\_\_\_

UNITED STATES DISTRICT/MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

CHAMBERS OF  
PAUL W. GRIMM  
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE  
GREENBELT, MARYLAND 20770  
(301) 344-0670  
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**DISCOVERY ORDER**

Fed. R. Civ. P. 26(b)(1), 26(b)(2)(C), and 26(g)(1)(B)(iii) require that discovery in civil cases be proportional to what is at issue in the case, and require the Court, upon motion or on its own, to limit the frequency or extent of discovery otherwise allowed to ensure that discovery is proportional. This Discovery Order is issued in furtherance of this obligation. Having reviewed the pleadings and other relevant docket entries, the Court enters the following Discovery Order that will govern discovery in this case, absent further order of the Court or stipulation by the parties. This Discovery Order shall be read in conjunction with the Scheduling Order in this case, which provides discovery deadlines, and will be implemented in compliance with the Discovery Guidelines for the United States District Court for the District of Maryland (see paragraph 3, below). **With respect to the limitations imposed in paragraphs 6, 7, and 9 on interrogatories, requests for production of documents, and fact depositions, counsel are encouraged to confer and propose to the Court for approval any modifications that are agreeable to all counsel.**

1. ***Disclosure of Damage Claims and Relief Sought.*** By the date set in the Scheduling Order, any party asserting a claim against another party shall serve on that party and provide to the Court the information required by Fed. R. Civ. P. 26(a)(1)(A)(iii) regarding calculation of damages. The party also shall include a particularized statement regarding any non-monetary relief sought. Unless otherwise required by the Scheduling Order, the disclosures required by Fed. R. Civ. P. 26(a)(1)(A)(i), (ii), and (iv) need not be made.
2. ***Scope of Discovery – Proportionality.*** Pursuant to Fed. R. Civ. P. 26(b)(1) and 26(g)(1)(B)(ii)–(iii), the discovery in this case shall be proportional to what is at issue in the case. While the monetary recovery a party seeks is relevant to determining proportionality, other factors also must be considered, including whether the litigation involves cases implicating “public policy spheres, such as employment practices, free speech, and other matters [that] may have importance far beyond the monetary amount involved.” Fed. R. Civ. P. 26(b) advisory committee’s note to 1983 amendment. If a party objects to providing requested discovery on the basis of a proportionality objection, it must state the basis of the objection with particularity.
3. For cases involving claims of employment discrimination, the parties are encouraged to follow the Initial Discovery Protocols for Employment Cases Alleging Adverse Action, which I have attached to this Order.

#### **4. *Cooperation During Discovery.***

As encouraged by Fed. R. Civ. P. 1, and Discovery Guideline 1 of the Discovery Guidelines for the United States District Court for the District of Maryland, D. Md. Loc. R. App. A (July 1, 2011), <http://www.mdd.uscourts.gov/localrules/LocalRules-Oct2012Supplement.pdf>, the parties and counsel are expected to work cooperatively during all aspects of discovery to ensure that the costs of discovery are proportional to what is at issue in the case, as more fully explained in *Mancia v. Mayflower Textile Services Co.*, 253 F.R.D. 354, 357–58 (D. Md. 2009). Whether a party or counsel has cooperated during discovery also may be relevant in determining whether the Court should impose sanctions in resolving discovery motions, if it determines that a party has acted in a manner that violates the Rules of Civil Procedure, Order of Court, Local Rule, or Discovery Guideline.

#### **5. *Discovery Motions Prohibited Without Pre-Motion Conference with the Court.***

- a. In accordance with Fed. R. Civ. P. 16(b)(3)(B)(v), no discovery-related motion may be filed unless the moving party attempted in good faith, but without success, to resolve the dispute and has requested a pre-motion conference with the Court to discuss the dispute and to attempt to resolve it informally. If the Court does not grant the request for a conference, or if the conference fails to resolve the dispute, then upon approval of the Court, a motion may be filed.
- b. Unless otherwise permitted by the Court, discovery-related motions and responses thereto will be filed in letter format and may not exceed three, single-spaced pages, in twelve-point font. Replies will not be filed unless requested by the Court following review of the motion and response.
- c. Unresolved discovery disputes are to be raised as required by this paragraph before the end of discovery. Absent a showing of due diligence and exceptional circumstances, discovery disputes will not be heard after the discovery cutoff.

#### **6. *Interrogatories.*** Absent order of the Court upon a showing of good cause or stipulation by the parties, Rule 33 interrogatories shall be limited to fifteen (15) in number. Contentions interrogatories (in which a party demands to know its adversary's position with respect to claims or defenses asserted by an adversary) may be answered within fourteen (14) days of the discovery cutoff as provided in the Scheduling Order. All other interrogatories will be answered within thirty (30) days of service. Objections to interrogatories will be stated with particularity. Boilerplate objections (e.g., objections without a particularized basis, such as "overbroad, irrelevant, burdensome, not reasonably calculated to identify admissible evidence"), as well as incomplete or evasive answers, will be treated as a failure to answer pursuant to Fed. R. Civ. P. 37(a)(4). For that reason, boilerplate objections are prohibited.

#### **7. *Requests for Production of Documents.***

- a. Absent order of the Court upon a showing of good cause or stipulation by the parties, Rule 34 requests for production shall be limited to fifteen (15) in number. A response to these requests shall be served within thirty (30) days and any documents shall be produced within thirty (30) days thereafter, absent Court order or stipulation by the parties. Any objections to Rule 34 requests shall be stated with particularity. Boilerplate

objections (*see* ¶ 5 above) and evasive or incomplete answers will be deemed to be a refusal to answer pursuant to Rule 37(a)(4). Pursuant to Fed. R. Civ. P. 34(b)(2)(C), “an objection must state whether any responsive materials are being withheld on the basis of that objection.”

- b. Requests for production of electronically-stored information (ESI) shall be governed as follows:
  - i. Absent an order of the Court upon a showing of good cause or stipulation by the parties, a party from whom ESI has been requested shall not be required to search for responsive ESI:
    - a. from more than ten (10) key custodians;
    - b. that was created more than five (5) years before the filing of the lawsuit;
    - c. from sources that are not reasonably accessible without undue burden or cost; or
    - d. for more than 160 hours, ***inclusive*** of time spent identifying potentially responsive ESI, collecting that ESI, searching that ESI (whether using properly validated keywords, Boolean searches, computer-assisted or other search methodologies), and reviewing that ESI for responsiveness, confidentiality, and for privilege or work product protection. The producing party must be able to demonstrate that the search was effectively designed and efficiently conducted. A party from whom ESI has been requested must maintain detailed time records to demonstrate what was done and the time spent doing it, for review by an adversary and the Court, if requested.
  - ii. Parties requesting ESI discovery and parties responding to such requests are expected to cooperate in the development of search methodology and criteria to achieve proportionality in ESI discovery, including appropriate use of computer-assisted search methodology, such as Technology Assisted Review, which employs advanced analytical software applications that can screen for relevant, privileged, or protected information in ways that are more accurate than manual review and involve far less expense.

8. ***Duty to Preserve Evidence, Including ESI, that is Relevant to the Issues that Have Been Raised by the Pleadings.***

- a. The parties are under a common-law duty to preserve evidence relevant to the issues raised by the pleadings.
- b. In resolving any issue regarding whether a party has complied with its duty to preserve ESI, the Court will comply with Fed. R. Civ. P. 37(e).

9. ***Depositions.*** Absent further order of the Court upon a showing of good cause or stipulation by the parties, depositions of fact witnesses other than those deposed pursuant to Fed. R. Civ. P. 30(b)(6) shall not exceed four (4) hours. Rule 30(b)(6) and expert witness depositions shall not exceed seven (7) hours.

10. ***Non-Waiver of Attorney–Client Privilege or Work Product Protection.*** As part of their duty to cooperate during discovery, the parties are expected to discuss whether the costs and

burdens of discovery, especially discovery of ESI, may be reduced by entering into a non-waiver agreement pursuant to Fed. R. Evid. 502(e). The parties also should discuss whether to use computer-assisted search methodology to facilitate pre-production review of ESI to identify information that is beyond the scope of discovery because it is attorney–client privileged or work product protected.

In accordance with Fed. R. Evid. 502(d), except when a party intentionally waives attorney–client privilege or work product protection by disclosing such information to an adverse party as provided in Fed. R. Evid. 502(a), the disclosure of attorney–client privileged or work product protected information pursuant to a non-waiver agreement entered into under Fed. R. Evid. 502(e) does not constitute a waiver in this proceeding, or in any other federal or state proceeding. Further, the provisions of Fed. R. Evid. 502(b)(2) are inapplicable to the production of ESI pursuant to an agreement entered into between the parties under Fed. R. Evid. 502(e). However, a party that produces attorney–client privileged or work product protected information to an adverse party under a Rule 502(e) agreement without intending to waive the privilege or protection must promptly notify the adversary that it did not intend a waiver by its disclosure. Any dispute regarding whether the disclosing party has asserted properly the attorney–client privilege or work product protection will be brought promptly to the Court, if the parties are not themselves able to resolve it.

Dated: February 8, 2022

/S/  
Paul W. Grimm  
United States District Judge



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA  
CIVIL DIVISION**

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<b>PLAINTIFF(S),</b>	)	
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<b>v.</b>	)	
	)	<b>CV:</b> _____
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<b>DEFENDANT(S).</b>	)	

**ORDER REGARDING ESI DISCOVERY**

As discussed at the last status conference, the parties are ordered to undertake a “Meet & Confer” process, with the goal of promptly assessing what ESI needs and challenges will be in this case.

Before the Meet & Confer, each party is to do the following:

1. review the client’s document retention plan, in order to assess its existence, scope and quality of implementation;
2. identify the client’s “key players” on IT issues and discuss issues such as the client’s network architecture and its process of creating and storing ESI;
3. ensure that the necessary hold notices have been issued and follow up to ensure client compliance; and
4. determine the extent to which any relevant hard copy documents and ESI have been destroyed.

In preparing for the Meet & Confer, each party is to do the following:

5. select key players and any retained forensic experts who would attend the Meet and Confer, it being the Court's expectations that such individuals would attend the Meet & Confer to ensure that questions arising therein can be addressed by those who have IT expertise;
6. determine the scope of the client's ESI, and the extent to which the ESI is "reasonably accessible";
7. establish a collection protocol to ensure that ESI will be collected in a forensically defensible manner that would avoid any suspicion of spoliation, and -- if the scope warrants -- consider using a third-party vendor to assist in proper collection, with scrupulous compilation and maintenance of a chain of custody log;
8. determine what resources would be needed for relevancy and privilege reviews, what the method of redaction will be, and what would constitute a duplicate and a near-deduplicate;
9. compile a suggested list of keyword search terms for discussion at the Meet & Confer;
10. assess the preferred format that you want to receive production from the opposing side, taking into account factors such as the size of production, requests for metadata fields, hosting tools, use of outside vendors, and costs; and
11. prepare suggested confidentiality/clawback agreements for consideration at the Meet & Confer.

At the Meet & Confer:

12. ESI in general. Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation.

13. E-mail information. Counsel should attempt to agree on the scope of e-mail discovery and e-mail search protocol, i.e., search terms and other search methodologies.
14. Deleted information. Counsel should attempt to agree on whether responsive deleted information still exists, the extent to which restoration of deleted information is needed, and who will bear the costs of restoration.
15. “Embedded data” and “metadata.” “Embedded data” typically refers to draft language, editorial comments, and other deleted matter retained by computer programs, while “metadata” typically refers to information describing the history, tracking, or management of an electronic file. The parties should discuss whether “embedded data” and “metadata” exist, whether it will be requested or should be produced, and how to handle determinations regarding privilege or protection of trial preparation materials.
16. Back-up and archival data. Counsel should attempt to agree on whether responsive back-up and archival data exist, the extent to which back-up and archival data are needed, and who will bear the cost of obtaining such data.
17. Format and media. Counsel should attempt to agree on the format and media to be used in the production of ESI, and on Bates numbering and/or other identifying markings. Also, consideration should be given to an internet-based repository where data from all parties can be hosted and reviewed.
18. Reasonably accessible information and costs. The Court expects that most parties’ discovery needs will be satisfied from reasonably accessible sources. Counsel should attempt to determine if any responsive ESI is not reasonably accessible, i.e., information that is only accessible by incurring undue burdens or costs. If the responding party is not searching or does not plan to search sources containing potentially responsive information, it should identify the category or type of such information. If the requesting party intends to seek

discovery of ESI from sources identified as not reasonably accessible, the parties should discuss: (1) the burdens and costs of accessing and retrieving the information, (2) the needs that may establish good cause for requiring production of all or part of the information, even if the information sought is not reasonably accessible, and (3) conditions on obtaining and producing this information such as scope, time, and allocation of cost.

19. Privileged or trial preparation materials. Counsel should attempt to reach an agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed. If the disclosing party inadvertently produces privileged or trial preparation materials, it must notify the requesting party of such disclosure within a reasonable time thereafter. After the requesting party is notified, it must return, sequester, or destroy all information and copies and may not use or disclose this information until the claim of privilege or protection as trial preparation materials is resolved.
  - (A) The parties may agree to provide a “quick peek,” whereby the responding party provides certain requested materials for initial examination without waiving any privilege or protection.
  - (B) The parties may also establish a “clawback agreement,” whereby materials that are disclosed without intent to waive privilege or protection are not waived and are returned to the responding party, so long as the responding party identifies the materials mistakenly produced.

Other voluntary agreements should be considered as appropriate.

20. Sequence of production. Counsel should address the most efficient process of producing requested ESI. A rolling production should be considered if the volume of production is significant. Further, the parties should consider phasing discovery by producing ESI from sources/custodians that have the most relevant information first.

**THE MEET & CONFER MEETING SHOULD TAKE PLACE WITHIN 45 DAYS FROM THE ENTRY OF THIS ORDER. WITHIN SEVEN DAYS AFTER THE MEETING, THE PARTIES ARE TO FILE A JOINT REPORT DESCRIBING THEIR AGREEMENTS AND IDENTIFYING ANY ISSUES REMAINING TO BE RESOLVED.**

**DONE and ORDERED, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.**

/s/ Robert S. Vance, Jr.  
Circuit Judge