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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KRISTIE RUDHAM,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

vs.

GLOBAL CUSTOM COMMERCE, INC.
and HOME DEPOT U.S.A., INC.

Defendant.

Case No. 3:23-cv-00152-DMS(BLM)

**ORDER GRANTING MOTION FOR
ORDER REGARDING DISCOVERY
OF ELECTRONICALLY STORED
INFORMATION**

[ECF NO. 20]

1 **I. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in
3 this case as a supplement to the Federal Rules of Civil Procedure and any other
4 applicable orders and rules.

5 **II. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and
7 commit to cooperate in good faith throughout the matter regarding the discovery of ESI.

8 **III. DEFINITIONS**

9 A. “Litigation” and “Lawsuit” mean the lawsuit filed by Plaintiff Kristie
10 Rudham against Global Custom Commerce, Inc. and Home Depot U.S.A., Inc. in the
11 United States District Court for the Southern District of California and assigned the Case
12 Number 3:23-cv-00152-DMS(BLM).

13 B. “Custodian” means an individual or entity from whom or from which
14 documents will be collected.

15 C. “Document” carries the meaning consistent with Fed. Rules 26, 34(a), and
16 Evidence Rule 1001.

17 D. “Electronically Stored Information” or “ESI” carries the meaning
18 consistent with Fed. Rules 26, 34(a), and Evidence Rule 1001.

19 E. “Email” means an electronic means for communicating written information
20 through non-telephone systems that will send, store, process, and receive information.

21 F. “Format” means the internal structure of a file, which defines the way it is
22 stored and its intended use.

23 G. “Hard Copy” documents means any Document or thing discoverable under
24 Rules 26(b)(1) and 34 that cannot be characterized as ESI.

25 H. “Native Format” or “Native File” mean the underlying file(s) containing
26 the ESI at issue in the file system in which such ESI was originally created.

27 I. “Party” or “Parties” means the Plaintiffs and Defendant in this Litigation.
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1 J. “Producing Party” means a Party that produces Documents.

2 K. “Receiving Party” means a Party to whom Documents are produced.

3 L. “Responsive Document” means any Document, excluding source code, that
4 is responsive to any Document requests served on the Producing Party in the Litigation
5 that the Producing Party has agreed to produce or that the Producing Party has been
6 ordered to produce by the Court.

7 M. “Tagged Image File Format” or “TIFF” refers to the CCITT Group IV
8 graphic file format for storing bit-mapped images, with multiple compression formats
9 and resolutions.

10 **IV. PRESERVATION**

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

15 (a) The parties have discussed, or will discuss, a list of the types of ESI they
16 believe should be preserved and the custodians, or general job titles or descriptions of
17 custodians, for whom they believe ESI should be preserved, e.g., “HR head,” “scientist,”
18 and “marketing manager.” The parties shall add or remove custodians as reasonably
19 necessary;

20 (b) The parties agree that the following data sources are not reasonably
21 accessible or proportional to the needs of discovery because of undue burden or cost
22 pursuant to 26(b)(2)(B), and therefore the parties agree not to preserve, collect,
23 process, review and/or produce:

- 24 1. Backup systems and/or tapes used for disaster recovery;
- 25 2. Systems no longer in use that cannot be accessed;
- 26 3. Deleted, slack, fragmented, or unallocated data only accessible
27 by forensics;
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- 1 4. Random access memory (RAM), temporary files, or other
- 2 ephemeral data that are difficult to preserve without disabling the
- 3 operating system;
- 4 5. Server, system and network logs;
- 5 6. Data in metadata fields that are frequently updated
- 6 automatically, such as last-opened dates;
- 7 7. Dynamic fields in databases or log files not stored or retained in
- 8 the usual course of business; and
- 9 8. Information created or copied during the routine, good-faith
- 10 performance of processes for the deployment, maintenance,
- 11 retirement, and/or disposition of computer equipment that was
- 12 not used by identified custodians.

13 **V. SEARCH**

14 Prior to conducting searches for responsive ESI, the parties will meet and confer
15 about methods to search ESI in order to identify ESI that is subject to production in
16 discovery, methods to filter out ESI that is not subject to discovery, and proposed ESI
17 search terms. The parties will also meet and confer regarding the custodians for whom
18 ESI will be produced.

19 **VI. PRODUCTION FORMATS**

20 (a) The parties agree to produce documents in TIFF and/or native file formats
21 as set forth below. If particular documents reasonably warrant a different format, the
22 parties will cooperate to arrange for the mutually acceptable production of such
23 documents. The parties agree not to degrade the searchability of documents as part of
24 the document production process.

25 (b) Electronic Production of Paper Documents as Static Images: The parties
26 agree that to the extent that a Producing Party elects to produce hard copy documents in
27 electronic format, such documents will be produced in the following format:
28

- 1 • Single page Group 4 Tagged Image File Format (.TIF or .TIFF) files
2 at 300 x 300 dpi resolution and 8.5 x 11 inch page size, unless a
3 document requires a higher resolution in order to be appropriately
4 viewed.
- 5 • A unique Bates number shall be assigned to each page, and branded
6 in the lower right-hand corner of the page, but shall not obscure any
7 part of the underlying image. Each image should have a unique file
8 name, which will be the Bates number of the individual page.
- 9 • Any confidentiality or other endorsements shall be branded on the
10 lower left-hand corner of the page or other practical area. The parties
11 shall use reasonable measures to ensure that any such branding does
12 not obscure any part of the underlying image.
- 13 • In scanning paper documents, distinct documents should not be
14 merged into a single record, and single documents should not be
15 merged into multiple records (i.e., paper documents should be
16 logically unitized). The parties will make their best efforts to have
17 their vendors unitize documents correctly and will commit to address
18 situations where there are improperly unitized documents.
- 19 • The parties agree that any file folders and/or documents affixed to
20 hard copy documents will be scanned as separate documents.
- 21 • The parties agree that the Producing Party shall also produce
22 searchable optical character recognition (“OCR”) text of scanned
23 paper documents consistent with the specifications for Searchable
24 Text set forth in Section 5(e), below.

25 (c) Production of ESI in Native File Format: The parties agree that certain
26 documents will be produced in native format, including:

- 27 • Spreadsheet formatted document (e.g., Microsoft Excel Files).
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- 1 • Presentation formatted documents (e.g., Microsoft PowerPoint
2 Files). PowerPoint Documents shall be processed with hidden slides
3 and all speaker notes unhidden and shall be processed to show both
4 the slide and the speaker's notes on the TIFF image. PowerPoint
5 documents that contain redactions shall be produced as static images
6 per the specifications in Section 6(d). If the Receiving Party believes
7 a PowerPoint document needs to be produced with color images, the
8 parties will confer to determine the best method of production.
- 9 • Video files (e.g., MPEG, AVI) and audio files (e.g., MP3)

10 Any documents produced in native format should be produced in accordance with
11 the following specifications:

- 12 • A unique document number shall be used as the file name, and the
13 original file name and file extension shall be preserved in the
14 corresponding load file. An example of this convention would be
15 ABC-JD-00000001.
- 16 • For each produced native file, the Producing Party will provide a
17 static image slipsheet indicating that the document was produced in
18 native format and providing the unique Bates number for the
19 corresponding native file.

20 (d) Production of ESI as Static Images: Except for those documents produced
21 in native format pursuant to Section 6(c) above, the parties agree that ESI will be
22 produced in TIFF format according to the following specifications:

- 23 • The parties will produce document images as single-page, Group IV
24 TIFF image files with an image load file in Concordance/Opticon
25 file format. For those graphic file types that cannot reasonably be
26 viewed in TIFF format (e.g., .jpeg, .png, .gif, etc.), those file types
27 will be produced in color.

- 1 • A unique Bates number shall be assigned to each page and branded
2 in the lower right-hand corner of the page, but shall not obscure any
3 part of the underlying image. Each image should have a unique file
4 name, which will be the Bates number of the individual page.
- 5 • Any confidentiality or other endorsements shall be branded on the
6 lower left-hand corner of the page. The parties shall use reasonable
7 measures to ensure that any such branding does not obscure any part
8 of the underlying image.
- 9 • The parties agree to meet and confer regarding file types that are not
10 amenable to conversion into TIFF images. If necessary, any such
11 relevant and responsive, but non-convertible files, may be
12 temporarily produced in the form of a placeholder TIFF image.

13 (e) Production of Searchable Text: Extracted text should be provided with all
14 records, except for documents that originated as hard copy or redacted documents.
15 Searchable/extracted text should be produced as a document-level multi-page text file
16 with the text file named the same as the BEGBATES field and placed in a separate
17 folder. The full path of the text file must be provided in the .DAT file in the TEXTLINK
18 field. For files produced natively, the full path of the native file (also named the same
19 as the BEGBATES field) must be provided in the .DAT file for the NATIVELINK field.
20 Searchable/extracted text for redacted documents will reflect only the non-redacted
21 portions.

22 (f) Metadata: The parties will include metadata, if available in the original
23 file, in a .DAT file with the following fields:

- 24 • BEGBATES
- 25 • ENDBATES
- 26 • BEGATTACH
- 27 • ENDATTACH
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- 1 • ALL CUSTODIANS
- 2 • TO
- 3 • FROM
- 4 • CC
- 5 • BCC
- 6 • EMAIL SUBJECT
- 7 • DATESENT (MM/DD/YYYY)
- 8 • TIMESENT
- 9 • DATERECEIVED (MM/DD/YYYY)
- 10 • TIMERECEIVED
- 11 • TIMEZONE (the time zone used for processing)
- 12 • FILENAME
- 13 • DATELASTMOD (File system date and time last modified)
- 14 • FILE_EXT (file extension)
- 15 • FILE TITLE
- 16 • FILE AUTHOR
- 17 • FILE SUBJECT
- 18 • REDACTED
- 19 • CONFIDENTIAL
- 20 • MD5 HASH
- 21 • TEXTLINK
- 22 • NATIVELINK
- 23 • PRODVOL
- 24 • ALL PATHS
- 25 • DATE CREATED
- 26 • TIME CREATED
- 27
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- 1 • PAGE COUNT
- 2 • CONVERSATION INDEX

3 (g) A Producing Party shall not be required to search for or produce more than
4 one identical copy of responsive documents absent a showing of good cause that the
5 production of such additional identical copies is necessary, provided that other
6 custodians from whom an identical copy was collected are identified in the “ALL
7 CUSTODIANS” field.

8 **VII. DEDUPLICATION**

9 (a) Deduplication shall be performed globally (across the entire production).
10 If a duplicate document exists that is part of a document family, the duplicate will only
11 be removed if the entire family is removed as a duplicate. To the extent that
12 deduplication is used, the parties expressly agree that a document produced from one
13 custodian’s file but not produced from another custodian’s file, as a result of
14 deduplication, will nonetheless be deemed as if produced from that other custodian’s
15 file for purposes of deposition, interrogatory, request to admit and/or trial.

16 (b) Paper documents shall not be eliminated as duplicates or responsive ESI.

17 (c) In order to reduce the volume of entirely duplicative content within email
18 threads, the Parties may utilize “email thread suppression.” As used in this agreement,
19 email thread suppression means reducing duplicative production of email threads by
20 producing the most recent email containing the thread of emails, as well as all
21 attachments within the thread, and excluding emails constituting exact duplicates of
22 emails within the produced string. Upon a showing of good cause by the Receiving
23 Party, the Producing Party agrees to provide metadata for specific documents and emails
24 that are not produced, upon identification and request by the Receiving Party.
25 Duplicative emails suppressed under this paragraph need not be reflected on the Party’s
26 privilege log.

27 **VIII. PASSWORD-PROTECTED FILES.**

1 To the extent any produced Documents are password-protected, the Producing
2 Party shall make reasonable efforts to unlock the Document prior to production or
3 provide passwords in order to allow access by the Receiving Party. If the Producing
4 Party is unable to process a Document because of unknown passwords or other
5 encryption, the Producing Party shall retain a listing of such Documents in an exception
6 report.

7 **IX. TIMELY PRODUCTION**

8 The Parties will endeavor to produce Documents in a rolling but reasonably timely
9 manner and in accordance with the timelines set forth in the Federal Rules of Civil
10 Procedure. If either party feels production has been unreasonably delayed, the parties
11 agree to confer via telephone or in person in order to attempt to reach a mutually
12 agreeable consensus prior to court involvement.

13 **X. DOCUMENTS PROTECTED FROM DISCOVERY**

14 Nothing contained herein is intended to or shall serve to limit a Party's right to
15 conduct a review of documents, ESI or information (including metadata) for relevance,
16 responsiveness and/or segregation of privileged and/or protected information before
17 production. Further nothing contained herein is intended to reduce the time frame
18 provided to the Producing Party to complete their review should they choose to do so.

19 **XI. PRIVILEGE LOG AND TREATMENT OF PRIVILEGED MATERIALS**

20 (a) Consistent with the Federal Rules of Civil Procedure, a Party withholding
21 or redacting any responsive Document on the grounds of privilege, immunity, or any
22 similar claim shall provide to the Receiving Party a privilege log within 60 days
23 following the production of documents from which the privileged documents are
24 withheld, except that the Parties shall have no obligation to log: (i) communications
25 between the parties and counsel (including internal communications within a law firm
26 or a legal department of a corporation) regarding the Litigation or Litigation strategy on
27 and after the filing of this lawsuit and before the lawsuit in anticipation of Litigation;
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1 (ii) work product material created after the start of the Litigation and before the lawsuit
2 in anticipation of Litigation; or (iii) redactions of produced documents, provided that the
3 reason for the redaction appears on the redaction label and the Producing Party logs
4 redactions of designated documents in which a log entry is necessary to enable a
5 Receiving Party to assess the claim that the information is privileged or subject to
6 protection.

7 (b) For each Document withheld, the privilege log shall contain the following
8 information: (i) a unique identifier, or Bates number for produced documents, (ii) the
9 date of the Document; (iii) identification of the person(s) who authored or sent the
10 Document (iv) identification of person(s) designated as addressees, copyees or blind
11 copyees; and (v) the type or nature of the privilege asserted (e.g., attorney-client
12 privilege, work-product doctrine, etc.). For all individuals listed on a log whose role as
13 an attorney, or legal personnel acting under the direction of an attorney, is the basis for
14 a claim of privilege, the privilege log shall identify them as such (for example, by placing
15 an asterisk next to the name).

16 (c) Any email thread that is withheld on the grounds of privilege, immunity, or
17 any similar claim shall be logged as one Document and shall be identified by the
18 top-most email in the chain, but expressly identified as an email thread.

19 **XII. REDACTIONS**

20 In addition to redactions for protecting attorney-client privilege and attorney work
21 product, the parties may use redactions to protect information prohibited from disclosure
22 by federal, state, or foreign statutes or regulations; medical information concerning any
23 individual person; and personally identifiable information or sensitive personal
24 information. Redacted documents will be produced in TIFF format with corresponding
25 searchable OCR text and the associated metadata for the document, ensuring the
26 redacted content is fully protected from disclosure. The Producing Party may use native
27 file redaction of spreadsheet formatted documents (i.e., Microsoft Excel) using industry
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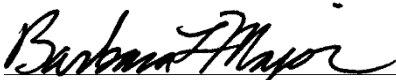
1 standard native redaction tools. Documents with native file redactions will also include
2 searchable text and associated metadata, with protected content removed to protect
3 disclosure.

4 **XIII. MODIFICATION**

5 This Order may be modified by an Order approved by the Court.

6 **IT IS SO ORDERED.**

7 Dated: 6/8/2023


8 Hon. Barbara L. Major
9 United States Magistrate Judge

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