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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 COPART, INC.,
17 Plaintiff-Counterdefendant,
18 v.
19 SPARTA CONSULTING, INC.,
20 Defendant-Counterplaintiff.
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CASE NO. 2:14-cv-00046-KJM-CKD

**STIPULATION AND ORDER REGARDING
ELECTRONICALLY STORED
INFORMATION, DISCOVERY, AND
DOCUMENT PRODUCTION FORMAT**

1 This Stipulation and [Proposed] Order Regarding Electronically Stored Information,
2 Discovery, and Document Production Format shall govern the parties in the above-captioned
3 case (the “Litigation”).

4 **I. GENERAL PROVISIONS**

5 The parties will make reasonable efforts to prepare responsive and non-privileged data for
6 production in accordance with the agreed-upon specifications set forth below. These
7 specifications apply to hard copy documents or electronically stored information (“ESI”) which
8 are to be produced in the first instance in this Litigation.

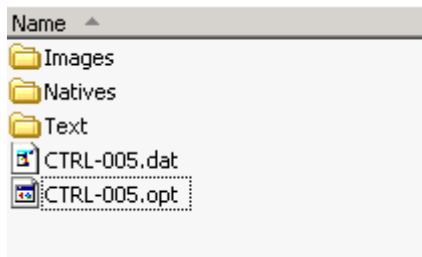
9 **A. SECURITY.** Both parties will make reasonable efforts to ensure that any productions
10 made are free from viruses and, if produced on physical media, encrypted and password
11 protected prior to submission.

12 **B. CONFIDENTIALITY DESIGNATION.** Responsive documents in TIFF format will
13 be identified with the appropriate confidentiality designations in accordance with the Protective
14 Order in this Litigation. Each responsive document produced in native format will have its
15 confidentiality designation identified.

16 **C. NON-STANDARD FILES.** Prior to the production of non-standard electronic files,
17 large or oversized documents, transparencies, etc., the parties will discuss and agree to the format
18 of any such production to optimize for cost, convenience, accessibility, and other considerations.

19 **D. PRODUCTION MEDIA.** Documents shall be produced on DVDs, external hard drives,
20 secure digital links, or other agreed upon media (“Production Media”). Each piece of Production
21 Media shall identify a production number corresponding to the production volume (e.g.,
22 “VOL001”, “VOL002”), as well as the volume of the material in that production (e.g. “-001”, “-
23 002”). Each piece of production media shall also identify: (1) the producing party’s name; (2)
24 the production date; and (3) the Bates number range of the materials contained on the Production
25 Media.

26 The production material should be produced in the following folder structure:
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In the alternative, the “CTRL-005.dat” and “CTRL-005.opt” files in the screenshot above may be contained in a folder titled “Data”.

II. DATA PROCESSING

A. KEYWORD SEARCHING. To the extent that keywords are used in limiting the universe of potentially responsive documents to be reviewed, the parties shall meet and confer to develop a mutually agreeable list of search terms and protocols prior to the production of documents. Any search methodology employed must open compound and nested files (*e.g.*, zip files). The search utilities employed must enable the use of stemmed searches (*e.g.* using “!” or “*” to include variations on a keyword) and Boolean searches.

B. CULLING\FILTERING. Each party will use its reasonable efforts to filter out common system files and application executable files by using a commercially reasonable hash identification process. Hash values that may be filtered out during this process are located in the National Software Reference Library (“NSRL”) NIST hash set list. Additional culling of system file types based on file extension may include, but are not limited to: WINNT, LOGS, DRVS, MP3, C++ Program File (c) , C++ Builder 6 (cpp), Channel Definition Format (cdf), Creatures Object Sources (cos), Dictionary file (dic), Executable (exe), Hypertext Cascading Style Sheet (css), JavaScript Source Code (js), Label Pro Data File (IPD), Office Data File (NICK), Office Profile Settings (ops), Outlook Rules Wizard File (rwz), Scrap Object, System File (dll), Temporary File (tmp), Windows Error Dump (dmp), Windows Media Player Skin Package (wmz), Windows NT/2000 Event View Log file (evt), Python Script files (.py, .pyc, .pud, .pyw), and Program Installers.

C. DEDUPLICATION. A party is only required to produce a single copy of a responsive email and a party may de-duplicate responsive emails (based on MD5 or SHA-1 hash values at

1 the document level) across Custodians. For emails with attachments, the hash value is generated
2 based on the parent/child document grouping. A party may also de-duplicate “near-duplicate”
3 email threads as follows: In an email thread, only the final-in-time document need be produced,
4 if all previous emails in the thread are contained within the final message. Where a prior email
5 contains an attachment, that email and attachment shall not be removed as a “near-duplicate.”
6 To the extent that de-duplication through MD5 or SHA-1 hash values is not possible, the parties
7 shall meet and confer to discuss any other proposed method of de-duplication.

8 **III. PRODUCTION OF HARD COPY DOCUMENTS OTHER THAN**
9 **TRANSACTIONAL DATA**

10 **A. CUSTODIAN HARD COPY DOCUMENTS TO BE PRODUCED IN TIFF.**

11 Responsive documents located in the workplace(s) of any Custodian and that exist in hard copy
12 format only shall be scanned and produced as single page TIFFs, with at least 300 dots per inch
13 (dpi) resolution. (Other documents are addressed in section III.G. below.) Each TIFF image
14 shall be named according to the corresponding Bates number associated with the document.
15 Each image shall be branded according to the Bates number and agreed upon confidentiality
16 designation. TIFFs shall show all text and images that would be visible to a user of the hard copy
17 documents. The following requirements apply to any documents produced in TIFF format:

18 1. **OCR TEXT FILES.** A commercially acceptable technology for optical
19 character recognition “OCR” shall be used for all scanned, hard copy documents. OCR
20 text shall be provided as a single text file for each document, and the file name itself
21 should match its respective TIFF file name. The text files will not contain the redacted
22 portions of the documents.

23 2. **DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Documents
24 should be provided with (a) an ASCII delimited data file (.txt, .dat, or .csv), and (b) an
25 image load file that can be loaded into commercially acceptable production software
26 (e.g., Concordance, Summation, ViewPoint). Each TIFF in a production must be
27 referenced in the corresponding image load file. The total number of documents
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1 referenced in a production's data load file should match the total number of designated
2 document breaks in the Image Load file(s) in the production.

3 3. **CODING FIELDS.** To the extent it is readily available, the following
4 information shall be produced in the delimited data file accompanying hard copy
5 documents: (a) BEGBATES, (b) ENDBATES, (c) CUSTODIAN, (d)
6 CONFIDENTIALITY, and (e) REDACTED.

7 4. **BATES NUMBERING.** All images must be assigned a unique Bates number
8 that is sequential within a given document and across the production sets. The Bates
9 numbering should start with a unique prefix identifying the producing party and should
10 sequentially number the images being produced.

11 5. **UNITIZING OF DOCUMENTS.** In scanning paper documents, distinct
12 documents should not be merged into a single record, and single documents should not be
13 split into multiple records (i.e., paper documents should be logically unitized). The
14 parties will use reasonable efforts to unitize documents correctly. Exception is taken
15 when the collected document was originally in a format which does not have logical or
16 sequential pagination. In that instance, the original pagination or order of the document
17 shall be maintained.

18 **B. NON-CUSTODIAL HARD COPY DOCUMENTS TO BE PRODUCED IN TIFF**
19 **OR BE MADE AVAILABLE FOR INSPECTION.** Documents stored in archives or other
20 long-term storage that are available only in hard copy may be either (i) produced in TIFF format,
21 per the requirements listed above; or (ii) made available for inspection and copying in California,
22 unless stored outside of California, in which case the parties shall meet and confer on an
23 accessible location for inspection and copying. In the event that documents are made available
24 for inspection and copying, the party doing the inspection shall be responsible for the costs of
25 copying.

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1 **IV. PRODUCTION OF ELECTRONICALLY STORED INFORMATION OTHER THAN**
2 **TRANSACTIONAL DATA**

3 **A. METADATA FIELDS AND PROCESSING.** Each of the metadata and coding fields
4 set forth in Appendix 1 that can be extracted shall be produced for that document. With the
5 exception of prior production materials for which metadata is not available, the parties are not
6 obligated to populate manually any of the fields in Appendix 1 if such fields cannot be extracted
7 from a document, with the exception of the following: (a) BEGBATES, (b) ENDBATES, (c)
8 BEGATTACH (or BEGFAMILY), (d) ENDATTACH (or ENDFAMILY); (e) CUSTODIAN, (f)
9 CONFIDENTIALITY, and (g) REDACTED, which should be populated by the party or the
10 party's vendor. The parties will make reasonable efforts to ensure that metadata fields
11 automatically extracted from the documents are correct, however, the parties acknowledge that
12 such metadata may not always be accurate and might instead contain irrelevant or incorrect
13 information generated during the collection process. Parties may request other native files be
14 produced as described in Section IV.I below.

15 **B. TIFFs.** Unless excepted below, single page TIFFs should be provided, at least 300 dots
16 per inch (dpi) resolution. Each TIFF image file should be one page and named according to the
17 unique Bates number, followed by the extension “.TIF”.

18 **C. TEXT FILES.** For each document, a text file should be provided along with the image
19 files and metadata. The text of native files should be extracted directly from the native file.
20 However, if a document has been redacted or does not contain extractable text, OCR of the
21 redacted document will suffice in lieu of extracted text.

22 **D. DATABASE LOAD FILES/CROSS-REFERENCE FILES.** Each Production Media
23 shall include: (a) An ASCII delimited data file (.txt, .dat, or .csv), and (b) an image load file that
24 can be loaded into commercially acceptable production software (e.g., Concordance, Summation,
25 ViewPoint). Each TIFF in a production must be referenced in the corresponding image load file.
26 The total number of documents referenced in a production's data load file should match the total
27 number of designated document breaks in the Image Load file(s) in the production. The total
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1 number of documents in a production should match the total number of records in the database
2 load file.

3 **E. BATES NUMBERING.** All images must be assigned a unique Bates number that is
4 sequential within a given document and across the production sets. The Bates numbering should
5 start with a unique prefix identifying the producing party and should sequentially number the
6 images being produced.

7 **F. PRESENTATIONS.** The parties shall produce presentations (*e.g.*, MS PowerPoint,
8 Google Presently/Punch) in native format unless redacted, in which instance presentations may
9 be produced in TIFF with OCR of the redacted document. Native copies of presentations should
10 be produced with a link in the NativeLink field, along with extracted text and applicable
11 metadata fields set forth in Appendix 1. A TIFF placeholder indicating the document was
12 provided in native format should accompany the database record. The parties will make
13 reasonable efforts to ensure that any presentations that are produced only as TIFF images are
14 formatted so as to be readable, with hidden slides and speaker's notes unhidden, and to show
15 both the slide and the speaker's notes on the TIFF image. The parties will take reasonable efforts
16 to make redacted presentations available in native format if TIFF images are unusable or are
17 missing material information.

18 **G. SPREADSHEETS.** The parties shall produce spreadsheets in native format unless
19 redacted, in which instance spreadsheets may be produced in TIFF with OCR of the redacted
20 document. Native copies of spreadsheets should be produced with a link in the NativeLink field,
21 along with extracted text and applicable metadata fields set forth in Appendix 1. A TIFF
22 placeholder indicating the document was provided in native format should accompany the
23 database record. The parties will make reasonable efforts to ensure that any spreadsheets that are
24 produced only as TIFF images are formatted so as to be readable. The parties will take
25 reasonable efforts to make redacted spreadsheets available in native format if TIFF images are
26 unusable or are missing material information.

27 **H. PROPRIETARY FILES.** To the extent a response to discovery requires production of
28 ESI accessible only through proprietary software, the parties should continue to preserve each

1 version of such information. The parties shall meet and confer to finalize the appropriate
2 production format.

3 **I. REQUEST(S) FOR ADDITIONAL NATIVE FILES.** If good cause exists to request
4 production of specified files, other than those set forth above, in native format, a party may
5 request such production and provide an explanation of the need for native file review, which
6 request shall not unreasonably be denied. Any native files that are produced should be produced
7 with a link in the NativeLink field, along with all extracted text and applicable metadata fields.

8 **J. REDACTION OF INFORMATION.** If documents are produced containing redacted
9 information, the producing party shall supply a list of the documents for any claim(s) of
10 privilege, indicating the grounds for the redaction and the nature of the redacted material (e.g.,
11 privilege, trade secret, privacy) within thirty (30) days of the production. During the course of
12 the Litigation, an electronic copy of the originally unredacted data shall be securely preserved in
13 such a manner so as to preserve without modification, alteration or addition the content of such
14 data including any metadata therewith. If scanning is necessary to create a redacted version of a
15 document, the producing party shall produce a corresponding load file identifying the custodian
16 from whom the document was collected and such documents shall subject the TIFF files to
17 Optical Character Recognition (“OCR”) process if the TIFF files do not already have extractable
18 text, such that the processed files become searchable.

19 **V. PRODUCTION OF TRANSACTIONAL DATA**

20 **A. WHAT CONSTITUTES TRANSACTIONAL DATA.** “Transactional data” consists
21 of transactional-level information stored in a database or contained in individual hard copy
22 documents such as bills of lading or invoices.

23 **B. TRANSACTIONAL DATA CONTAINED IN DATABASES TO BE PRODUCED**
24 **IN FLAT FILES.** Responsive transactional data shall be produced in a “flat file” format such as
25 a comma-delimited TXT files.

26 **C. TRANSACTIONAL DATA CONTAINED IN HARD COPY FORMAT.** Responsive
27 transactional data that is contained in hard copy format but that is also contained in a
28 transactional database that is subject to production need not be separately produced. For

1 example, if transaction-level information is contained in a hard copy invoice, but that
2 information is also entered into a transactional database, the hard copy invoice need not be
3 produced. Responsive transactional data that is contained in hard copy format that is not
4 contained in a transactional database shall be either (i) produced in TIFF format, per the
5 requirements listed III.A. above; or (ii) made available for inspection and copying at an
6 accessible location in either California or Texas. In the event that documents are made available
7 for inspection and copying, the party doing the inspection shall be responsible for the costs of
8 copying.

9 **VI. PROCESSING OF THIRD-PARTY DOCUMENTS**

10 **A.** A party that issues a non-party subpoena (“Issuing Party”) shall include a copy of this
11 Stipulation with the subpoena and state that the parties to the Litigation have requested that third-
12 parties produce documents in accordance with the specifications set forth herein.

13 **B.** The Issuing Party shall produce any documents obtained pursuant to a non-party
14 subpoena to the opposing party within fourteen (14) days of receipt of those documents by the
15 Issuing Party.

16 **C.** If the non-party production is not Bates-stamped, the Issuing Party will endorse the non-
17 party production with unique prefixes and Bates numbers prior to producing it to the opposing
18 party.

19 **D.** Nothing in this stipulation is intended to or should be interpreted as narrowing,
20 expanding, or otherwise affecting the rights of the parties or third-parties to object to a subpoena.

21 **VII. MISCELLANEOUS PROVISIONS**

22 **A. Objections Preserved.** Nothing in this agreement shall be interpreted to require
23 disclosure of irrelevant information or relevant information protected by the attorney-client
24 privilege, work-product doctrine, or any other applicable privilege or immunity. The parties do
25 not waive any objections as to the production, discoverability, admissibility, or confidentiality of
26 documents and ESI.

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1 **B. No Effect on Cost Shifting.** Nothing in this agreement shall affect, in any way, a
2 producing party's right to seek reimbursement for costs associated with collection, review,
3 and/or production of documents or ESI.

4 **C. No Waiver.** Pursuant to Federal Rule of Evidence 502 and applicable California law, the
5 inadvertent production of a privileged document or work product protected ESI is not a waiver in
6 the pending case or in any other federal or state proceeding. Moreover, the mere production of
7 ESI in a litigation as part of a mass production shall not itself constitute a waiver for any
8 purpose. The Parties acknowledge and understand that, under California law, if a lawyer
9 receives materials covered by the attorney-client privilege or that otherwise clearly appear to be
10 confidential and privileged and where it is reasonably apparent that the materials were produced
11 or made available through inadvertence, the lawyer should refrain from examining the materials
12 any more than is essential to ascertain if the materials are privileged and should immediately
13 notify the sender that he or she possesses material that appears to be privileged. *See Rico v.*
14 *Mitsubishi Motors Corp.*, 42 Cal. 4th 807, 817 (2007).

15
16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 Dated: November 14, 2014

18 By: /s/ Jason S. Takenouchi

19 KASOWITZ BENSON TORRES &
20 FRIEDMAN LLP
21 Mark P. Ressler
22 R. Tali Epstein
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24 Dated: November 14, 2014

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GIBSON, DUNN & CRUTCHER LLP
Frederick Brown

*Attorneys for Defendant-Counterplaintiff Sparta
Consulting, Inc.*

IT IS SO ORDERED.

Dated: November 18, 2014



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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Appendix 1: ESI Metadata and Coding Fields

- A. Image Load File shall contain the following comma-delimited fields:
BEGBATES, VOLUME, IMAGE FILE PATH, DOCUMENT BREAK,
FOLDER BREAK, BOX BREAK, PAGE COUNT
- B. Metadata Load File shall be delimited according to the following characters:
 - o Delimiter = D (ASCII:0020)
 - o Text-Qualifier = p (ASCII:00254)
 - o NewLine = (ASCII:00174)
- C. The following fields will appear in the metadata load file in the order displayed in the chart on the next page:

Field Name	Field Description
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH (or BEGFAMILY)	First production Bates number of the first document in a family
ENDATTACH (or ENDFAMILY)	Last production Bates number of the last document in a family
CUSTODIAN	Individual from whom the documents originated
NATIVELINK	Native File Link (e.g., Excel files and Powerpoint files)
SUBJECT	Subject line of email
DATESENT	Date email was sent (format: MM/DD/YYYY)
TIMESENT	Time email was sent
TO	All recipients that were included on the "To" line of the email
FROM	The name and email address of the sender of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
AUTHOR	Any value populated in the Author field of the document properties
LASTAUTHOR (Edoc only)	The name of the last author as identified by the metadata of the produced document.
FILENAME (Edoc only)	File name of an electronic document
FILE EXTENSION	The original file or document extension of the produced document.
FILEPATH	The original file path to the produced document.
FILESIZE	The original file size of the produced document.
DATEMOD (Edoc only)	Date an electronic document was last modified (format: MM/DD/YYYY)
TIMEMOD (Edoc only)	Time an electronic document was last modified (format: HR:MN AM/PM)
DATECREATED (Edoc only)	Date the document was created (format: MM/DD/YYYY)
TIMECREATED (Edoc only)	Time an electronic document was last modified (format: HR:MN AM/PM)
CONVERSATIONINDEX (Email Only)	The conversation index extracted from the produced email message.
PAGES	The number of pages of a produced document.
MD5HASH	A calculated value unique to each identical file. The producing party may substitute the SHA1 Hash value, but will name the field accordingly to indicate such.
TEXTPATH	Path to the associated multi-page/document level text file for each produced document.
CONFLABEL	The confidentiality designation of the produced file.
REDACTED	Identifies whether or not the produced file is redacted.
PRODVOLUME	The production volume associated with the produced file.

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