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17 **UNITED STATES DISTRICT COURT**  
 18 **EASTERN DISTRICT OF CALIFORNIA**

19 RICHARD STAYCHOCK AND  
 20 KATHLEEN MACKAY STAYCHOCK,

21 Plaintiffs,

22 vs.

23 KLEAN KANTEEN, INC., a corporation,

24 Defendant.

Case No.: 2:17-cv-01012-KJM-CMK  
 [Hon. Kimberly J. Mueller]

**STIPULATED ORDER  
 ESTABLISHING PRODUCTION OF  
 ELECTRONICALLY STORED  
 INFORMATION**

25 KLEAN KANTEEN, INC., a corporation,

26 Counterclaim Plaintiff,

27 vs.

28 RICHARD STAYCHOCK AND  
 KATHLEEN MACKAY STAYCHOCK,

Counterclaim Defendants.

1 **I. SCOPE**

2 Pursuant to Fed. R. Civ. P. 16 and 26 and the Court’s Minutes for Scheduling Conference  
3 held on September 14, 2017 (Doc. No. 10), the Plaintiffs / Counterclaim Defendants, Richard  
4 Staychock and Kathleen Mackay Staychock (“Plaintiffs”) and Defendant / Counterclaim  
5 Plaintiff, Klean Kanteen, Inc., a corporation (“Defendant”) (Plaintiffs and Defendants  
6 collectively referred to as the “Parties”) have conferred regarding matters affecting the discovery  
7 of electronically stored information (“ESI” or “E-discovery”) and agreed on the following  
8 procedures regarding the production for ESI in this case, which the Court finds appropriate  
9 (“Stipulated Order”).  
10

11 **II. GENERAL PROVISIONS**

12  
13 1. This Stipulated Order does not determine the relevance, discoverability,  
14 confidentiality, authenticity or admissibility of any ESI of the Parties, does not expand any  
15 record preservation requirements under the Federal Rules of Civil Procedure, and does not limit  
16 any protection provided by Fed. R. Civ. P. 26 or Fed. R. Civ. P. 37.

17  
18 2. This Stipulated Order does not waive any objections as to discoverability,  
19 confidentiality, authenticity or admissibility of any ESI, or any objections raised by a Party in  
20 their written responses to specific discovery requests served in this case.

21  
22 3. Nothing in this Stipulated Order shall be interpreted to require the disclosure of  
23 any ESI that a Party contends are protected from disclosure by the attorney-client privilege, work  
24 product doctrine or any other applicable privilege or protection.

25  
26 4. This Stipulated Order shall not require the Parties to create or supply any  
27 information, metadata or otherwise, which is not maintained by the Parties in the usual course of  
28 business.

1           5.       This Stipulated Order is subject to, and does not modify or supersede, the terms  
2 and conditions of any protective order agreed to between the Parties or entered in this case.

3  
4           **III. DEFINITIONS**

5           6.       “**Electronically stored information**” or “**ESI**,” as used herein, has the  
6 same meaning as contemplated by the Federal Rules of Civil Procedure.

7           7.       “**Native data format**” means and refers to the format of ESI in which it  
8 was originally generated and/or normally kept by the producing party in the usual course of its  
9 business and in its regularly conducted activities.

10          8.       “**Metadata**” means (a) information embedded in a native file that is not  
11 ordinarily viewable or printable from the application that generated, edited, or modified such  
12 native file, and (b) information generated automatically by the operation of a computer or other  
13 information technology system when a native file is created, modified, transmitted, deleted or  
14 otherwise manipulated.

15          9.       “**Documents**” has the same meaning contemplated in the Federal Rules of  
16 Civil Procedure.  
17

18          10.      “**Static Image**” refers to a representation of ESI produced by converting a  
19 native file into standard image format capable of being viewed and printed on standard computer  
20 systems.  
21

22          11.      “**Media**” means an object or device, real or virtualized, including but not  
23 limited to a disc, tape, computer or other device, on which data is or was stored.  
24

25           **IV. IDENTIFICATION OF E-DISCOVERY LIAISONS**

26          12.      The parties identify their E-discovery liaisons as follows:  
27  
28

1 Plaintiffs identify: Mieke K. Malmberg and Sarah E. Spires, counsel for Plaintiffs.

2 Defendant identifies: Phil Ducker, counsel for Defendant.

3 **V. PRODUCTION OF ESI**

4 13. Subject to the limitations in this Stipulated Order, on a rolling basis the  
5 Parties will produce responsive, non-privileged ESI (regardless of its original format) as image  
6 files or text searchable files (i.e. TIFF), unless otherwise agreed. For TIFF file documents that  
7 do not contain redactions, the Parties will produce an extracted text file for each electronic  
8 document where text can be extracted, and an Optical Character Recognition (“OCR”) text file  
9 for (a) each imaged paper document and (b) each electronic document for which text cannot be  
10 extracted. For TIFF file documents that contain redactions, the Parties will provide an OCR text  
11 file for the unredacted portions of such documents. Said extracted text and OCR files shall be  
12 produced as document level text files and be named consistently with their corresponding TIFF  
13 files (Example000000001.tif and Example000000001.txt). The Parties shall also provide  
14 mutually acceptable load files linking the TIFFs with their associated text file in order for the  
15 documents to be loadable into document management software.

16 14. **Image Formatted Documents.** With respect to image formatted documents, the  
17 parties agree to produce certain document level information including starting production  
18 number and ending production number, beginning attach, end attach, native file link (if  
19 applicable), and confidentiality designations. While there is no general obligation to produce  
20 metadata, to the extent such metadata is readily accessible in the document as kept in the  
21 ordinary course of business, the parties will use reasonable efforts to provide the following  
22 metadata: author, original filename, document extensions, modification date and creation date.  
23 Parties may also provide custodian information to the extent it is readily accessible and/or  
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1 available. If redacted electronic documents are produced, some of the metadata may be removed  
2 from the data load files and from the “Full Text” field.

3       15.     **Emails.** With respect to emails, the parties agree to produce certain document  
4 level information including starting production number, ending production number, beginning  
5 attach, end attach, native file link (if applicable), OCR/extracted text path and confidentiality  
6 designations. While there is no general obligation to produce metadata, to the extent metadata is  
7 accessible in the email as kept in the ordinary course of business, parties will use reasonable  
8 efforts to provide the following metadata: to, from, cc, bcc, date sent, and subject. If redacted  
9 emails are produced, some of the metadata may be removed from the data load files and from the  
10 “Full Text” field.  
11

12       16.     Attachments, enclosures, and exhibits to any parent document should be produced  
13 and proximately linked to the respective parent document (and vice-versa).  
14

15       17.     Electronic documents will be produced in native file format if necessary for the  
16 accurate portrayal of the document’s ordinarily viewable or printable content, including, for  
17 example, Microsoft Excel spreadsheets (.xsl, .xlsx, .xlsm, and .xlsb files). Documents produced  
18 in native file format shall be produced together with a placeholder TIFF image marked with the  
19 words “File Produced Natively” along with the appropriate confidentiality designation (if any),  
20 production number, and a file path to the native file.  
21

22       18.     In the event that a Receiving Party requests production of Native Format  
23 ESI, the Producing Party and the Receiving Party shall negotiate in good faith about the timing,  
24 cost and method of such production. No document produced in Native Format shall be  
25 intentionally manipulated to change the appearance or substance of the document prior to its  
26 collection. When producing a file in native format, it shall be accompanied by a TIFF image  
27  
28

1 marked with the words “File Produced Natively” along with the appropriate confidentiality  
2 designation (if any) and production number. In addition, because native documents may lack  
3 production numbers or confidentiality designations branded on the face of the document when  
4 printed, any such numbers or designations shall be contained in a load file and in the name of the  
5 native document, which associates this type of information with each native file produced.  
6

7 19. Certain types of files, such as system, program, and sound files, may not be  
8 amenable to conversion into TIFF format. Those files will not be converted into TIFF format  
9 but, if required to be produced, will be represented in the form of a placeholder TIFF image and  
10 produced in a reasonably usable form by agreement of the Parties. Examples of such file types  
11 that are not conducive to conversion into TIFF image include: \*.mov \*.mp3 \*.exe \*.wav \*.dwg.  
12

## 13 **VII. PROCESSING AND LOGGING OF PRIVILEGED DOCUMENTS**

14 20. If either of the Parties determines that a parent document will be withheld as  
15 privileged, the Party shall make a separate determination regarding whether to produce, redact,  
16 or withhold each of its attachments, enclosures, and exhibits as privileged. If a Party determines  
17 that only an attachment, enclosure, or exhibit to a parent document is privileged, the attachment,  
18 enclosure, or exhibit shall be redacted and then produced in redacted form with the parent  
19 document.  
20

21 21. The Parties shall create logs of the responsive documents that they withhold from  
22 production or redact on grounds of attorney-client privilege, the attorney work product doctrine  
23 or any other claim of privilege (the “privilege logs”). The Parties are not required to log  
24 privileged documents dated after the filing date of the complaint.  
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1 **VIII. DE-DUPLICATION OF DOCUMENTS**

2 22. Prior to production, the Parties may de-duplicate e-mails and other ESI designated  
3 for production

4 **IX. PRODUCTION OF DOCUMENTS CONTAINING COLOR**

5 23. Documents containing color need not be produced in color; however, if color is  
6 necessary to understand the meaning or content of the document, the producing Party shall  
7 produce either the original document for inspection and copying or a color image of the  
8 document.  
9

10 **X. THIRD-PARTY SOFTWARE AND DECRYPTION OF FILES**

11 24. To the extent that ESI produced pursuant to this Stipulated Order cannot be  
12 rendered or viewed without the use of proprietary third-party software, the Parties shall  
13 cooperate and seek to attempt to minimize any expense or burden associated with production of  
14 such data. The Parties shall meet and confer to address such issues as may arise with respect to  
15 obtaining access to any such software and operating manuals which are the property of a third-  
16 party.  
17

18 25. The Parties shall make reasonable efforts to ensure that all ESI that they produce  
19 is decrypted.  
20

21 **XI. PRODUCTION FORMAT**

22 26. Each page of a produced document in TIFF format shall have a legible, unique  
23 Bates Number electronically “burned” onto the image at a location that does not obliterate,  
24 conceal or interfere with any information from the source document (preferably in the lower  
25 right-hand corner of the image).  
26

27 27. The Bates Number for each page of each document shall be created so as to  
28 identify the producing Party or Parties by using a unique prefix.

1           28.     The producing Party will produce documents that are to be produced in TIFF  
2 format (along with the corresponding load files) on readily-accessible, computer or electronic  
3 media, including CD-ROM, DVD, or external hard drive (with standard PC compatible  
4 interface), based upon the amount of data to be produced and the receiving Party's preference.  
5 The producing Party may also make such documents available via secure FTP site.  
6

7 **XII. LIMITATIONS ON DISCOVERY – PRODUCTION**

8           29.     No Party shall be required to re-produce any documents produced or exchanged  
9 prior to the date of this Stipulated Order, including materials submitted prior to commencement  
10 of the instant lawsuit, or to backfill any information associated with such documents.  
11

12           30.     A Party producing data in electronic format need not produce the same document  
13 in paper format.

14 **XIII. OBJECTIONS TO ESI PRODUCTION**

15           31.     Documents that present imaging or format production problems shall be promptly  
16 identified and disclosed to the requesting party; the parties shall then meet and confer to attempt  
17 to resolve the problems.  
18

19           32.     If either party objects to producing the requested information on the grounds that  
20 such information or productions in the requested format is not reasonably accessible because of  
21 undue burden or cost, upon request, the responding party will inform the requesting party of the  
22 the format, if at all, in which it is willing to produce it, the estimated volume, file types and  
23 location of the information claimed to not be reasonably accessible, the reason(s) the requested  
24 form of production would impose an undue burden or cost, and a quote from a third party vendor  
25 concerning estimated costs to render the material accessible. Although the Parties agree to use  
26 best efforts to resolve such issues amongst themselves, the requesting party may bring the issue  
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1 before the Court under the appropriate local rules. Notwithstanding anything contained herein to  
2 the contrary, a producing party shall not produce ESI in a format not requested or designated by  
3 the requesting party (i) unless the parties have met and conferred, and, having been unable to  
4 resolve such format production conflict at such meet and confer session, (ii) prior to referral to  
5 and resolution of such issue by the court.  
6

7 **XIV. CLAWBACK PROVISIONS**

8  
9 33. The producing Party shall have the right to “claw back” (i.e., have  
10 returned from the receiving party) any information disclosed in connection with this case which  
11 contains confidential commercial information, information protected by the attorney-client  
12 privilege, information protected by the attorney work product doctrine, and any other applicable  
13 privilege or immunity (“Disclosed Protected Information”). The disclosure of any Disclosed  
14 Protected Information shall not be deemed a waiver or forfeiture of any claim of privilege that  
15 the producing Party would be entitled to assert with respect to the Disclosed Protected  
16 Information and its subject matter. The producing Party must exercise its rights under this  
17 Paragraph by providing a written notice to the receiving Party that the producing party is  
18 invoking its right to claw back such documents and identifying the documents to be returned.  
19 Upon receipt of such written notice, the receiving Party shall immediately cease any use,  
20 whatsoever, of such documents. Within 10 days of receiving such written notice, the receiving  
21 Party shall provide the producing Party a written confirmation that all Disclosed Protected  
22 Information has been returned or destroyed, or state its intention to move to compel the  
23 production of Disclosed Protected Information.  
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1 **XV. MODIFICATION OF STIPULATED ORDER**

2  
3 34. This Stipulated Order may be modified for good cause. The Parties shall  
4 jointly submit any proposed modifications. If the Parties cannot resolve their disagreements  
5 regarding those modifications, the Parties shall submit their competing proposals and a summary  
6 of their dispute to the Court for resolution.

7 **IT IS SO STIPULATED**, through Counsel of Record.

8  
9 Dated: September 28, 2017

10  
11 Respectfully submitted,

12  
13 SKIERMONT DERBY LLP

MINTZ LEVIN COHN FERRIS  
GLOVSKY AND POPEO P.C.

14  
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**ORDER**

IT IS SO ORDERED.

Dated: October 12, 2017

  
**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE

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