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20 Attorneys for Plaintiff, GUTTERGLOVE, INC.

21 UNITED STATES DISTRICT COURT  
22 EASTERN DISTRICT OF CALIFORNIA

23 GUTTERGLOVE, INC. a California  
24 Corporation,

25 Plaintiff,

26 v.

27 WILLIAM LASELL, an individual,  
28 AMERICAN DIE and  
ROLLFORMING, INC., a California  
corporation; and ARTESIAN HOME  
PRODUCTS, dba VALOR  
GUTTER GUARD,

Defendants.

Case No. 2:17-CV-01372-WBS-CKD

Judge: Hon. Carolyn K. Delaney  
Courtroom: 24, 8<sup>th</sup> Floor

**STIPULATED ORDER RE:  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION**

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Upon the stipulation of the parties, the Court ORDERS as follows:

1. This Order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a just, speedy, and inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.

2. This Order may be modified in the Court’s discretion. This Order may also be modified for good cause. The parties shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil Procedure 16 Conference. If the parties cannot resolve their disagreements regarding these modifications, the parties shall submit their competing proposals and a summary of their dispute.

3. As in all cases, costs may be shifted for disproportionate ESI production requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory discovery tactics are cost-shifting considerations.

4. A party’s meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.

5. The parties are expected to comply with the Northern District’s E-Discovery Guidelines (“Guidelines”), and are encouraged to employ the Checklist for Rule 26(f) Meet and Confer regarding Electronically Stored Information. Otherwise the Local Rules of the Eastern District of California shall continue to apply.

6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45 shall not include email or other forms of electronic correspondence (collectively “email”). To obtain email parties must propound specific email production requests.

1           7. Email production requests shall only be propounded for specific issues,  
2 rather than general discovery of a product or business.

3           8. Email production requests shall be phased to occur after the parties have  
4 exchanged initial disclosures and basic documentation about the asserted claims and  
5 defenses. While this provision does not require the production of such information,  
6 the Court encourages prompt and early production of this information to promote  
7 efficient and economical streamlining of the case.

8           9. Email production requests shall identify the custodian, search terms, and  
9 time frame. The parties shall cooperate to identify the proper custodians, proper  
10 search terms and proper timeframe.

11           10. Each requesting party shall limit its email production requests to a total of  
12 seven custodians per producing party for all such requests. The parties may jointly  
13 agree to modify this limit without the Court's leave. The Court shall consider  
14 contested requests for additional custodians, upon showing a distinct need based on  
15 the size, complexity, and issues of this specific case. Cost-shifting may be considered  
16 as part of any such request.

17           11. Each requesting party shall limit its email production requests to a total of  
18 ten search terms per custodian per party. The parties may jointly agree to modify this  
19 limit without the Court's leave. The Court shall consider contested requests for  
20 additional search terms per custodian, upon showing a distinct need based on the size,  
21 complexity, and issues of this specific case. The Court encourages the parties to  
22 confer on a process to test the efficacy of the search terms. The search terms shall be  
23 narrowly tailored to particular issues. Indiscriminate terms, such as the producing  
24 company's name or its product name, are inappropriate unless combined with  
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1 narrowing search criteria that sufficiently reduce the risk of overproduction. A  
2 conjunctive combination of multiple words or phrases (*e.g.*, “computer” and  
3 “system”) narrows the search and shall count as a single search term. A disjunctive  
4 combination of multiple words or phrases (*e.g.*, “computer” or “system”) broadens  
5 the search, and thus each word or phrase shall count as a separate search term unless  
6 they are variants of the same word. Use of narrowing search criteria (*e.g.*, “and,” “but  
7 not,” “w/x”) is encouraged to limit the production and shall be considered when  
8 determining whether to shift costs for disproportionate discovery. Should a party  
9 serve email production requests with search terms beyond the limits agreed to by the  
10 parties or granted by the Court pursuant to this paragraph, this shall be considered in  
11 determining whether any party shall bear all reasonable costs caused by such  
12 additional discovery.  
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15 12. The receiving party shall not use ESI that the producing party asserts is  
16 attorney-client privileged or work product protected to challenge the privilege or  
17 protection.

18 13. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production  
19 of a privileged or work product protected ESI is not a waiver in the pending case or  
20 in any other federal or state proceeding.

21 14. The mere production of ESI in a litigation as part of a mass production  
22 shall not itself constitute a waiver for any purpose.

23 15. Nothing in this Order prevents the parties from agreeing to use technology  
24 assisted review and other techniques insofar as their use improves the efficacy of  
25 discovery.  
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**IT IS SO STIPULATED**, through Counsel of Record.

Date: October 11, 2018     /s/ Jacob Song  
Counsel for Plaintiff

Date: October 11, 2018     /s/ John P. Costello  
Counsel for Defendant

**IT IS ORDERED** that the forgoing Agreement is approved.

Dated: October 15, 2018

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE