

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
Northern District of California

MITSUI O.S.K. LINES, LTD.,

Plaintiff,

v.

SEAMASTER LOGISTICS, INC., *et al.*,

Defendants.

No. CV10-05591 MEJ

**DISCOVERY ORDER RE AUDIT
SPREADSHEETS**

(Docket No. 30)

On October 6, 2011, the parties filed a joint discovery dispute letter regarding Plaintiff's audit spreadsheets. Dkt. No. 30. Plaintiff has produced the spreadsheets, but in TIFF format. Defendant argues that the spreadsheets must be produced in their native Excel format.

Documents that were originally created in an electronic format must be produced in an electronic format that is "the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms." Fed. R. Civ. P. 34(b)(E)(ii). The Advisory Committee notes to the 2006 "electronic discovery" amendments state:

The rule does not require a party to produce electronically stored information in the form it which it is ordinarily maintained, as long as it is produced in a reasonably usable form. But the option to produce in a reasonably usable form does not mean that a responding party is free to convert electronically stored information from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome for the requesting party to use the information efficiently in the litigation. If the responding party ordinarily maintains the information it is producing in a way that makes it searchable by electronic means, the information should not be produced in a form that removes or significantly degrades this feature.

Fed R. Civ. P. 34, Advisory Committee's Note to the 2006 Amendment.

The cases interpreting Rule 34 conclude that it is therefore improper to take an electronically searchable document and either destroy or degrade the document's ability to be searched. *See, e.g.*,

1 *Covad Communications Co. v. Revonet, Inc.*, 260 F.R.D. 5, 9 (D.D.C. 2009) (ordering production of
2 native Excel files); *Dahl v. Bain Capital Partners, Inc.*, 655 F. Supp. 2d 146, 150 (D. Mass. 2009)
3 (requiring production of spreadsheets in native format); *In re Classicstar Mare Lease Litig.*, No.
4 07-CV-353, 2009 WL 260954, at *3 (E.D. Ky. Feb. 2, 2009) (production may not degrade
5 searchability); *Goodbys Creek, LLC v. Arch Ins. Co.*, No. 07-CV-947, 2008 WL 4279693, at *3
6 (M.D. Fla. Sept. 15, 2008) (same; conversion of e-mails from native to PDF not acceptable); *White*
7 *v. Graceland Coll. Ctr. for Prof'l Dev. & Lifelong Learning*, 586 F. Supp. 2d 1250, 1264 (D. Kan.
8 2008) (same); *L.H. v. Schwarzenegger*, No. 06-CV-2042, 2008 WL 2073958, at *3 (E.D. Cal. May
9 14, 2008) (same).

10 Thus, as Plaintiff's audit is "ordinarily maintained" in Excel format, the Court hereby
11 ORDERS Plaintiff to produce the current spreadsheets in their native Excel format, keeping search
12 capabilities and other attributes, such as formulae, intact.

13 **IT IS SO ORDERED.**

14
15 Dated: October 12, 2011

16 
17 _____
18 Maria-Elena James
19 Chief United States Magistrate Judge
20
21
22
23
24
25
26
27
28