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Counterclaim Plaintiffs
 ORACLE CORPORATION, ORACLE
 AMERICA, INC. and ORACLE
 INTERNATIONAL CORPORATION

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 THOUGHT, INC., a California corporation,
 17 Plaintiff,

18 v.

19 ORACLE CORPORATION, a Delaware
 corporation; ORACLE AMERICA, INC., a
 20 Delaware corporation; and ORACLE
 INTERNATIONAL CORPORATION, a
 21 California corporation

22 Defendants.

No. 3:12-05601 JSW

~~PROPOSED~~ STIPULATION AND
 ORDER REGARDING E-DISCOVERY

1 Native File; and (ii) information generated automatically by the operation of a computer or other
2 information technology system when a Native File is created, modified, transmitted, deleted or
3 otherwise manipulated by a user of such system.

4 (4) **“Static Image(s)”** means a representation of ESI produced by
5 converting a Native File into a standard image format capable of being viewed and printed on
6 standard computer systems. A Tagged Image File Format (TIFF) image is an example of a Static
7 Image.

8 (5) **“Load/Unitization file”** means an electronic file containing
9 information identifying a set of paper-scanned images or processed ESI and indicating where
10 individual pages or files belong together as Documents, including attachments, and where each
11 document begins and ends. A Load/Unitization file will also contain data relevant to the individual
12 Documents, including extracted and user created Metadata, coded data, as well as OCR or
13 Extracted Text.

14 (6) **“OCR”** means the optical character recognition file that is created by
15 software used in conjunction with a scanner that is capable of reading text-based documents and
16 making such documents searchable using appropriate software.

17 (7) **“Extracted Text”** means the text extracted from a Native File and
18 includes all header, footer and document body information.

19 (8) **“Receiving Party”** shall mean the party receiving production of
20 Documents in response to any request for production of document(s) pursuant to Fed. R. Civ. P.
21 34(a) or pursuant to initial production of documents identified in the party’s Rule 26(a) disclosures.

22 (9) **“Producing Party”** shall mean the party producing Documents in
23 response to any request for production of documents pursuant to Fed. R. Civ. P. 34(a) or pursuant
24 to initial production of documents identified in the party’s Rule 26(a) disclosures.

25 **B. General Format of Production.** Subject to the provisions of paragraph
26 5.C., Documents that are produced in these proceedings, whether originally stored in paper or
27 electronic form, shall be produced in electronic image form in the manner as described below.

28 Notwithstanding the foregoing provisions of this paragraph, the Parties reserve the right to request

1 that an alternative format or method of production be used for Documents that are not susceptible
2 to production in the format or methods of production addressed herein. In that event, the Receiving
3 Party and the Producing Party will meet and confer to discuss alternative production requirements,
4 concerns, formats, or methods.

5 C. **Production Format.** Documents shall be produced according to the
6 following formats:

7 (1) **Electronic Production of Paper Documents.** Documents that are
8 maintained in paper format shall be scanned as black and white images at 300 x 300 d.p.i. or
9 greater resolution, in a Group 4 compression single-page Tagged Image File Format (“TIFF” or
10 “.tiff format”) reflecting source attachment information and reflecting the full and complete
11 information contained in the original Document. Documents shall also be produced with the
12 associated OCR in accordance with Paragraph 5.C.(3). No Producing Party shall be required to
13 ensure that the OCR is an exact duplicate of the contents of the TIFF image; and the Receiving
14 Party shall accept the OCR in its “as is” condition.

15 (2) **Electronically Stored Information.** Except as provided in
16 Paragraph 5.C.(5) below, Document images shall be generated from electronic Documents in a
17 Group 4 compression single-page black and white “TIFF” image that reflects the full and complete
18 information contained on the original document, together with a load file or functional equivalent
19 specified in Paragraph 5.C.(3) that contains (or is produced with a corresponding text file that
20 contains) the metadata as set forth in Paragraph 5.I. and extracted text. In the event a Document is
21 redacted, the Producing Party shall withhold the redacted text for that Document. The failure to
22 withhold such text for a redacted document by a Producing Party shall not be deemed a waiver of
23 the privilege associated with that Document.

24 (3) **Load/Unitization File Structure.** The Producing Party shall produce
25 a unitization file (“load file”) for all produced Documents in accordance with the following
26 formatting, including for native Documents (in the same or a separate load file):

27 **OCR and Extracted Text Files (.TXT Files):**

- 28 • Single text file per document containing all the document’s pages

- Pages separated by form feed character (decimal 12, hex 0xC)

- Filenames should be of the form:

<Bates num>.txt

Where <Bates num> is the BATES number of the first page in the document.

- Text must be encoded in UTF-8 or ANSI

Images Files:

- Single page per image and single image per file;

- TIFF is the default FORMAT unless the following formats are agreed to: jpeg, jpeg2000, giff, png, single image tiff, and bmp

- Filenames should be of the form:

<Bates num>.<ext>

Where <Bates num> is the BATES number of the page, and <ext> is the appropriate extension for the image format (.jpg, .tif, .png, etc)

Index Files:

- Comma Separated Value (.CSV) files or Concordance .DAT files

- First line must contain the column/field names (set forth in paragraph 5.I. herein)

- Every row must have the same number of columns/fields (empty values are acceptable)

- Text must be encoded in UTF-8 or ANSI.

- Values must be enclosed by decimal 17, hex 0x11 (ascii device control 1) or an equivalent

- Values must be separated by decimal 19, hex 0x13 (ascii device control 3) or standard .DAT delimiters; to avoid errors, the parties agree to use, where available, default Concordance delimiters: ¶ and

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1 (6) **Color.** Documents may be produced in black and white in the first
2 instance. If a produced Document contains color and that color is necessary to decipher the
3 meaning, context, or content of the document, the Producing Party shall honor reasonable requests
4 for either the production of the original Document for inspection and copying or production of a
5 color image of the Document.

6 D. **Production Media.** A Producing Party shall produce Documents on a
7 CD-ROM, DVD, external hard drive, ftp, or such other readily accessible computer or electronic
8 media as the Producing Party and the Receiving Party may hereafter agree upon (the “Production
9 Media”). Information that shall be identified on the face of the Production Media shall include: (1)
10 the production date, and (2) the confidentiality notation required by the Protective Order entered in
11 this case, if the media contains Confidential Information, as defined in the Protective Order. Where
12 practicable, the face of the Production Media shall also contain the Bates Number range(s) of the
13 Documents on the Production Media. Where not practicable, the range(s) may be provided in an
14 accompanying letter. If the Producing Party encrypts or “locks” the production, the Producing
15 Party shall include with the production an explanation of how to decrypt the files.

16 E. **Document Unitization.** When scanning paper documents into Document
17 Images as described in paragraph 5.C.(1), they shall be unitized in a manner so as to maintain the
18 document(s) and any attachments as they existed in their original state. For electronic documents,
19 the relationship of documents in a document collection (e.g., cover letter and enclosures, e-mail
20 and attachments, binder containing multiple documents, or other documents where a parent-child
21 relationship exists between the documents) shall be maintained through the scanning or conversion
22 process from native format to TIFF, provided however, that the Parties shall be required to present
23 only one level of parent child relationship. Document Images generated from attachments to
24 e-mails stored in Native Format shall be produced contemporaneously and sequentially
25 immediately after the parent e-mail. All hard copy documents imaged and produced electronically
26 shall include a unitization file (“load file”) in accordance with paragraph 5.C.(3).

27 F. **Paper Documents Containing Fixed Notes.** Paper Documents that contain
28 fixed notes shall be scanned with the notes affixed, if it can be done so in a manner so as not to

1 obstruct other content on the document. If the content of the Document is obscured by the affixed
2 notes, the Document and note shall be scanned separately.

3 G. **Duplicates.** If a Producing Party who has more than one identical copy of an
4 electronic document (i.e., the documents are actual duplicates), the Producing Party need produce
5 only a single copy of that document. A Producing Party need not produce the same electronically
6 stored information in more than one form.

7 H. **Bates Numbering.** Each Producing Party shall Bates number its
8 production(s) as follows:

9 (1) **Document Images.** Each page of a produced Document shall have a
10 legible, unique page identifier (“Bates Number”) electronically “burned” onto the image at a
11 location that does not unreasonably obliterate, conceal, or interfere with any information from the
12 source document. The Bates Number shall contain a two to four letter prefix associated with the
13 Producing Party’s name followed by 8 numbers (e.g., ABCD00000001). The Producing Party will
14 use a consistent prefix throughout the matter. Thus, once a party chooses a four letter prefix, e.g.
15 ABCD, it shall not later produce a Document using a different prefix, e.g. EFGH. No other legend
16 or stamp will be placed on the Document Image other than a confidentiality legend (where
17 applicable), redactions, the Bates Number identified above, and any other internal tracking number
18 that the Producing Party may choose to use. The confidentiality legend shall be “burned” onto each
19 document’s image at a location that does not unreasonably obliterate or obscure any information
20 from the source document.

21 (2) **Native Format Documents.** In the event Native Format Documents
22 are produced, in order to preserve the integrity of those Native Format Documents, no Bates
23 Number, confidentiality legend, or internal tracking number should be added to the internal content
24 of the Native Document, but may be added to the file name and/or to a document placeholder
25 provided with the production. Additionally, Native Format Documents may be produced with
26 password protection.

27 I. **Metadata.** To the extent it is reasonably accessible, the Producing Party
28 shall produce the metadata information described below with each production and in the format

1 described in this Paragraph 5, above. For images generated from native electronic documents, a
 2 Producing Party shall produce with each production the following fields, where available. The field
 3 naming conventions shall be the following, unless otherwise agreed. Substantially similar field
 4 names may be used if consistent with the defined fields. Field names must be consistently applied
 5 for each production by a Producing Party. Upon request from the Receiving Party, the Producing
 6 Party shall produce additional metadata for select documents. In the event the parties cannot reach
 7 agreement regarding a request to produce metadata, it shall be the Receiving Party's burden to
 8 show good case for such production.

	FIELD	DEFINITION	DOC TYPE
	SOURCE	Name of party producing the document/data	ALL
	CUSTODIANS	Name of person from whose files the document/data is being produced	ALL
	BEGINBATES	Beginning Bates Number (production number)	ALL
	ENDBATES	Ending Bates Number (production number)	ALL
	FROM	Sender	EMAIL ¹
	TO	Recipient	EMAIL
	CC	Additional Recipients	EMAIL
	BCC	Blind Additional Recipients	EMAIL
	SUBJECT	Subject line of Email	EMAIL
	BEGATTACH	First Bates number of a family range (i.e. Bates number of the first page of the parent email)	EMAIL
	ENDATTACH	Last Bates number of a family range (i.e. Bates number of the last page of the last attachment)	EMAIL
	DATESENT	Date sent	EMAIL
	TIMESENT	Time sent	EMAIL
	HASHVALUE	MD5 Hash for Edocs	EDOCS
	DOCTYPE	Document type (e.g. .doc, .pst, .ppt, .xls, .pdf)	EDOCS
	NATIVELINK	The path to the native files in the production	EDOCS
	AUTHOR	The creator of a documents	EDOCS
	TITLE	The title of a document	EDOCS

25 **J. Privilege Logs.** The Producing Parties will produce privilege logs in an
 26 electronic format that allows text searching and organization of data. When there is a chain of
 27

28 ¹ For purposes of providing metadata, "EMAIL" Documents excludes attachments.

1 privileged emails, the Producing Party need only include one entry on the privilege log for the
2 entire e-mail chain, and need not log each e-mail contained in the chain separately. The parties
3 shall meet and confer regarding the appropriate timing for the production of privilege logs.

4 However, the production of a privilege log for a custodian shall be not less than 7 days prior to that
5 custodian's deposition. The Producing Party and the Receiving Party may modify the deadlines for
6 production of privilege logs by agreement. Parties are not required to include in the privilege logs
7 any information or Documents generated or created after the filing of the complaint in this matter.

8 **K. No Backup Restoration Required.** Absent a showing of good cause, no
9 party need restore any form of media upon which backup data is maintained in a party's normal or
10 allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of
11 media, to comply with its discovery obligations in the present case.

12 **L. Categories that Need Not Be Preserved.** Absent a showing of good cause
13 by the Requesting Party, the categories of ESI identified in Schedule A need not be preserved.

14 **M. General ESI production requests under Federal Rules of Civil Procedure 34**
15 **and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or**
16 **other forms of electronic correspondence (collectively "e-mail"). To obtain e-mail, parties must**
17 **propound specific e-mail production requests.**

18 **N. E-mail production requests shall be phased to occur timely after the parties**
19 **have exchanged initial disclosures, a specific listing of all e-mail custodians likely to have**
20 **discoverable information, a specific identification of the ten most significant listed e-mail**
21 **custodians in view of the pleaded claims and defenses,² infringement contentions and**
22 **accompanying documents pursuant to Patent L.R. 3-1 and 3-2, invalidity contentions and**
23 **accompanying documents pursuant to Patent L.R. 3-3 and 3-4, and preliminary information**
24 **relevant to damages. The exchange of this information shall occur at the time required under the**
25 **Federal Rules of Civil Procedure, Local Rules, or by order of the Court. The parties may jointly**
26 **agree to modify this limit or, failing agreement, by seeking leave of Court.**

27 _____
28 ² A "specific identification" requires a short description of why the custodian is believed to be significant.

1 O. E-mail production requests shall identify the custodian, search terms, and
2 time frame. The parties shall cooperate to identify the proper custodians, proper search terms, and
3 proper time frame. Each requesting party shall limit its e-mail production requests to a total of
4 eight custodians per producing party for all such requests. The parties may jointly agree to modify
5 this limit without the Court's leave. The Court shall consider contested requests for additional or
6 fewer custodians per producing party upon showing a distinct need based on the size, complexity,
7 and issues of this specific case.

8 P. Each requesting party shall limit its e-mail production requests to a total of
9 ten search terms per custodian per party. The parties may jointly agree to modify this limit without
10 the Court's leave. The Court shall consider contested requests for additional or fewer search terms
11 per custodian, upon showing a distinct need based on the size, complexity, and issues of this
12 specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms,
13 such as the producing company's name or its product name, are inappropriate unless combined
14 with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive
15 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and
16 shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,
17 "computer" or "system") broadens the search, and thus each word or phrase shall count as a
18 separate search term unless they are variants of the same word. Use of narrowing search criteria
19 (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when
20 determining whether to shift costs for disproportionate discovery.

21 Q. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
22 privileged or work product protected ESI document is not a waiver in the pending case or in any
23 other federal or state proceeding. *See also* Section 13 of the Stipulated Protective Order in this
24 matter, specifying that "When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other protection, the
26 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
27 26(b)(5)(B)".

28 12. The mere production of ESI in a litigation as part of a mass production shall not

1 itself constitute a waiver for any purpose.

2 13. Except as expressly stated, nothing in this order affects the parties' discovery
3 obligations under the Federal or Local Rules.

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SCHEDULE A

- 1
- 2 1. Deleted, slack, fragmented, or other data only accessible by forensics.
- 3 2. Random access memory (RAM), temporary files, or other ephemeral data that are
- 4 difficult to preserve without disabling the operating system.
- 5 3. On-line access data such as temporary internet files, history, cache, cookies, and the
- 6 like.
- 7 4. Data in metadata fields that are frequently updated automatically, such as last-
- 8 opened dates.
- 9 5. Back-up data that are substantially duplicative of data that are more accessible
- 10 elsewhere.
- 11 6. Voice messages.
- 12 7. Instant messages that are not ordinarily printed or maintained in a server dedicated
- 13 to instant messaging.
- 14 8. Device-to-device (pin-to-pin) messages sent to or from mobile devices (e.g.,
- 15 Android, iPhone, and Blackberry devices), provided that a copy of such mail is routinely saved
- 16 elsewhere.
- 17 9. Other electronic data stored on a mobile device, such as calendar or contact data or
- 18 notes, provided that a copy of such information is routinely saved elsewhere.
- 19 10. Logs of calls made from mobile devices.
- 20 11. Server, system, or network logs.
- 21 12. Electronic data temporarily stored by laboratory equipment or attached electronic
- 22 equipment, provided that such data is not ordinarily preserved as a part of a laboratory report.
- 23 13. Data remaining from systems no longer in use that is unintelligible on the systems in
- 24 use.
- 25 14. Company wikis and social network data from services such as Facebook, LinkedIn
- 26 and Twitter.

IT IS SO STIPULATED.

DATED: May 6, 2013

/s/ Jeff D. Friedman
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DATED: May 6, 2013

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 7, 2013



HONORABLE JEFFREY S. WHITE
United States District Judge

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