

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 UNITED STATES OF AMERICA )

5 Plaintiff, )

6 vs. )

7 FRED MARTIN, INDIVIDUALLY AND )  
8 AS TRUSTEE OF MARTIN FAMILY 2005 )  
9 TRUST; FATIMA RIVERA; and )  
10 ALFREDO RIVERA )

11 Defendants. )

Case Number: CV 13-4983-JST

STIPULATED ORDER RE: DISCOVERY  
OF ELECTRONICALLY STORED  
INFORMATION FOR STANDARD  
LITIGATION

11 **1. PURPOSE**

12 This Order will govern discovery of electronically stored information (“ESI”) in this  
13 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the  
14 Discovery of Electronically Stored Information, and any other applicable orders and rules.

15 **2. COOPERATION**

16 The parties are aware of the importance the Court places on cooperation and commit to  
17 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the  
18 Discovery of ESI.

19 **3. LIAISON**

20 The parties have identified liaisons to each other who are and will be knowledgeable  
21 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or  
22 have access to those who are, knowledgeable about the technical aspects of e-discovery,  
23 including the location, nature, accessibility, format, collection, search methodologies, and  
24 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer  
25 about ESI and to help resolve disputes without court intervention.

26 **4. PRESERVATION**

27 The Parties have discussed their preservation obligations and needs and agree that  
28 preservation of potentially relevant ESI will be reasonable and proportionate, to the extent such

1 ESI exists. Specifically, Defendants have informed the United States that Defendants Fatima  
2 Rivera and Alfredo Rivera speak English as a second language and do not communicate via e-  
3 mail, so Defendants believe that any ESI in this matter is likely to be seriously limited or may  
4 not exist at all. However, to reduce the costs and burdens of preservation and to ensure proper  
5 ESI is preserved, to the extent it exists, the Parties agree that:

- 6 a) Only ESI created or received from January 1, 2008 through the duration of this  
7 litigation, to the extent such ESI had been preserved on January 1, 2010, will be  
8 preserved;
- 9 b) The parties agree to preserve potentially relevant draft documents, as well as red-  
10 lined or marked-up documents. The term "Draft Document" means a preliminary  
11 version of a document that has been shared by the author with another person (by  
12 email, print or otherwise) or one that the author no longer intends to finalize or to  
13 share with another person.
- 14 c) These data sources are not reasonably accessible because of undue burden or cost  
15 pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will not be  
16 preserved, searched, reviewed, or produced:
  - 17 i. Voicemail messages on counsel for the Parties' voicemail management  
18 systems;
  - 19 ii. Electronic mail, SMS messages or "pin to pin" messages sent to or from a  
20 Personal Digital Assistant (e.g. Blackberry Handheld) provided that a  
21 copy of electronic messages is saved in another reasonably accessible  
22 location;
  - 23 iii. Other electronic data stored on a Personal Digital Assistant, such as  
24 calendar or contact data or notes, provided that a copy of such information  
25 is saved in another reasonably accessible location;
  - 26 iv. Logs of calls made to or from cellular phones of counsel for the Parties;
  - 27 v. Temporary or cache files, including internet history, web browser cache  
28 and cookie files, wherever located;
  - vi. Server, system or network logs;
  - vii. Data from photocopiers or fax machines;
  - viii. Autosaved copies of electronic documents;
  - ix. Delivery or read recipients of electronic mail;
  - x. Duplicate copies of an electronic message sent to multiple recipients so  
long as the copy retained accurately reflects all recipients of the email and  
the entire contents of the email, including all attachments.
  - xi. Potentially relevant ESI on a backup system used for the purpose of  
system recovery or information restoration, if that backup system is not

1 reasonably accessible and the potentially relevant ESI has been preserved  
2 on other, accessible electronic media.

### 3 **5. SEARCH**

4 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if  
5 appropriate, they will meet and confer about methods to search ESI in order to identify ESI  
6 that is subject to production in discovery and filter out ESI that is not subject to discovery.

### 7 **6. PRODUCTION FORMATS**

8 The Parties agree to produce documents in PDF and native file formats, as described  
9 below. If particular documents warrant a different format than specified below, the Parties will  
10 cooperate to arrange for the mutually acceptable production of such documents. The Parties  
11 agree not to degrade the searchability of documents as part of the document production  
12 process. Specifically, the Parties agree to produce documents, things, and ESI in the following  
13 form and manner:

- 14 a) Hard Copy Documents Scanned to Electronic Form: Hard copy documents shall be  
15 scanned as searchable PDF images and reflect, without visual degradation, the full  
16 and complete information contained on the original document. Color documents,  
17 including photographs, brochures, or advertising materials, shall be scanned in  
18 color. The Parties agree to produce all imaged documents with a legible, unique  
19 page identifier (“Bates Number”) electronically “burned” onto the image in the  
20 lower right hand corner or at a location that does not obliterate, conceal, or interfere  
21 with any information from the source document. The Bates numbering convention  
22 shall be in the format “XX#####” where “XX” represents the producing party  
23 and “#####” represents the eight-digit sequential number of the page being  
24 produced by that party. For example, the first Bates labeled document produced by  
25 the United States should be labeled “US00000001”.
- 26 b) Unitization of Scanned Images: The Parties will make good faith efforts to: (1)  
27 scan an individual document, including attachments, as it existed in the original; (2)  
28 make all information that is in a hard copy document available in the scanned  
image, even if that requires scanning a page or document more than once (i.e., for  
documents that contain fixed notes, such as post-it notes, the parties will scan the  
pages both with and without the notes and those pages will be treated as part of the  
same document); (3) maintain the relationship of documents in a document  
collection (e.g., cover letter and enclosures, binder containing multiple documents)  
through the scanning process.
- c) ESI: All ESI shall be produced in its native format (i.e., Word documents produced  
in Word, WordPerfect documents produced in WordPerfect). The parties further  
agree that:

1 i. All email produced shall include the following metadata fields: (1)  
2 "From"; (2) "To"; (3) "CC"; (4) "BCC"; (5) "Subject"; (6) date and time  
3 the message was sent.

4 ii. In the event that a Party needs to redact a portion of a document, the  
5 Parties will meet and confer regarding production of the redacted  
6 document.

7 d) Production Media: The Parties agree to produce PDFs and ESI on CD-ROM,  
8 DVD, or external hard drive, (the "Production Media"), depending on the volume  
9 of the production. Each piece of Production Media shall be labeled with: (1) the  
10 case number, (2) the producing party's name, and (3) the production date, and (4)  
11 wave of production and the number of pieces in the wave (i.e., a party's first  
12 production of two CDs shall be labeled FIRST PROD, 1 of 2 and 2 of 2, the second  
13 production of one DVD shall be labeled SECOND PROD, 1 of 1).

14 e) No use of File Sharing Sites for Production Without Prior Agreement of the Parties:  
15 The parties agree not to use file sharing or post sites (i.e., FTP or SFTP) to produce  
16 documents or ESI responsive to a discovery request without the written agreement  
17 of the party requesting the discovery.

18 f) Each party shall identify the discovery request to which a produced document or  
19 ESI responds.

## 20 7. PHASING

21 The parties agree that phasing is inappropriate in this case.

## 22 8. DOCUMENTS PROTECTED FROM DISCOVERY

23 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-  
24 protected document, whether inadvertent or otherwise, is not a waiver of privilege  
25 or protection from discovery in this case or in any other federal or state proceeding.  
26 For example, the mere production of privileged or work-product-protected  
27 documents in this case as part of a mass production is not itself a waiver in this case  
28 or in any other federal or state proceeding.

29 b) The Parties agree that for each document, thing, or ESI withheld based on an  
30 asserted claim of privilege, the Party asserting the privilege must produce a  
31 privilege log pursuant to Rule 26(b)(5)(a) of the FRCP, except as provided in  
32 Paragraph 4(c). The privilege log must contain the Bates Number, the type of  
33 document or ESI, whether the document or ESI contains any attachments, the date,  
34 authors, recipients, copyees, privilege(s) claimed, the title of the document or ESI,  
35 the purpose of the document or ESI and the basis for the claimed privileges or  
36 protections with information sufficient to establish the elements of each asserted  
37 privilege. E-mail attachments should be identified as attachments and separately  
38 logged.

39 c) Communications involving attorneys or staff within the United States Department  
40 of Justice or attorneys or staff of Ropers Majeski Kohn Bentley PC and the  
41 Defendants need not be placed on a privilege log. Communications may be

1 identified on a privilege log by category, rather than individually, if appropriate.

2 **9. MODIFICATION**

3 This Stipulated Order may be modified by a Stipulated Order of the parties or by the  
4 Court for good cause shown.

5 **10. MISCELLANEOUS PROVISIONS**

- 6 a) No Party shall seek sanctions pursuant to the FRCP, the contempt powers of the  
7 Court, or any other authority, against another Party for failure to preserve  
8 documents, things, or ESI excluded from preservation and enumerated in Paragraph  
9 4(c).  
10 b) Each Party shall bear the costs of producing its own documents, things, and ESI.  
11 c) Before filing any motion regarding the terms of this Stipulated Order, compliance  
12 with this Stipulated Order or other discovery dispute, the Parties will confer in a  
13 good faith attempt to resolve such disputes.  
14 d) The Effective Date of this Stipulation is the date on which it is executed by all  
15 Parties.  
16 e) None of the meet and confer provisions of this Stipulation shall be construed to  
17 extend the time within which a Party must respond to a discovery request; rather,  
18 such time frames shall be governed by the FRCP  
19 f) The terms of this Stipulation and Order are not exhaustive. Each Party reserves the  
20 right to subsequently request a meet and confer to address any matters concerning  
21 discovery in this litigation which has not been addressed herein.

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

23 Dated: 1/29/2014

s/ Joel Flaxman

24 \_\_\_\_\_  
Counsel for Plaintiff

25 Dated: 1/29/14

/s/ Brock R. Lyle

26 \_\_\_\_\_  
Counsel for Defendant

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

28 Dated: January 31, 2014



\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
HON JON S. TIGAR