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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARY GARRISON and GRACE
GARRISON, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

Case No. 3:13-CV-05222-VC

**STIPULATION AND ~~PROPOSED~~
ORDER RE: TREATMENT OF ESI**

Plaintiffs MARY GARRISON and GRACE GARRISON, individually, and on behalf of
all others similarly situated (collectively “Plaintiffs”), on the one hand, and Defendant WHOLE
FOODS MARKET GROUP, INC. (“Defendant”), by and through their undersigned counsel,

1 hereby enter into the following stipulation regarding electronic discovery (“eDiscovery”) issues
2 in this case:

3 **I. PURPOSE**

4 Defendant represents that its preservation efforts for this action have resulted in the
5 retention and ongoing storage of substantial amounts of electronically stored information, as
6 defined in Fed. R. Civ. P. 34(a)(1), (the “ESI”). Defendant believes the vast majority of the ESI
7 is not relevant to any claim or defense in this action. Defendant therefore seeks to establish a
8 reasonable protocol for treatment this ESI so that it need not continue to preserve the substantial
9 amounts of data that have no relevance to this action.

10 **II. DESIGNATION OF E-DISCOVERY LIAISON**

11 To promote communication and cooperation between the Parties, each party shall
12 designate an eDiscovery Liaison. The eDiscovery Liaison will serve as a conduit of
13 communications regarding eDiscovery issues among the Parties including specific topics such
14 as: (1) the party’s electronic systems and capabilities in order to explain these systems and
15 answer relevant questions; (2) the technical aspects of eDiscovery, including ESI storage,
16 organization, and format issues;(3) eDiscovery dispute resolution; and (4) general facilitation of
17 the eDiscovery process.

18 **III. PRESERVATION**

19 The parties have discussed their preservation obligations and needs and agree that
20 preservation of potentially relevant ESI will be reasonable and proportionate. Plaintiffs represent
21 that they have retained relevant ESI in their possession, custody, or control. Defendant
22 represents that it has issued ESI retention notices to appropriate custodians and has undertaken
23 reasonable efforts to preserve relevant ESI in its possession, custody or control.

24 **IV. DEVELOPMENT OF SEARCH TERMS**

25 In an effort to cull the broadly preserved ESI down to a reasonable, manageable and cost-
26 effective review corpus, the Parties agree that certain filters should be applied to all preserved
27 data in order to identify the ESI most likely to contain highly relevant data.
28

1 To this end, the Parties will attempt to develop a search methodology to locate potentially
2 relevant information from the preserved ESI. The Parties shall reach agreement as to the words,
3 terms, phrases and syntax to be searched.

4 The Parties agree to the following process for the development of search terms:

- 5 • On or before 30 days after entry of this Order, Defendant shall provide to
6 Plaintiffs a proposed list of search terms and any related parameters.
- 7 • On or before 15 days after receipt of Defendant's proposed list of search terms
8 and related parameters, Plaintiffs shall provide any proposed changes.
- 9 • On or before 15 days after receipt of Plaintiffs' proposed changes, the Defendant
10 shall respond to Plaintiffs indicating agreement or disagreement as to any changes
11 proposed by Plaintiffs.
- 12 • On or before 10 days after Defendant's response, the Parties shall submit a joint
13 letter brief to the Court outlining any disagreements, should any remain.

14 **V. SEARCH TERM METHODOLOGY**

15 **A. General Approach**

16 In general, the process of review and production will consist of (1) loading of ESI within
17 the scope of relevant materials by agreement of the Parties; (2) further refinement through key
18 word searching and culling; (3) review by the producing party; and (4) identification by the
19 producing party of responsive, non-privileged ESI; and (5) production of responsive non-
20 privileged ESI to the other Parties.

21 The Parties acknowledge and agree that any information identified as a "hit" based upon
22 the search will be considered only potentially responsive. The Parties at their option may
23 produce any "hits" with or without attorney review to determine actual responsiveness and
24 whether any basis exists for withholding the document such as attorney-client privilege or
25 attorney work product.

26 **B. File Type/Extension Filters**

27 To reduce the likelihood of false search hits that may skew keyword search hit counts,
28 cause the review of non-reviewable documents, and increase costs of review and production, the

Parties agree to limit the processing, review, and production of loose file and email attachment data to commonly known user-created ESI file types/extensions, to wit:

pdf	dotm	xlam	csv
rtf	dotx	xls	pages
txt	pot	xlsm	keynote
msg	potm	xlsx	numbers
eml	potx	xlt	jpeg
emlx	ppa	xltm	jpg
wpd	ppam	xltx	png
mpp	pps	mpp	gif
zip	ppsm	wk3	bmp
rar	ppsx	wk4	ai
7z	ppt	pub	psd
doc	pptm	pubx	eps
docm	pptx	pubm	
docx	rtf	tif	
dot	vsd	tiff	

C. Cached Data, Residual Data, RAM and Fragmented Data

Absent a showing of special need and lack of undue burden or cost, the Parties shall have no obligation to review or produce deleted, shadowed, fragmented, residual data, or documents,

1 cached, temporary files, random access memory (“RAM”) or ESI that would only be preserved
2 by taking constant and repeated forensic (bit stream) image of hard drives and computer memory
3 sticks, neither of which is practical technically or economically.

4 **D. Other Forms of Electronically Stored Information**

5 The scope of Defendant’s identification and preservation efforts included custodians’
6 voice mail as well as cell phone voicemail, cell phone text/instant messages. Absent further
7 agreement of the Parties or a showing of good cause and a lack of undue burden or cost, the
8 Parties shall have no further obligation to review or produce ESI regarding or relating to (1)
9 text/instant messaging communications; (2) voicemail messages and system information
10 including VOIP data; (3) web browser files; (4) personal digital assistants (“PDAs”); and (5)
11 mobile devices including, but not limited to, smartphone devices.

12 **E. On-Site Inspections**

13 On-site inspections of electronic media under Fed.R.Civ.P. 34(b) shall not be permitted,
14 except on mutual agreement of the Parties or upon ruling of the Court following a showing of
15 exceptional circumstances including good cause and specific need. Inspection or testing of
16 certain types of ESI may raise issues of confidentiality or privacy and such undue intrusiveness
17 resulting from such inspections shall be guarded against.

18 **F. Spam and/or Virus Filtering**

19 Absent compelling circumstances and upon notice, any message, attachment or other
20 electronically stored information that has been identified by a spam or virus filter shall be treated
21 by the Parties as per se non-responsive and the Parties shall not be required to produce such ESI.

22 **VI. PRODUCTION METHODOLOGY**

23 **A. Form of Production**

24 The Stipulated Protective Order entered in this case, (Dkt. 52), provided that, with the
25 exception of documents to be produced in native format, documents shall be produced in single-
26 page Tagged Image Format image files (“TIFF”) named with sequential Bates numbering with
27 each page branded in the lower right-hand corner with sequential bates numbering. At Plaintiffs’
28 subsequent request, Defendant will endeavor to provide said documents in Portable Document

1 Format (“PDF”) instead and will meet and confer with Plaintiffs if it deems that not feasible for
2 any particular production. Spreadsheets, PowerPoint presentations, multimedia (i.e., audio and
3 video), and similar files shall be produced in native file format named with sequential Bates
4 numbering, except where image/PDF format is required for purposes of redaction. For all
5 documents produced in native format, a single-paged placeholder with Bates numbers shall be
6 provided. Each production shall be accompanied by a corresponding electronic delimited text
7 file using Concordance standard delimiters (“Concordance DAT files”), OPT and/or LFP image
8 load files, and separate text files containing each document’s extracted text or text generated
9 through Optical Character Recognition (“OCR”). OCR text will only be provided for documents
10 with redactions or documents that are hard copy in origin, but all other text will be extracted text.
11 When available as part of normal processing, ESI productions shall also include available
12 metadata as listed in Exhibit B to the Stipulated Protective Order.

13 **B. Non-Standard File Handling in Production**

14 During the processing of documents or ESI for production it may become apparent that
15 some file types are not easily converted from native format into image/PDF files. In such
16 circumstances, the Parties agree to confer on an appropriate native file protocol. After initial
17 production in image/PDF file format is complete, the requesting Party must demonstrate
18 particularized need for production of electronic documents in their native format. If the Parties
19 are unable to come to an agreement, the Parties agree to seek appropriate relief from the Court
20 through further stipulation or otherwise.

21 **C. Metadata Production**

22 Nothing herein alters the provisions governing the production of metadata as set forth in
23 Exhibit B of the Stipulated Protective Order.

24 **D. Claw-back Provision and Non-Waiver Agreement**

25 Provisions regarding “claw back” and “non-waiver” shall be in accordance with Fed. R.
26 Civ. P. 26 (b)(5), Fed. R. Evid. 502, and paragraph 11 of the Parties’ Stipulated Protective Order
27 entered in this case. The Parties and the Court recognize that the significant amount of ESI
28 involved increases the possibility of inadvertent production of materials to which the producing

1 Party may make a claim of privilege or of protection from discovery as trial preparation material
2 or some other asserted right. The inadvertent production of such documents or ESI shall not
3 operate as a waiver of that privilege, protection or right and shall not operate as any subject
4 matter waiver of that privilege, protection or right.

5
6 **VII. RELIEF FROM COURT**

7 If the Parties are unable to agree, or need further clarification on any issue relating to the
8 preservation, collection, or production of electronically stored information, any Party may seek
9 appropriate relief from the Court through further stipulation or otherwise.

10 **IT IS SO STIPULATED BY COUNSEL OF RECORD.**

11 DATED: April 10, 2015

SEYFARTH SHAW LLP

12
13 By: /s/ Jay W. Connolly

Jay W. Connolly
Giovanna A. Ferrari
Joseph J. Orzano

15 Attorneys for Defendant
16 WHOLE FOODS MARKET GROUP, INC.

17 DATED: April 10, 2015

SCOTT COLE & ASSOCIATES, APC

19 By: /s/ Molly A. Desario

20 Matthew R. Bainer
21 Molly a. DeSario

22 Attorneys for Plaintiffs
23 MARY GARRISON and GRACE
24 GARRISON, individually and on behalf of all
25 other similarly situated

26 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

27 DATED: April 14, 2015

28 
HON. VINCE CHHABRIA
United States District Court Judge