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 20 **ELECTRONICS FOR IMAGING, INC.**

21 **UNITED STATES DISTRICT COURT**
 22 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

23 **CHERINGAL ASSOCIATES, INC., a**)
 24 **New Jersey Corporation doing business as**)
 25 **Control Group,**)

26 Plaintiff,)

27 v.)

28 **ELECTRONICS FOR IMAGING, INC., a**)
 29 **Delaware Corporation, doing business as**)
 30 **EFI,**)

31 Defendant.)

Case No. 3:14-cv-00189-EMC

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

Courtroom 5
 Hon. Edward M. Chen

Action Filed: January 13, 2014
 Trial Date: April 27, 2015

32 **AND RELATED COUNTERCLAIM**)
 33)
 34)
 35)
 36)
 37)
 38)

1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this
3 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information, this Court’s order filed May 16, 2014,
5 concerning the May 13, 2014, Case Management Conference and any other applicable orders
6 and rules.

7 **2. COOPERATION**

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

11 **3. LIAISON**

12 The parties will identify within two weeks from the date of this Order, liaisons to each
13 other who are and will be knowledgeable about and responsible for discussing their respective
14 ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about
15 the technical aspects of e-discovery, including the location, nature, accessibility, format,
16 collection, search methodologies, and production of ESI in this matter. The parties will rely on
17 the liaisons, as needed, to confer about ESI and to help resolve disputes without court
18 intervention.

19 **4. PRESERVATION**

20 Consistent with the Court’s oral orders at the Case Management Conference on May
21 13, 2014, and its written order regarding the same, filed May 16, 2014, the parties agree that all
22 ESI relating to the following topics shall be preserved by Plaintiff from Plaintiff’s custodians
23 James Imburgia, Jeffrey Levine, William Cheringal, and Rob Paglieri: (1) all communications,
24 and records thereof, with EFI regarding the subject printer; (2) all communications, and
25 records thereof, with any person or entity from which Plaintiff considered purchasing a digital
26 printer; (3) all communications, and records thereof, relating to the cost or reliability of print
27 heads on digital printers prior to the purchase of the subject printer, and regarding the print
28

1 heads on the subject printer before and after that purchase; (4) all communications, and records
2 thereof, with any other printing company or printer regarding Plaintiff subcontracting digital
3 printing work to that printing company or printer; (5) all records of potential and actual
4 subcontracting of digital printing jobs to another printing company or printer for work since
5 November 1, 2012, and the costs thereof; (6) all communications, and records thereof, with
6 actual or potential customers relating to digital printing or “flexo” printing on the subject
7 printer; (7) all communications, and records thereof, with actual or potential customers
8 concerning print head failure with respect to the subject printer; (8) all communications, and
9 records thereof, with a customer relating to terminating an actual or potential relationship with
10 Plaintiff for digital printing services since November 1, 2012; (9) all records of all additional
11 costs purportedly incurred for jobs sold as digital but performed by third-parties or as non-
12 digital jobs since November 1, 2012; (10) all records of equipment loan existence and
13 payments with respect to the subject printer; (11) all financial records relating to the loss of
14 future income caused by the subject printer.
15

16 The parties also agree that all ESI relating to the following topics shall be preserved by
17 EFI from EFI custodians Stephen Emery, Jason Oliver, John Hickey, Tony Ricketts, Bart
18 Kulesz, Matthew Gardner, John Hennessy, Gerald Jimmerson, Chris Cole, Steve Billow, Boris
19 Liberman, Jon Martin, Angel Ramirez, Les Schalm, Nick Schimelfening, and Kevin Sheppard:
20 (1) all communications and records thereof between Plaintiff and EFI regarding the subject
21 printer; (2) all communications and records thereof with component manufacturers and
22 consultants regarding the subject printer; (3) all internal communications at EFI regarding print
23 heads or Flexo Stations for the subject printer; (4) all service and repair records and
24 technicians’ notes regarding the subject printer; (5) all information, communications and
25 records thereof concerning the design and manufacture of Flexo Stations for the Jetrion 4900
26 printers; (6) all information, communications and records thereof concerning changes in EFI’s
27 timetable for designing, manufacturing and installing Flexo Stations on the subject printer; (7)
28 all internal and external communications, and records thereof, regarding the marketing of

1 Jetrion printers to Plaintiff; (6) all internal and external communications, and records thereof,
2 regarding the sale of the subject printer to Plaintiff; (7) all communications and records
3 thereof by or between EFI and its (a) customers, (b) component manufacturers, (c) consultants
4 and (d) internally at EFI relating to print head failures on Jetrion printers, including efforts to
5 determine the cause of any such print head failures, ; (8) service and repair records relating to
6 print head failures on Jetrion printers , including shipping records for print head replacements
7 on Jetrion printers; and (9) technicians' notes relating to print head failures on Jetrion printers.
8

9 This preservation stipulation and order apply only to ESI created or received between
10 January 1, 2009, and the present.

11 **5. SEARCH**

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

15 **6. PRODUCTION FORMATS**

16 The parties agree to produce documents in PDF format with OCR capability. If
17 particular documents warrant a different format, the parties will cooperate to arrange for the
18 mutually acceptable production of such documents. The parties agree not to degrade the
19 searchability of documents as part of the document production process.

20 **7. PHASING**

21 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties
22 agree to phase the production of ESI and the initial production will be from the following sources
23 and custodians: For Plaintiff: James Imburgia, Jeffrey Levine, William Cheringal, and Rob
24 Paglieri; For Defendant: Stephen Emery, Jason Oliver, John Hickey, Tony Ricketts, Matthew
25 Gardner, John Hennessy, Gerald Jimmerson, Chris Cole, Steve Billow, Bart Kulesz, Boris
26 Liberman, Jon Martin, Angel Ramirez, Les Schalm, Nick Schimelfening, and Kevin Sheppard.
27 Following the initial production, the parties will continue to prioritize the order of subsequent
28 productions.

1 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

- 2 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.
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- 6 b) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.
- 7

8 **8. MODIFICATION**

9 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
10 Court.

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

12
13 Dated: June 18, 2014

LAW OFFICES OF ROBERT F. KNOX

14 By: /s/ Robert F. Knox
15 ROBERT F. KNOX
16 Attorneys for Plaintiff
17 CHERINGAL ASSOCIATES, INC.,
18 Doing business as CONTROL GROUP

19 DATED: June 20, 2014

KERR & WAGSTAFFE LLP

20 By: /s/ Ivo Labar
21 IVO LABAR

22 Attorneys for Defendant
23 ELECTRONICS FOR IMAGING, INC.

24 **IT IS ORDERED** that the foregoing Stipulation is approved.

25 Dated: June ²³____, 2014

26 HONORABLE
27 UNITED STATES

