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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN FRANCISCO DIVISION**

19
 20 24/7 Customer, Inc.,
 21 Plaintiff,
 22 v.
 23 LivePerson, Inc.,
 24 Defendant.

Case No. 3:15-CV-02897-JST

**~~PROPOSED~~ STIPULATED
 ELECTRONIC DISCOVERY ORDER**

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 DISCOVERY ORDER
 3:15-CV-02897-JST**

1 ~~PROPOSED~~ **STIPULATED ELECTRONIC DISCOVERY ORDER**

2 1. This Stipulated Electronic Discovery Order (“Order”) specifies the form in which
3 both parties and non-parties shall be required to produce documents, including any Electronic
4 Stored Information (“ESI”), for use in this Action.

5 2. This Order may be modified by agreement of the parties or upon further order of
6 the Court.

7 3. The production of Documents in a manner consistent with the specifications set
8 forth in this Order shall be, absent exceptional circumstances, sufficient to satisfy a Producing
9 Party’s obligation to produce its materials in reasonably useable form and as they are maintained
10 in the ordinary course of business.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency
12 and reduce costs will be considered in cost-shifting determinations.

13 5. Except as expressly stated, nothing in this Order affects the parties’ discovery
14 obligations under the Federal Rules of Civil Procedure, the Local Rules of the Northern District
15 of California, or this Court’s Rules (the “Rules”).

16 6. Except as expressly stated, nothing in this Order affects the parties’ rights and
17 obligations under the parties’ Stipulated Protective Order in this case, including but not limited to
18 (1) the parties’ rights and obligations as to the inadvertent production of privileged or otherwise
19 protected material, including Documents within the scope of this Order, and (2) the parties’
20 obligations with respect to preparing privilege logs.

21 **I. Definitions.**

22 A. “Document” means any document or electronically stored information as defined
23 in Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure and includes Hard Copy Documents
24 and Electronic Files as those terms are defined in this Order.

25 B. “Producing Party” means a party that produces Documents or other material in
26 connection with the above-captioned litigation in response to document requests, compulsory
27 process, or voluntarily.

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1 C. “Receiving Party” means a party that receives Documents or other material from a
2 Producing Party in connection with the above-captioned litigation.

3 D. “Hard Copy Document” means a document that is maintained in hard copy or
4 paper form.

5 E. “Electronic File” means a computer-generated file that is maintained in electronic
6 form. Electronic Files include, but are not limited to, email (e.g., .msg), spreadsheet files (e.g.,
7 .xls), slide presentation files (e.g., .ppt), word processing files (e.g., .doc), audio or visual files
8 (e.g., .wav, .mpeg), image files (e.g., .pdf), and container files (e.g., .pst, .zip).

9 **II. Production Format Specifications.**

10 A. General Form of Production. Except as provided in Section B, all Documents
11 shall be produced as single-page, black and white, Group IV TIFF image files with the associated
12 text and metadata specified in this Order.

13 1. Image Requirements. TIFF images files shall be of at least 300 dpi
14 resolution. The page orientation (i.e., portrait or landscape) of a TIFF image file shall be the
15 same as the underlying document from which the TIFF image is created. The page size of a TIFF
16 image file shall be 8.5 x 11 inches unless, in the reasonable judgment of the Producing Party, a
17 particular document requires a different page size. Each TIFF image shall be branded with (a) a
18 confidentiality stamp, if applicable, that signals any designation under the Protective Order in this
19 Action; and (b) a Bates number that must: (1) be unique across the entire document production;
20 (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire
21 production; (3) be sequential within a given document; and (4) include a prefix identifying the
22 Producing Party. As examples, the following Bates numbers would satisfy the requirements of
23 this section: LPI-000000001 or 247-000000001. Each TIFF image file shall be named with the
24 same page-level Bates number branded on the underlying image.

25 2. Text Requirements. All Documents shall be produced with a
26 corresponding multipage text file (i.e., one text file per Electronic File or Hard Copy Document).
27 The text file for an Electronic File shall be created by extracting text directly from the underlying
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1 native file, unless the Electronic File must be redacted prior to production, in which case the text
2 file shall be generated by applying industry standard OCR technology to the redacted version of
3 the electronic file. The text file for Hard Copy Documents shall also be created using industry-
4 standard OCR technology. Each text file shall be named with the beginning Bates number of the
5 Document to which the text file relates.

6 3. Metadata Requirements. Electronic Files shall be produced with metadata
7 specified in Exhibit A to this Order. Hard Copy Documents, including electronic files created by
8 scanning paper documents, shall be produced with the metadata specified in Exhibit B to this
9 Order.

10 B. Native Production. Unless redactions are necessary, the following types of
11 Electronic Files shall be produced in native format, whether they exist as attachments to e-mails,
12 embedded files, or standalone files: (1) spreadsheet files such as Excel and slide presentation
13 files such as PowerPoint; (2) Microsoft Access files; and (3) audio or video files such as .wav or
14 .mpeg files. Moreover, any party or non-party may produce in native format any other document
15 that it determines has not converted to a readable TIFF image, or that the party cannot convert to
16 a TIFF image. If redactions of spreadsheet files, Access files, or slide presentation files are
17 necessary, then the files may be produced in TIFF in accordance with Section II.A, provided that
18 the files are TIFFed in a manner that will yield production of all non-privileged content including,
19 for example, speaker notes, hidden rows and columns, and comments. If the parties encounter
20 audio or video files containing privileged content, the parties shall meet and confer to determine a
21 suitable manner of producing the non-privileged content contained in those files.

22 1. Native Files Request. A party that receives a Document produced in TIFF
23 format may make a reasonable request to receive the Document in its native format, and upon
24 receipt of a reasonable request, the Producing Party shall produce the Document in its native
25 format. Examples of where production of a native file would be reasonable are where the TIFF
26 version omits material, substantive content included in the native file or where the TIFF version
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1 suffers material, adverse formatting changes as a result of the conversion to TIFF, such as the loss
2 of meaningful color distinctions.

3 2. Production Specifications For Native Files. When producing an Electronic
4 File in native format pursuant to Section II.B, a Producing Party shall:

5 i. Provide a corresponding single-page TIFF placeholder stating
6 “Document Produced in Native.” The placeholder shall be branded with a Bates number meeting
7 the requirements of Section II.A.1.

8 ii. Name the produced version of the electronic file with the Bates
9 number affixed to the TIFF placeholder corresponding to the electronic file.

10 iii. Provide the text and metadata, including the original file name of
11 the underlying electronic file, required under Sections II.A.2 and II.A.3 of this Order.

12 C. Hidden Text, Track Changes, and Speaker Notes. All Word, PowerPoint, and
13 similar Documents that are produced in TIFF form and contain hidden text, track changes,
14 speaker notes, or other similar data shall be produced in form so that all data is visible in the TIFF
15 image.

16 D. Family Relationships of Electronic Files. Family relationships between Electronic
17 Files must be preserved by assigning sequential Bates numbers to all files within a family group,
18 and by providing accurate attachment ranges for those files in the metadata fields required by
19 Exhibit A. When a family of Electronic Files contains both responsive and wholly non-
20 responsive members, the party may either produce the wholly non-responsive Document or
21 produce a placeholder TIFF image for the wholly non-responsive Document in lieu of producing
22 it. For Documents withheld as non-responsive, the placeholder shall state: “Family Member
23 Withheld as Non-Responsive.” Placeholder images shall also be branded with a Bates number
24 meeting the requirements of Section II.A.a.

25 E. Branched Email Threads or Chains. To the extent an email branches from an
26 original, responsive thread or chain, and results in a series of both responsive and wholly non-
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1 responsive threads or chains, a party need not produce the wholly non-responsive threads or
2 chains separately, or in addition to, the responsive email threads or chains.

3 F. Hard Copy Documents. The parties agree to use reasonable efforts to maintain the
4 family relationships of Hard Copy Documents by scanning and Bates numbering those documents
5 in sequential order. This provision does not obligate any party to produce documents in a
6 manner other than that in which those documents were kept in the ordinary course of business.

7 G. Scanning and Unitization Requirements for Hard Copy Documents. The parties
8 agree to use reasonable efforts to ensure that Hard Copy Documents are logically unitized such
9 that: (1) multiple, distinct documents are not merged into a single document range; and (2)
10 distinct documents are not split into multiple document ranges.

11 H. Preservation of Metadata. The parties shall use industry-standard technology and
12 processes to ensure the metadata required to be produced for Electronic Files under Section
13 II.A.c. of this Order is preserved during the collection, processing, and production of those files.
14 However, the parties also acknowledge that in some circumstances it may be more efficient to
15 collect Electronic Files informally, such as by making a simple electronic copy of a file
16 discovered during the course of a witness interview. Accordingly, a party may collect and
17 produce a reasonable number of documents utilizing informal collection methods even though
18 such collection method may alter certain aspects of those files' metadata as they exist at the time
19 of collection (e.g., created date, file path). If the original metadata of these files becomes of
20 material importance during the course of the litigation, the parties shall meet and confer regarding
21 how to address that issue and promptly raise any disputes that cannot be resolved with the Court.
22 Nothing in this Order is intended to permit a party to convert a file that is normally maintained as
23 an Electronic File to a Hard Copy Document for production in this litigation.

24 I. De-duplication. Any party need produce only a single copy of any unique
25 Document.

26 1. Any party may de-duplicate its ESI population vertically by custodian, or
27 horizontally (i.e., "globally") across its custodians.

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1 2. ESI duplicates shall be identified using industry standard MD5 algorithm
2 only to create and compare hash values for exact matches only. Any other methodology
3 contemplated for identification of duplicates must be discussed with the Receiving Party and
4 approved in writing before implementation. The hash value used for each Document as part of
5 the de-duplication process shall be reflected in the HASH metadata field specified in Exhibit A.

6 J. Placeholders for Wholly Privileged Family Members. If a party wants to withhold
7 a wholly privileged Document that is part of a family group containing responsive documents that
8 are not wholly privileged, the party shall produce a placeholder TIFF image for the Document in
9 lieu of producing it. For Documents withheld as privileged, the placeholder shall state:
10 “Document Withheld as Privileged.” Placeholder images shall also be branded with a Bates
11 number meeting the requirements of Section II.A.a.

12 K. Error Files. If a responsive Document cannot be converted to TIFF without error
13 due to corruption or some other issue, the Document shall be produced in native pursuant to the
14 requirements of Section II.B.

15 L. Production of Container Files. The parties need not produce container files (e.g.,
16 .zip or .rar) so long as the responsive contents of those files are produced in accordance with the
17 specifications of this Order.

18 **III. Method of Production.**

19 A. All productions of Documents shall be accompanied with data load files and
20 image load files. Each party shall provide data and image load files in standard Concordance
21 format (i.e., DAT for metadata load files and OPT for image load files) using standard
22 Concordance delimiters.

23 B. The Producing Party may produce materials by electronic transmission, such as
24 FTP or secure file transfer (e.g., Accellion). A production by electronic transmission shall be
25 considered complete when made available to the Receiving Party by electronic transmission.
26 Alternatively, or in addition to production by electronic transmission, the Producing Party may
27 produce materials on electronic storage media such as CDs, DVDs, or USB hard drives. If
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1 produced on electronic storage media, each piece of electronic storage media shall be assigned a
2 sequential volume number that identifies the party to whom the volume is attributable (e.g.,
3 LPI001).

4 C. A party shall accompany each production of Documents with a cover letter
5 specifying: (1) the volume or volumes comprising the production; and (2) the Bates range or
6 ranges of the materials being provided on each volume and whether those Bates ranges contain
7 any known gaps.

8 **IV. Discovery of Electronic Correspondence**

9 A. Requests for production made pursuant to Federal Rule of Civil Procedure 34 shall
10 not include email or other forms of electronic correspondence (collectively “email”). To obtain
11 email, parties must propound specific email production requests.

12 B. Email production requests shall only be propounded for specific issues, rather than
13 general discovery of a product or business.

14 C. Email production requests shall be phased to occur after the parties have
15 exchanged initial disclosures and basic documentation about the patents, the prior art, the accused
16 instrumentalities, and the relevant finances.

17 D. Email production requests shall identify the custodian, search terms, and time
18 frame. The parties shall cooperate to identify the proper custodians, proper search terms and
19 proper timeframe as set forth in the Guidelines.

20 E. Each requesting party shall limit its email production requests to a total of six
21 custodians per producing party for all such requests. The parties may jointly agree to modify this
22 limit without the Court’s leave. The Court shall consider contested requests for additional
23 custodians, upon showing a distinct need based on the size, complexity, and issues of this specific
24 case. Cost-shifting may be considered as part of any such request. Moreover, where the Producing
25 Party has failed to reasonably identify—through initial disclosures, interrogatory responses, or
26 otherwise—the respective areas of knowledge its disclosed witnesses or email custodians, that is
27 a factor weighing in favor of granting a contested request for additional custodians.
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1 F. Each requesting party shall limit its email production requests to a total of six
2 search terms per custodian per party. The parties may jointly agree to modify this limit without
3 the Court's leave. The Court shall consider contested requests for additional search terms per
4 custodian, upon showing a distinct need based on the size, complexity, and issues of this specific
5 case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such
6 as the producing company's name or its product name, are inappropriate unless combined with
7 narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive
8 combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and
9 shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g.,
10 "computer" or "system") broadens the search, and thus each word or phrase shall count as a
11 separate search term unless they are variants of the same word. Use of narrowing search criteria
12 (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when
13 determining whether to shift costs for disproportionate discovery.

14
15 Dated: October 14, 2015

O'MELVENY & MYERS

16
17 By: /s/ Mark E. Miller
18 Mark E. Miller

19 Attorneys for Plaintiff
20 24/7 Customer, Inc.

21 Dated: October 14, 2015

TURNER BOYD LLP

22
23 By: /s/ Karen Boyd
24 Karen Boyd

25 Attorneys for Defendant
26 LivePerson, Inc.

1 **ATTESTATION:** Pursuant to Local Rule 5-1(i)(3) I hereby attest that concurrence in the filing
2 of this document has been obtained from Karen Boyd.

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By: /s/ Mark E. Miller
Mark E. Miller

~~PROPOSED~~ ORDER

The parties' stipulation is adopted and IT IS SO ORDERED.

Dated: October 21, 2015

By:

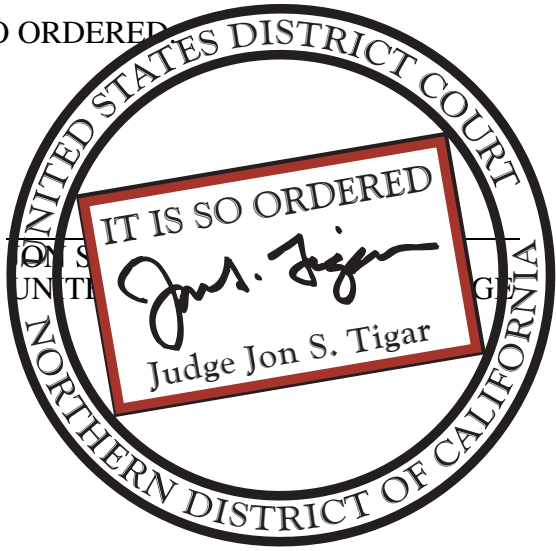


EXHIBIT A

The chart below describes the metadata fields to be produced in generic, commonly used terms which the Producing Party must adapt to the specific types of Electronic Files it is producing, to the extent such metadata fields are included in the original Electronic Documents and can be customarily extracted as part of the electronic data discovery process. Any ambiguity about a metadata field is to be discussed with the Receiving Party prior to processing and production.

Field Name	Description
PRODBEG	First Bates number of Electronic File or Hard Copy Document
PRODEND	Last Bates number of Electronic File or Hard Copy Documents
PRODBEGATT	First Bates number of the first page in a parent/child relationship
PRODENDATT	Last Bates number of the last page in a parent/child relationship
ATTACH_COUNT	Number of attachments to an email or loose e-file with extracted children
PRODVOL	Name of production volume on which Electronic or Hard Copy File is produced
PRODPARTY	Name of party producing Electronic File or Hard Copy Document
CUSTODIAN	Name of person from whom the Electronic File was collected, reviewed, and produced.
DOCTYPE	Populate with either Hard Copy, E-Mail, Attachment, or E-Docs (i.e., loose or standalone files)
FROM	The Names and SMTP email addresses of all individuals included on the From line of an email or calendar item
TO	The Names and SMTP email addresses of all individuals included on the To line of an email or calendar item
CC	The Names and SMTP email addresses of all individuals included on the CC line of an email or Optional line of a calendar item
BCC	The Names and SMTP email addresses of all individuals included on the BCC line of an email
SUBJECT	Subject line of email
DATE_SENT	Date email was sent (MMDDYYYY)
TIME_SENT	Time email was sent (HH:MM:SS)
LINK	Link to native file on the media received (e.g., Excel attachment)
FILE_EXTEN	File extension of the email, attachment, or loose e-file
FILE_NAME	The file name of the email attachment or loose e-file
FILE_PATH	The original file path of the email or loose e-file
AUTHOR	The author of the loose e-file or e-file attachment

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DATE_CREATED	The created date of the email attachment or loose e-file (MMDDYYYY)
DATE_MODIFIED	The last-modified date of the email attachment or loose e-file (MMDDYYYY)
REDACTION	Populate with Yes or No to indicate whether document contains redactions
CONFIDENTIALITY	Populate with any confidentiality designation attached to the document
HASH	The MD5 hash value generated when processing the document

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EXHIBIT B

Field Name	Description
PRODBEG	First Bates number of Electronic File or Hard Copy Document
PRODEND	Last Bates number of Electronic File or Hard Copy Documents
PRODVOL	Name of production volume on which document is produced
PRODPARTY	Name of party producing Electronic File or Hard Copy Document
CUSTODIAN	Name of person from whom the Electronic File or Hard Copy Document was collected, reviewed, and produced.
REDACTION	Populate with Yes or No to indicate whether document contains redactions
CONFIDENTIALITY	Populate with any confidentiality designation attached to the document