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COLLABORATIVE AGREEMENTS, LLC

UNITED STATES DISTRICT COURT**NORTHERN DISTRICT OF CALIFORNIA****SAN FRANCISCO DIVISION**COLLABORATIVE AGREEMENTS, LLC,
D/B/A OUI AGREE

Plaintiff,

v.

ADOBE SYSTEMS INCORPORATED, *et al*,

Defendants.

Case No: 3:15-cv-03853-EMC

**STIPULATION & ORDER
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

Judge: The Honorable Edward Chen

1 Upon the stipulation of the parties, the Court ORDERS as follows:

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3 **I. GENERAL PROVISIONS**

4 A. This Order supplements all other discovery rules and orders. It streamlines
5 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and
6 inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

7 B. This Order may be modified in the Court’s discretion or by stipulation.

8 C. As in all cases, costs may be shifted for disproportionate ESI production requests
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
10 discovery tactics are cost-shifting considerations.

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

13 E. General ESI production requests under Federal Rules of Civil Procedure 34 and
14 45 shall not include email or other forms of electronic correspondence (collectively “email”). To
15 obtain email parties must propound specific email production requests.

16 F. Absent a showing of good cause, general ESI production requests under Federal
17 Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of
18 this Court, shall not include metadata. However, fields showing the date and time that the
19 document was sent and received, as well as the complete distribution list, shall generally be
20 included in the production if such fields exist.

21 **II. INFORMATION TO BE PRODUCED**

22 A. Email production requests shall only be propounded for specific issues, rather
23 than general discovery of a product or business.

24 B. Within 14 days of completion of Patent L.R. 3-1 and 3-2 disclosures, the parties
25 shall exchange a specific identification of each party’s own eight most significant listed e-mail
26 custodians. The identification of e-mail custodians shall include the area(s) of relevant
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1 knowledge as to each custodian.

2 C. Within 14 days of disclosure of the significant e-mail custodians, the parties shall
3 exchange specific requests that a party produce e-mail in accordance with the following
4 provisions.

5 1. Email production requests shall be phased to occur after the parties have
6 exchanged initial disclosures and basic documentation about the patents, the prior art, the
7 accused instrumentalities, and relevant financial information. While this provision does
8 not require the production of such information, the Court encourages prompt and early
9 production of this information to promote efficient and economical streamlining of the
10 case.

11 2. Email production requests shall identify the custodian, search terms, and
12 time frame. The parties shall cooperate to identify the proper custodians, proper search
13 terms and proper timeframe as set forth in the Guidelines. Each requesting party shall
14 limit its email production requests to a total of five (5) custodians per producing party for
15 all such requests. The parties may jointly agree to modify this limit without the Court's
16 leave. The Court shall consider contested requests for additional custodians, upon
17 showing a distinct need based on the size, complexity, and issues of this specific case.
18 Cost-shifting may be considered as part of any such request.

19 3. Each requesting party shall limit its email production requests to a total of
20 five (5) search terms per custodian per party. The parties may jointly agree to modify this
21 limit without the Court's leave. The Court shall consider contested requests for
22 additional search terms per custodian, upon showing a distinct need based on the size,
23 complexity, and issues of this specific case. The Court encourages the parties to confer
24 on a process to test the efficacy of the search terms. The search terms shall be narrowly
25 tailored to particular issues that are relevant to the claims or defenses in the case.
26 Indiscriminate terms, such as the producing company's name or its product name, are
27 inappropriate unless combined with narrowing search criteria that sufficiently reduce the
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1 risk of overproduction. A conjunctive combination of multiple words or phrases (*e.g.*,
2 “computer” and “system”) narrows the search and shall count as a single search term. A
3 disjunctive combination of multiple words or phrases (*e.g.*, “computer” or “system”)
4 broadens the search, and thus each word or phrase shall count as a separate search term
5 unless they are variants of the same word. For example, “computer and system” counts as
6 a single search term; however “computer and (system or drive or disk)” counts as three
7 search terms. Use of narrowing search criteria (*e.g.*, “and,” “but not,” “w/x”) is
8 encouraged to limit the production and shall be considered when determining whether to
9 shift costs for disproportionate discovery. Should a party serve email production requests
10 with search terms beyond the limits agreed to by the parties or granted by the Court
11 pursuant to this paragraph, this shall be considered in determining whether any party shall
12 bear all reasonable costs caused by such additional discovery. The parties agree to meet
13 and confer regarding potential search terms prior to a party collecting and producing
14 emails.

15 16 **III. FORMAT OF PRODUCTION**

17 The parties have agreed and shall produce all ESI in accordance with the agreed-upon
18 specifications set forth below:

19 **A. GENERAL DOCUMENT IMAGE FORMAT.** Each electronic document shall
20 be produced in text-searchable/OCR’d Tagged Image File Format (“TIFF”) or PDF format
21 unless the document cannot reasonably or without undue expense be produced in that format, in
22 which case the document may be produced in native format. TIFF files shall be single page,
23 Group IV, minimum 300dpi TIFF images. PDF files shall be multi-page wherein each multi-
24 page PDF document shall be produced as a single PDF file. The TIFF or PDF images shall be
25 named with a unique production number followed by the appropriate file extension. Load files,
26 such as Concordance load files, shall be provided to indicate the location and unitization of the
27 TIFF or PDF files and ease the loading of the files into the receiving party’s document
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1 management system. The document load files shall include fields identifying at least: (1) the
2 beginning and ending Bates numbers for each document; and (2) the DocID (which shall match
3 the beginning Bates number). When a text-searchable image file is produced, the producing party
4 must preserve the integrity of the underlying ESI (i.e., the original formatting, the metadata, and,
5 where applicable, the revision history). If a document is more than one page, the unitization of
6 the document and any attachments and/or affixed notes shall be maintained as they existed in the
7 original document.

8 **B. CONFIDENTIALITY DESIGNATION.** Responsive documents in TIFF or
9 PDF format will be stamped with the appropriate confidentiality designations in accordance with
10 the Protective Order in this matter. All material not reduced to documentary, tangible, or
11 physical form or which cannot be conveniently labeled, shall be designated by the producing
12 party by informing the receiving party of the designation in writing.

13 **C. BATES NUMBERING.** All images must be assigned a unique Bates number in
14 the footer that is sequential within a given document.

15 **D. PRODUCTION MEDIA.** Documents shall be produced on external hard drives,
16 readily accessible computer(s) or electronic media such as CDs, DVDs, USB drives (“Production
17 Media”); production by FTP rather than on hard media will be acceptable; and production by
18 email is acceptable provided that the receiving party’s designated email address for accepting
19 service of the production is used, and the producing party has not received any error or return
20 message indicating that the service email was not received or sent successfully. Each piece of
21 production media should identify: (1) the producing party’s name; (2) the production date; (3)
22 the Bates Number range of the materials contained on the Production Media; and (4) the
23 appropriate confidentiality designations in accordance with the Protective Order in this matter.

24 **E. PRESENTATIONS.** The parties shall take reasonable efforts to process
25 presentations (e.g., Microsoft PowerPoint) with hidden slides and speaker’s notes unhidden, and
26 to show both the slide and the speaker’s notes on the TIFF (or PDF) image and/or produce such
27 presentations in their native format pursuant to the terms of native production set forth below.
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1 **F. SPREADSHEETS.** TIFF images of spreadsheets need not be produced unless
2 redacted, in which instance, spreadsheets will be produced in TIFF (or PDF) format with OCR.
3 Native format copies of spreadsheets should be produced, if available. The parties will make
4 reasonable efforts to ensure that any spreadsheets that are produced only as TIFF or PDF images
5 are formatted so as to be readable.

6 **G. PROPRIETARY FILES.** To the extent a response to discovery requires
7 production of ESI accessible only through proprietary software, the parties should continue to
8 preserve each version of such information. The parties shall meet and confer to finalize the
9 appropriate production format.

10 **H. REQUESTS FOR NATIVE FILES.** If good cause exists to request production
11 of specified files in native format, the party may request such production and provide an
12 explanation of the need for native file review, which request shall not be unreasonably denied.

13 **I. NON-STANDARD FILES.** The parties are encouraged to discuss the format of
14 production of non-standard electronic files, large oversized documents, etc. before production to
15 determine the optimal production format.

16 **J. SOURCE CODE.** To the extent relevant to the Litigation, source code will be
17 made available for inspection pursuant to the terms of the Protective Order. The parties agree
18 that the search terms will not be applied to source code.

19 **K. REDACTION OF INFORMATION.** Redacted documents and redacted
20 portions of documents are subject to the parties' agreement in the Discovery Order regarding
21 whether certain documents need to be included in a privilege log. The producing party shall
22 retain a copy of the unredacted data within its possession and control and preserve it without
23 modification, alteration or addition to the metadata therewith.

24 25 **IV. PROCESSING OF THIRD-PARTY DOCUMENTS**

26 **A.** A party that issues a non-party subpoena ("Issuing Party") shall include a copy of
27 this Stipulation & Order Regarding Discovery of Electronically Stored Information with the
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subpoena and state that the parties to the litigation have requested that third-parties produce documents in accordance with the specifications set forth herein.

B. The Issuing Party shall promptly produce any documents obtained pursuant to a non-party subpoena to the opposing party.

C. Assuming that it is not unduly burdensome or impractical, if the non-party production is not Bates-stamped, the Issuing Party will endorse the non-party production with unique prefixes and Bates numbers prior to producing them to the opposing party.

D. Nothing in this stipulation is intended to or should be interpreted as narrowing, expanding, or otherwise affecting the rights of the parties or third-parties to object to a subpoena.

V. SEARCHING

A. LOCATIONS THAT WILL BE SEARCHED. The parties will search reasonably accessible electronic files or folders likely to have relevant non-duplicative information pertaining the issues in the case. This includes repositories maintained or accessed by identified Custodians in the ordinary course of business, whether on-premises or off-premises (e.g., in a remote email service, such as Gmail, Yahoo! or Hotmail or other cloud-based storage). The parties agree that storage media and ESI venues that would require the producing party to (1) acquire or purchase software or hardware that it does not have in its possession, custody, or control, and/or (2) retain and pay outside IT/technical advisors or consultants, in order to view or copy the media's or ESI venue's contents is not considered "reasonably accessible" for the purpose of this Order. If such a storage media or ESI venue exists, the producing party will identify the location to the requesting party. The parties agree that any email searches shall be limited to the Custodian's accounts and, to the extent not duplicative, email archives on the Custodian's local machine.

In addition, nothing in this paragraph shall limit a receiving party's right to request from a producing party more information about the nature of and burden associated with obtaining documents from a particular location.

1 The parties agree to search central repositories, including central databases, or relevant
2 portions thereof to the extent that the party reasonably anticipates they contain non-duplicative
3 Responsive Documents. The parties agree to meet and confer to limit the scope of production
4 from central repositories if the search of central repositories (or relevant portions thereof) that the
5 producing party anticipates contain Responsive Documents is unduly burdensome or is likely to
6 be unreasonably inefficient in identifying relevant documents. Specifically, the parties recognize
7 that certain repositories, by their nature, may not effectively or reasonably be searched using
8 electronic search strings, and the parties agree to notify each other of any such repositories that
9 contain Responsive Documents. The parties will then meet and confer to discuss the collection of
10 Responsive Documents from such repositories, including potentially using other effective
11 collection methodologies.

12 **B. LOCATIONS NOT REQUIRED TO BE SEARCHED.** No party shall be
13 required to search for or produce the following categories of ESI, except when any particular one
14 or more files within any such category are already known to be relevant (i.e., relevant source
15 code) or are attached to or identified in a text file, or when any particular one or more files within
16 any such category are specifically requested by a party: 1) any electronic file that matches the
17 Reference Data Set published by the National Institute of Standards and Technology's National
18 Software Reference Library; 2) system or executable files (.exe, .dll, etc.); 3) audio, video, or
19 audio-visual information (.wav, .mp3, .avi, .swf, etc.); 4) telephonic recordings; 5) unreadable or
20 corrupt files; 6) computer log files or records of a computer-operational nature (e.g., HTTP or
21 CPU logs, but this does not excuse a party from producing summary reports maintained in the
22 ordinary course of business reflecting relevant operational metrics); and 7) any other types
23 subsequently agreed to by the parties. Absent a showing of good cause, voicemails, instant
24 messages, PDAs, and mobile phones are deemed not reasonably accessible and need not be
25 collected and preserved. Notebook computers and laptop computers used as the Custodian's
26 local or primary machine are not "mobile devices" for the purpose of this paragraph

27 **C. NO OBLIGATION TO SEARCH METADATA.** Without a showing of good
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1 cause, no party shall be obligated to perform an additional search for and produce metadata
2 associated with any electronic document beyond the metadata that shall allow for compliance
3 with the production format contained herein. Metadata includes embedded data about an
4 electronic document, such as date created, author, etc., and does not include the text of the
5 document itself.

6 **D. DE-DUPLICATING ESI.** Each party may de-duplicate ESI. If de-duplication is
7 performed, the de-duplicated originals shall be securely retained and made available for
8 inspection and copying upon reasonable request.

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

13 14 **VI. MISCELLANEOUS PROVISIONS**

15 **A. OBJECTIONS PRESERVED.** Nothing in this protocol shall be interpreted to
16 require disclosure of irrelevant information or relevant information protected by the attorney-
17 client privilege, work-product doctrine, or any other applicable privilege or immunity. The
18 parties do not waive any objections as to the production, discoverability, admissibility, burden,
19 or confidentiality of documents and ESI.

20 **B.** Notwithstanding the preceding paragraphs, the parties may later make other
21 agreements for their mutual convenience relating to the form and manner of production. To the
22 extent a producing party believes discovery requests or particular applications of this order may
23 be unduly burdensome or otherwise objectionable under the applicable rules, the parties will
24 meet and confer in good faith as to the necessity for, scope of, and objections to such production
25 before seeking relief from the Court. To the extent a receiving party believes that the production
26 of a document in a format different from that originally produced is necessary to translate the
27 document into a reasonably usable form, the parties will meet and confer in good faith as to the
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necessity for, scope of and objection to such production before seeking relief from the Court.

C. An agreement by any party to bear or receive the costs of any ESI discovery is an interim agreement subject to modification by a final Taxation Order issued by the Court and shall not prejudice any party's right to seek ESI expenses as taxable costs.

D. Nothing in this Order prevents the parties from agreeing to use technology assisted review and other techniques insofar as their use improves the efficacy of discovery.

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

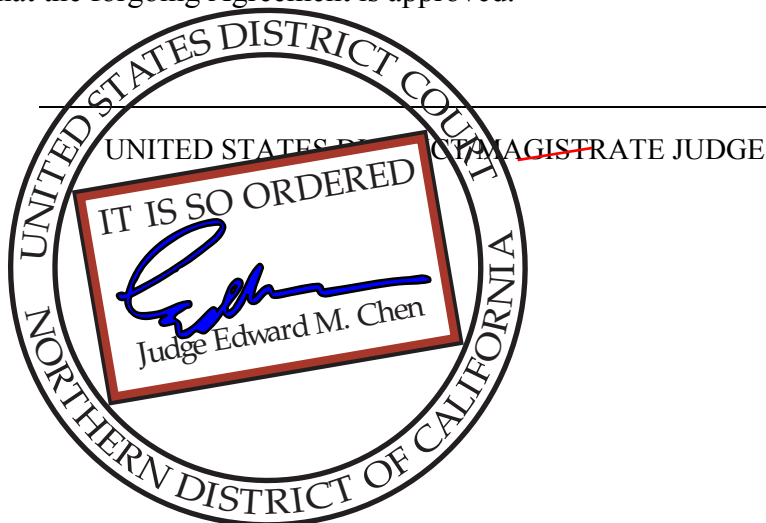
IT IS SO STIPULATED, through Counsel of Record.

Dated: /s/ Edward Chin
Edward Chin
NIX, PATTERSON & ROACH, L.L.P.
Counsel for Plaintiff

Dated: /s/ Jason Wolff
Jason Wolff
FISH & RICHARDSON P.C.
Counsel for Defendant

IT IS ORDERED that the forgoing Agreement is approved.

Dated: 12/10/15



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/s/ Jason Wolff
Jason Wolff
FISH & RICHARDSON P.C.