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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

B & R SUPERMARKET, INC., d/b/a)	Case No. 3:16-cv-01150-WHA
MILAM'S MARKET, a Florida corporation, et)	
al., Individually and on Behalf of All Others)	<u>CLASS ACTION</u>
Similarly Situated,)	
)	STIPULATED [PROPOSED] ORDER RE:
Plaintiffs,)	DISCOVERY OF ELECTRONICALLY
)	STORED INFORMATION AND HARD
vs.)	COPY DOCUMENTS
)	
VISA, INC., a Delaware corporation, et al.,)	
)	
Defendants.)	
)	

1 **I. PURPOSE**

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

6 **II. COOPERATION**

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

10 **III. LIAISON**

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

17 **IV. PRESERVATION**

18 The parties have discussed their preservation obligations and needs and agree that
19 preservation of potentially relevant ESI will be reasonable and proportionate. Consistent with the
20 parties’ obligations under the Federal Rules of Civil Procedure, the parties will meet and confer
21 regarding whether there are any issues involving preservation, such as categories of information that
22 are not reasonably accessible or cannot reasonably be preserved because of undue burden or cost.
23 Each party will disclose categories or sources of responsive information that it believes should not be
24 preserved (and explain with specificity the reasons to support such a belief) because of undue burden
25 or cost, or relevance considering the proportionality factors in the Federal Rules.

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1 **V. SEARCH, IDENTIFICATION OF RESPONSIVE DOCUMENTS, AND**
2 **COLLECTION**

3 The parties shall meet and confer in an effort to conduct discovery in the most efficient and
4 effective manner. Specifically, the parties will attempt in good faith to come to an agreement on
5 search and culling methods used to identify responsive information. Within 7 days of the Start
6 Date,¹ the parties will begin to meet and confer regarding the scope of discovery, including
7 custodians, custodial and non-custodial sources, date ranges, file types, and whether the party plans
8 to use search terms to cull documents for review. The parties agree that the grounds for objections
9 should be supported by specific information. The parties will not seek court intervention without
10 first attempting to resolve any disagreements in good faith, based upon all reasonably available
11 information.

12 **A. Sources**

13 Within 7 days of the Start Date, the parties will meet and confer regarding the custodial and
14 non-custodial sources from which the party is collecting and producing documents. The parties will
15 continue to meet and confer regarding sources as appropriate. The parties will, where applicable,
16 identify and describe sources likely to contain responsive information that a party asserts should not
17 be searched or is not reasonably accessible and will explain the reasons for such assertions. The
18 parties reserve the right, upon reviewing the initial production of documents, and conducting other
19 investigation and discovery, to request that files from additional custodial or non-custodial sources
20 be searched and meet and confer regarding such request, subject to the Federal Rules of Civil
21 Procedure.

22 At the time of production, the producing party will provide the names of the custodians from
23 whom the documents were collected and produced, and will in their production cover letter explain
24 the relevant roles of these custodians and dates they were in those roles, if such information has not

25 ¹ The “Start Date” shall be defined as (1) the date on which the Court rules on defendants’ motions
26 to dismiss, if the motions to dismiss are denied; (2) the date on which a party serves its written
27 responses and objections to requests for production, if those responses and objections are served
28 after the motions to dismiss are denied; or (3) a later date negotiated by the parties. Notwithstanding
the foregoing, in the event the Court denies defendants’ motions to dismiss, defendants will
commence production of documents to plaintiffs approximately three weeks after the motions’
denial, or at such other time as the Court may order.

1 already been provided. The parties agree that this information will satisfy the requirements in
2 paragraph 13 of the Supplemental Order to Order Setting Initial Case Management Conference in
3 Civil Cases Before Judge William Alsup (DE 41).

4 **B. Identification of Custodians**

5 Within 7 days of the Start Date, each party shall provide a written list identifying persons
6 whose files are likely to contain unique documents and ESI responsive to the opposing parties'
7 discovery requests, subject to the Federal Rules of Civil Procedure. This will include a description
8 of each proposed custodian's job title and a brief description of such person's relevant
9 responsibilities (including relevant dates of employment by the applicable party). The parties
10 reserve the right, upon reviewing the initial production of documents and conducting other
11 investigation and discovery, to request that files from additional custodians be searched and meet
12 and confer regarding such request.

13 **C. Easily Segregable Documents**

14 The parties will work in good faith to identify categories of documents that are easily
15 identifiable and segregable that may be produced as responsive without the use of search terms or
16 other agreed upon advanced search methodology (*e.g.*, analytics, predictive coding, technology-
17 assisted review). If the producing party decides that potentially responsive ESI shall be searched
18 through the use of search terms, the parties agree to follow the process identified below and the
19 parties shall meet and confer regarding any proposed deviation.

20 **D. Search Terms**

21 The producing party shall use best efforts to provide a list of proposed search terms, which
22 shall contain all search terms that it believes would lead to the identification of responsive
23 documents from sources to be subject to search term application, within 21 days of the Start Date.
24 To the extent reasonably possible, search terms will be crafted with input from the custodians in
25 order to identify appropriate nomenclature, code words, *etc.* The identification of search terms will
26 be subject to the Federal Rules of Civil Procedure.

27 Within 7 days of receipt of the proposed search terms, the receiving party shall provide any
28 additional search terms that they believe are necessary to identify responsive documents. Within 14

1 days of receiving the additional search terms, the parties shall meet and confer regarding the
2 proposed search terms. The parties will use best efforts to agree to a set of search terms within 45
3 days of receipt of the originally proposed search terms.

4 If disputed terms still exist at the end of the meet and confer process, the parties will submit
5 those terms to the Court in the form of a joint discovery letter with a discussion of the relevance
6 and/or burden associated with those search terms.

7 If discovery reveals additional terms that the receiving party believes will lead to the
8 identification of other unique responsive material, the party requesting the additional terms will
9 provide them to the producing party. Such a request will be subject to the Federal Rules of Civil
10 Procedure. Within 14 days of receiving the additional search terms, the parties shall meet and confer
11 regarding the additional proposed search terms. The parties will use best efforts to agree to the set of
12 additional proposed search terms within 30 days of receipt. Duplicate documents captured by the
13 additional terms need not be reproduced.

14 During the meet and confer process, the parties may provide reasonable information related
15 to search term hits, quality control testing, and/or sampling results, if appropriate.

16 If disputed terms still exist at the end of the meet and confer process, the parties will submit
17 those terms to the Court in the form of a joint discovery letter with a discussion of the relevance
18 and/or burden associated with those search terms.

19 **E. Technology-Assisted Review**

20 To reduce the costs and burdens of document review and production, any party may use
21 predictive coding or technology-assisted review for the purpose of culling the documents to be
22 reviewed or produced. Any party using predictive coding or technology-assisted review (“TAR”) to
23 cull the documents to be reviewed agrees that as early as reasonably practicable (and in any event
24 prior to using such tools) it will disclose to the opposing parties the type of technology it will be
25 using and a general description of the TAR methodology that will be used.

1 **VI. PRODUCTION OF HARD COPY DOCUMENTS**

2 **A. Format**

3 Hardcopy documents should be scanned as single-page, Group IV, 300 DPI TIFF images
4 with an .opt image cross reference file and a delimited database load file (*i.e.*, .dat). The database
5 load file should contain the following fields: “BEGNO”, “ENDNO”, “PAGES”, and
6 “CUSTODIAN.” The documents should be logically unitized (*i.e.*, distinct documents shall not be
7 merged into a single record, and single documents shall not be split into multiple records) and be
8 produced in the order in which they are kept in the usual course of business. Multi-page OCR text
9 for each document should also be provided as a separate text file, to the extent reasonably
10 practicable. The OCR software shall maximize text quality over process speed. Settings such as
11 “auto-skewing” and “auto-rotation” should be turned on during the OCR process, to the extent
12 reasonably practicable. If unitizing hard copy documents or providing OCR text presents an undue
13 burden, or if the burden exceeds the benefit with respect to certain sets of hard copy documents, the
14 producing party is not obligated to unitize and provide OCR text, but the producing party will
15 disclose that fact to the receiving party.

16 These production specifications apply to documents which are to be produced in the first
17 instance in this action. To the extent any party is required to re-produce documents in this action
18 that were originally produced in other actions, the parties have not agreed to reformat those earlier
19 productions in accordance with the production specifications in this Order.

20 **VII. PRODUCTION OF ESI**

21 **A. Format**

22 The parties will produce ESI in single-page, black and white, TIFF Group IV, 300 DPI TIFF
23 images with the exception of spreadsheet type files, presentation type files such as PowerPoint files,
24 source code, audio, and video files, which shall be produced in native format, unless they contain
25 privileged information or information subject to any other applicable protection. If documents that
26 the parties have agreed to produce in native format need to be redacted and cannot be redacted in
27 TIFF in a readable manner, the parties will meet and confer regarding how to implement redactions
28 while ensuring that proper formatting and usability are maintained. If a party has reason to believe

1 the redacted TIFF image is not reasonably usable, the parties agree to meet and confer regarding
2 redactions for select native documents or categories of documents and to accommodate reasonable
3 requests for producing documents in native format. TIFFs will show any and all text and images
4 which would be visible to the reader using the native software that created the document, to the
5 extent reasonably practicable. For example, TIFFs of email messages should include the BCC line.
6 For each document, a text file containing the extracted text shall be provided along with the TIFF,
7 when such text exists. The filename for the text file should be identical to the first image of the
8 corresponding document, and the text file should be linked directly to its corresponding record in the
9 metadata load file using the TEXTLINK field. For documents that contain redactions, the parties
10 may use OCR text to create the text file. Parties are under no obligation to enhance an image beyond
11 how it was kept in the usual course of business.

12 Each image should have a unique file name. For single-page TIFFs, the unique file name
13 will be the Bates number of the page. For native files, the unique file name will be the Bates number
14 of the document. Bates numbers shall be unique IDs with a prefix that can be readily attributed to
15 the producing party. Bates numbers shall be sequential within a document.

16 Any document produced in native format shall be produced with a single page Bates-stamped
17 TIFF image slip-sheet stating the document has been produced in native format and noting the
18 document's confidentiality designation. Each native file should be named according to the Bates
19 number it has been assigned, and should be linked directly to its corresponding record in the load file
20 using the NATIVELINK field. To the extent that either party believes that specific documents or
21 classes of documents, not already identified within this protocol, should be produced in native
22 format, the parties agree to meet and confer in good faith.

23 **B. Family Relationships**

24 Family relationships (i.e., the association between attachment(s), or "child(ren)", and the
25 "parent" document) should be preserved. Where feasible, responsive non-privileged family
26 members shall be produced together and bear sequential Bates numbers. Non-responsive
27 attachments to responsive parent documents may be withheld from the production or redacted in full,
28 provided that the responsive families are Bates numbered prior to production and a load file is

1 provided that contains the following metadata fields for the files withheld as nonresponsive:
2 “BEGNO”, “ENDNO”, “BEGATTACH”, “ENDATTACH”, “FILENAME”, “TITLE”,
3 “AUTHOR”, “CREATEDATE”, “LASTMODDATE”, and “NONRESPONSIVE” (a field populated
4 by the producing party that indicates that the document was removed as non-responsive). The
5 parties agree that they will not object to a document’s completeness under Fed. R. Evid. 106 on the
6 ground that an attachment is missing where a non-responsive attachment has been withheld from
7 production according to this provision.

8 **C. De-Duplication**

9 Each party may remove exact duplicate documents based on MD5 or SHA-1 hash values at
10 the family level. Attachments should not be eliminated as duplicates for purposes of production,
11 unless the parent email and all attachments are also duplicates. Parties agree that an email that
12 includes content in the BCC or other blind copy field shall not be treated as a duplicate of an email
13 that does not include content in those fields, even if all remaining content in the email is identical.
14 De-duplication may be done across the entire collection (global de-duplication) and the All
15 Custodians field will list each custodian, separated by a semi-colon, who was a source of that
16 document. Should the All Custodians metadata field produced become outdated due to rolling
17 productions, an overlay file providing all the custodians for the affected documents will be produced
18 prior to substantial completion of the document production. The parties may review documents
19 using email threading without restraint, but if a party seeks to use email thread suppression to
20 remove responsive documents from production, the parties will meet and confer prior to use and
21 with sufficient time to raise the issue with the Court, if necessary.

22 **D. Metadata**

23 All ESI will be produced with a delimited, database load file (*i.e.*, .dat file) that contains the
24 metadata fields listed in Table 1, attached hereto, where reasonably available. Each party shall use
25 one normalized time zone for all metadata pertaining to time and date.

26 **E. Embedded Objects**

27 The parties agree to meet and confer over the inclusion or exclusion of embedded files from
28 the production.

1 **F. Compressed Files Types**

2 Compressed file types (*i.e.*, .ZIP, .RAR, .CAB, .Z) should be decompressed so that the lowest
3 level document or file is extracted, where reasonably feasible.

4 **G. Structured Databases**

5 To the extent a response to discovery involves production of electronic information stored in
6 a database, the producing party will provide a general description of what information is in the
7 database. The parties shall meet and confer regarding the format for database productions, where
8 necessary.

9 **H. Encryption**

10 To maximize the security of information in transit, any media on which documents are
11 produced should be encrypted. The producing party shall transmit the encryption key or password to
12 the receiving party, under separate cover, contemporaneously with sending the encrypted media.

13 **I. Re-Productions**

14 The production specifications in this order apply to documents which are to be produced in
15 the first instance in this action. To the extent any party is required to re-produce documents in this
16 action that were originally produced in other actions, the parties have not agreed to reformat those
17 earlier productions in accordance with the production specifications in this Order.

18 **VIII. PHASING**

19 The parties may discuss phasing discovery to prioritize certain custodians or sources, where
20 reasonably feasible and where such phasing may result in making the scope of discovery more
21 reasonable and proportionate.

22 **IX. DOCUMENTS PROTECTED FROM DISCOVERY**

23 (a) Protection against waiver of privilege or other protection from discovery shall be
24 governed by the Stipulated Protective Order. The parties do not waive the right to conduct a full and
25 comprehensive review for privilege and other protections.

26 (b) Communications involving litigation counsel (both outside counsel and in-house
27 counsel responsible for the litigation, including their staff or consultants) that post-date the filing of
28 the complaint need not be placed on a privilege log.

1 (c) Documents produced with redactions that identify the basis of the redaction (*e.g.*,
2 attorney-client privilege, work-product protection) need not be placed on a privilege log. If a party
3 redacts a document, the accompanying metadata should so indicate.

4 (d) The parties agree that where emails are combined in an email string, the metadata
5 from the top email in the string will be provided on the log and the metadata for the other emails,
6 lower down in the email string, need not be included in the log entry for that string. The parties also
7 agree, however, that non-inclusive emails in a thread that are identified as privileged will be included
8 on the log (along with the metadata from only the top email in the non-inclusive strings) and the log
9 will contain an identifier for the email thread group. That is, if a party threads emails for purposes of
10 privilege review, that party will provide the following for emails being withheld on the basis of
11 privilege or protection: (i) a full log entry for the most inclusive email(s) in the thread, which will
12 include the metadata for the most inclusive email (*i.e.*, metadata for the top email in the string) and a
13 description of the basis for the privilege or protection for all privileged or protected emails in that
14 string; (ii) the “TO”, “FROM”, “CC”, “BCC”, “SUBJECT”, AND “RECEIVEDDATE” metadata
15 for any lesser-included emails being withheld on the basis of privilege or protection; and (iii) a
16 thread identifier.

17 (e) The parties reserve the right to discuss other methods of logging data if the
18 procedures described in this ESI protocol impose an undue burden.

19 (f) The parties will use best efforts to provide the substantial majority of their privilege
20 logs no later than three months before the cut-off date for non-expert discovery. The parties are not
21 required to provide privilege logs on a rolling basis.

22 (g) Paragraph 16 of the Supplemental Order to Order Setting Initial Case Management
23 Conference in Civil Cases Before Judge William Alsup (DE 41), applies to the parties’ preparation of
24 privilege logs to the extent it is not inconsistent with this Order or an agreement reached between the
25 parties.

26 **X. OBJECTIONS AND RIGHTS PRESERVED**

27 Nothing in this Order shall be interpreted to require the production of information that is non-
28 discoverable under the Federal Rules of Civil Procedure, including irrelevant information, or

1 relevant information protected by the attorney-client privilege, work-product doctrine, or any other
2 applicable privilege or immunity. Nothing in this Order precludes any party from seeking cost
3 shifting. The parties do not waive any objections as to the production, discoverability, admissibility,
4 or confidentiality of ESI or hard copy documents through this Order. All objections to the
5 discoverability or admissibility of any document or data are preserved and may be asserted at any
6 time.

7 Nothing in this Order waives the right of any party to petition the Court for an order
8 modifying its terms upon sufficient demonstration that compliance with such terms is unreasonably
9 burdensome or that the production of particular documents in a different format or with different
10 metadata fields is reasonably necessary, provided, however, that counsel for such party must first
11 meet and confer with the counsel for the opposing parties and the parties shall use reasonable best
12 efforts to negotiate an exception from or modification to this Order prior to seeking relief from the
13 Court.

14 **XI. MODIFICATION**

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

17 IT IS SO STIPULATED, through Counsel of Record.

18 DATED: July 22, 2016

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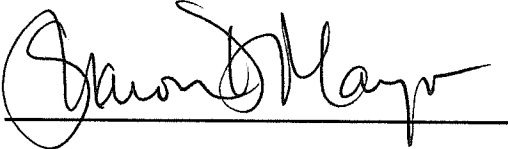
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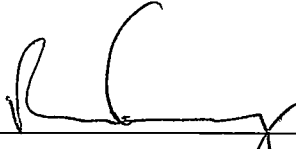
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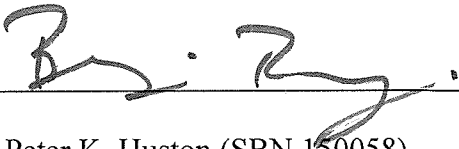
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Dated: *July 26, 2016*

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By: F. Matthew Ralph

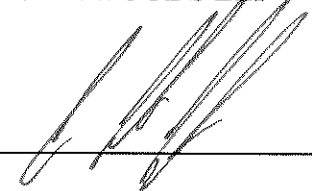
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7/26/2016



A handwritten signature in blue ink, appearing to be "W. H. Alsup", written over a horizontal line.

IT IS SO ORDERED.

DATED: August 29, 2016.



A handwritten signature in blue ink, appearing to be "W. H. Alsup", written over a horizontal line.

THE HONORABLE WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE