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

19 IN RE ANIMATION WORKERS ANTITRUST  
 20 LITIGATION

Master Docket No. 14-CV-4062-LHK

21 STIPULATION AND [~~PROPOSED~~]  
 ORDER REGARDING SEARCH TERM  
 22 PROTOCOL

23 THIS DOCUMENT RELATES TO:

24 ALL ACTIONS

1     **A.     General Provisions**

2             1.     The Parties agree to meet and confer concerning search methodologies, including  
3 without limitation, the use of key word search terms. For any Party<sup>1</sup> to this litigation who chooses to  
4 use keyword search terms to collect or cull documents for production in this litigation, the following  
5 protocol shall be used for the application and testing of search terms.

6             2.     The parties further agree that the Guidelines for the Discovery of Electronically  
7 Stored Information (“the ESI Guidelines”) and the Checklist for Rule 26(f) Meet and Confer  
8 Regarding Electronically Stored Information (“the ESI Checklist”) adopted by the U.S. District  
9 Court for the Northern District of California shall apply as appropriate to ESI discovery, including  
10 any meet and confer sessions regarding ESI discovery.

11            3.     The Parties recognize that even though a document contains one or more of the search  
12 terms identified in accordance with the procedures listed below, such document may not be  
13 responsive to any document request. In such cases, the Responding Party is not required to produce  
14 such documents.

15            4.     A Responding Party choosing to use search terms to identify potentially responsive  
16 documents shall exercise reasonable due diligence in investigating and analyzing its data in  
17 providing its proposed list of search terms to the Requesting Party prior to applying the search terms.  
18 Examples of such due diligence include, but are not limited to: identification of commonly  
19 misspelled words appearing on responsive documents or electronically stored information;  
20 identifying idiosyncratic language and terms of art utilized by a party in responsive documents and  
21 by interviewing key custodians about the same; utilizing quality control metrics; and using an  
22 iterative search approach to identify the terms most likely to locate responsive documents.

23     **B.     Protocol**

24            1.     **Document Collection:** Each Responding Party will collect documents for custodians,  
25 within a date range, and from locations agreed to between the parties or pursuant to Court order.  
26 Each Responding Party will make a good faith effort to collect documents and information for each

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27            <sup>1</sup> As used herein, a “Requesting Party” is the party who has served Requests for Production and a  
28 “Responding Party” is the Party upon whom such Requests for Production were served.

1 agreed-upon or court-ordered custodian within twenty-one (21) days of such agreement or court  
2 order, or as otherwise agreed as a result of a meet and confer between the relevant parties. Each  
3 party will provide, as appropriate, informal discovery consistent with Section III of the ESI Checklist  
4 for each electronic source of documents and information.

5       2.       **Proposed Search Terms:** Within twenty-one (21) days of the Parties' agreement or a  
6 Court order regarding a Search Terms Protocol, or as otherwise agreed as a result of a meet and  
7 confer between the relevant parties, each Responding Party shall provide to the Requesting Party a  
8 list of proposed search terms to run against the custodians and locations as determined in accordance  
9 with paragraph (B)(1), above. The Parties acknowledge that developing the final Agreed Terms will  
10 be an iterative process including evaluation of search terms proposed by the Responding and  
11 Requesting Party. If a search term proposed by a Responding Party pursuant to this paragraph  
12 causes issues of privilege, relevance, overbreadth, undue burden or costs, a Responding Party is  
13 permitted to propose modifications, provided: (i) the Responding Party explains in writing the  
14 issue(s) as to each term and does so separately for each term; and (ii) that the Responding Party  
15 provides the Requesting Party with the quantitative metrics outlined in paragraph five below for the  
16 initial and proposed modified terms. The parties then shall meet and confer regarding the proposed  
17 modifications and, if unable to come to an agreement, shall follow the procedures outlined in  
18 paragraph 7 below.

19       3.       **Additional Terms:** If the Requesting Party objects to the sufficiency of the  
20 Responding Party's proposed search terms, within twenty-eight (28) days after service of the  
21 Responding Party's list of proposed search terms, the Requesting Party may propose modifications to  
22 the Responding Party's terms or a list of additional terms, with the combination of modifications and  
23 additional terms being no more than 125 in total, subject to the paragraph regarding Additional  
24 Terms for Good Cause below.

25       4.       **Application of Agreed Terms:** Each Responding Party will proceed with the  
26 application of (i) its own proposed search terms and (ii) the search terms from the Requesting Party's  
27 proposed search term list to which the Responding Party does not object ("Agreed Terms"). The  
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1 Parties shall meet and confer regarding the results of these searches with respect to issues such as,  
2 but not limited to privilege, relevance, overbreadth, undue burden and costs. To the extent the  
3 parties can agree to search terms without the Court's assistance, those terms will be considered  
4 Agreed Terms and the results of these searches will then be reviewed for responsiveness and  
5 privilege, and for necessary redactions. If the parties do not come to agreement regarding any search  
6 term, it shall be considered a Disputed Search Term subject to paragraph 5 below.

7           **5. Disputed Search Terms:** To the extent that a Responding Party believes that any of  
8 the remaining search terms (the "Disputed Terms") proposed by a Requesting Party are unreasonably  
9 overbroad and/or will result in the identification of disproportionate numbers of irrelevant  
10 documents, the Responding Party will identify:

11           (i) the aggregate hits for each of the Disputed Terms (i.e. the number of documents  
12 returned by a search term);

13           (ii) the number of unique hits for each of the Disputed Terms (the number of documents  
14 which contain the a particular search term, but no other);

15           (iii) the total number of documents returned by the Agreed Terms;

16           (iv) the total number of documents being searched for the Disputed Terms; and

17           (v) the nature and type of irrelevant documents that the search term is returning. With

18 respect to any search term for which the Responding Party believes that there exists a modification  
19 that will reduce the number of irrelevant documents returned by the search term, the Responding  
20 Party will meet and confer with the Requesting Party to discuss in good faith any such modification.  
21 For any terms that a Responding Party believes are burdensome, overly broad, and/or objectionable  
22 and for which there does not appear to be any modification that would resolve such issues, the  
23 Responding Party will meet and confer with the Requesting Party to discuss in good faith its  
24 objections to such search terms. As part of that process, the Responding Party will not refuse to  
25 provide the Requesting Party with the quantitative information discussed above.

26           **6. Qualitative Sampling Information Regarding Disputed Terms:** In the event that  
27 the parties are unable following good faith efforts to resolve any dispute after exhausting the  
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1 Disputed Search Terms procedures set forth in Paragraph 5 above, the Requesting Party may request  
2 that random sampling be done. If the parties cannot reach agreement, they will stipulate for the  
3 motion to be heard on shortened time under Local Rule 6-2. This agreement is made without  
4 prejudice to plaintiffs re-raising the issue of qualitative sampling should defendants' motion(s) to  
5 dismiss the consolidated second amended complaint with prejudice be denied.

6           7.       **Presentation to the Court:** If, after engaging in the process described above, there  
7 still remain search terms about which the Parties cannot reach agreement, the Parties agree to submit  
8 a joint discovery letter to the Court explaining their respective positions with respect to such search  
9 terms.

10           8.       **Additional Terms for Good Cause:** Once a search term list is finalized (either  
11 though agreement of the parties or Order of the Magistrate Judge) and all iterative searches for a  
12 custodian are complete, the Requesting Party may propose additional search terms for a Responding  
13 Party to consider, but the Responding Party will have no obligation to re-search the custodian's  
14 electronic data using different or additional search terms without agreement or a court order. The  
15 Requesting Party must show good cause for any additional proposed search terms. If a Responding  
16 Party cannot meet any applicable deadlines for the production of documents as a result of this  
17 provision, the parties will negotiate in good faith a reasonable timeline for production or seek an  
18 order from the Court.

19                   IT IS HEREBY STIPULATED:

20  
21 DATED: April 17, 2015

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Pursuant to Civil Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from each of the signatories.

\* \* \*

**~~PROPOSED~~ ORDER**

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

The parties' stipulation is modified as follows, and IT IS SO ORDERED.

DATED: 4/21/2015

  
HONORABLE PAUL S. GREWAL  
UNITED STATES MAGISTRATE JUDGE