

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SEB INVESTMENT MANAGEMENT AB,
Individually and on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

ALIGN TECHNOLOGY, INC., JOSEPH M.
HOGAN, and JOHN F. MORICI,

Defendants.

Case No. 5:18-cv-06720-LHK

CLASS ACTION

~~PROPOSED~~ ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED INFORMATION
FOR STANDARD LITIGATION

Judge: Hon. Lucy H. Koh

1 **1. PURPOSE**

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

5 **2. COOPERATION**

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

8 **3. LIAISON**

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

15 **4. PRESERVATION**

16 Consistent with this Court’s Guidelines for the Discovery of ESI and the Checklist for Rule 26(f)
17 Meet and Confer Regarding Electronically Stored Information, the parties have discussed their
18 preservation obligations and needs and agree that preservation of potentially relevant ESI will be
19 reasonable and proportionate.

20 **5. SEARCH**

21 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate,
22 and consistent with this Court’s Guidelines for the Discovery of ESI and the Checklist for Rule 26(f) Meet
23 and Confer Regarding Electronically Stored Information, they will meet and confer about methods to
24 identify, collect, search, validate, and review ESI, and whether any phasing of discovery is appropriate.

25 **6. PRODUCTION FORMATS**

26 **General Production Format:** Except as provided herein, all ESI and paper documents shall be
27 produced as single-page, black and white, Group IV TIFF image files with the associated text and metadata
28 (as applicable and available) specified herein. If specific ESI cannot be produced in the manner described

1 below, the parties shall confer and cooperate to arrange for the mutually acceptable production of such
2 ESI. This Order supersedes any ESI specifications served with document requests or any other requests
3 for production of documents/ESI in this matter. This Order does not prevent any party from requesting or
4 agreeing to different or additional ESI formats in future discovery requests, including pursuant to Fed. R.
5 Civ. P. 34(b)(1)(C) and with respect to subpoenas pursuant to Fed. R. Civ. P. 45.

6 **a) Image Requirements:**

7 TIFF images files shall be of at least 300 DPI resolution. The parties shall endeavor to ensure that
8 the page orientation (i.e., portrait or landscape) of a TIFF image file shall be the same as the underlying
9 document from which the TIFF image is created. The page size of a TIFF image file shall be 8.5 x 11
10 inches unless, in the reasonable judgment of the producing party, a particular document requires a different
11 page size. Each TIFF image shall be branded with a Bates number that must: (1) identify the party
12 producing the document; (2) maintain a constant length of nine numeric digits (including 0-padding)
13 across the entire production; and (3) be sequential within a given document. Each TIFF image file shall
14 be named with the same page-level Bates-number branded on the underlying image.

15 **b) Text Requirements:**

16 All ESI and paper documents shall be produced with a corresponding multipage text file
17 (i.e., one .TXT file per electronic file or paper document as opposed to one text file per page). The text
18 file for ESI shall be created by extracting text directly from the underlying native file, unless the ESI must
19 be redacted prior to production, in which case the text file shall be generated by applying industry standard
20 OCR technology to the redacted version of the ESI. The text file for paper documents shall also be created
21 using industry standard OCR technology. Each text file shall be named with the beginning Bates number
22 of the electronic file or paper document to which the text file relates.

23 **c) Metadata Requirements:**

24 All ESI shall be produced with the metadata specified in Exhibit A to this Order (as applicable),
25 unless such metadata itself contains information subject to the attorney-client privilege or attorney work-
26 product protection. If some or all of the metadata cannot be extracted from its ESI during standard
27 processing, the document shall be produced in native format (as specified below) where possible. If some
28 or all of the metadata cannot be extracted during standard processing and the producing party believes it

1 is not possible to produce the document in native format, the parties shall confer and cooperate to arrange
2 for the mutually acceptable production of such document.

3 **d) Native Production:**

4 The following types of ESI shall be produced in native format: (1) spreadsheet files such as
5 Microsoft Excel (including .csv and similar files); (2) Microsoft Access Files; (3) slide presentation files
6 such as Microsoft PowerPoint; (4) word processing files such as Microsoft Word; and (5) audio or video
7 files such as .wav or .mpeg files. Additionally, ESI shall be produced in native format if the TIFF version
8 of the Document is not reasonably usable. Slide presentation files and word processing files shall be
9 produced in both TIFF and native format.

10 When producing ESI in native format, the producing party shall provide a corresponding single-
11 page TIFF placeholder stating “Document Produced in Native Format” unless the ESI is being produced
12 in both native and TIFF format, in which case no TIFF placeholder is required. The TIFF placeholder shall
13 be branded with a Bates number meeting the requirements set forth above and any applicable
14 confidentiality or other designation permitted by the parties’ agreement or the Court’s orders. The
15 producing party shall name the produced version of the native electronic file with the Bates number affixed
16 to the TIFF placeholder corresponding to the electronic file or, in the case of ESI produced in both native
17 and TIFF formats, with the BEGNO for that document. The producing party also shall provide the text
18 and metadata for the underlying electronic file, including the original file name, as explained above.

19 When producing ESI that contains color in both native and TIFF format, the producing party need
20 not produce the ESI in TIFF format in color.

21 If the ESI must be redacted for attorney-client privilege or attorney work product protection, the
22 producing party shall first utilize native redaction tools where possible for documents that only are
23 produced in native format. If the producing party believes that it is not possible to utilize native redaction
24 tools for documents that are only produced in native format, the parties shall confer and cooperate to
25 arrange for the mutually acceptable production of such documents. If ESI that shall be produced in both
26 TIFF and native format requires redaction for attorney-client privilege or attorney work-product
27 protection, that ESI may be produced in TIFF format with the necessary redactions and no native shall be
28

1 provided. In the event that the original of such a document contains color, it shall be produced be produced
2 as single-page, 300 DPI, color JPG images.

3 The parties shall comply with their obligations under Fed. R. Civ. P. 26(b)(5)(A)(i) by providing
4 a list that identifies each document or file as to which information has been withheld on the basis of the
5 attorney-client privilege or work-product doctrine via redaction. The parties shall confer regarding the
6 format in which they shall comply with their obligations under Fed. R. Civ. P. 26(b)(5)(A)(ii) for
7 information withheld on the basis of the attorney-client privilege or work-product doctrine via redaction.

8 **e) Load Files:**

9 All productions of ESI and paper documents shall be accompanied with data load files and image
10 load files. Each producing party shall provide data and image load files in a format that is reasonably
11 necessary to allow a receiving party to load productions to its document review or case management
12 database.

13 **f) Family Relationships:**

14 Parent-child relationships between electronic files (e.g., the association between an attachment and
15 its parent email, or a spreadsheet embedded within a word processing document), must be preserved by
16 assigning sequential Bates numbers to all files within a parent-child group, and by providing accurate
17 attachment ranges for those files in the metadata fields identified below.

18 To the extent a document that will be withheld in its entirety due to an assertion of attorney-client
19 privilege or the attorney work-product doctrine (“Withheld Document”) is part of a “document family”
20 that includes both privileged and non-privileged documents, the following instructions govern the
21 production of that ESI.

22 If the Withheld Document within the “document family” is a parent email, a copy of the Withheld
23 Document shall be produced with the header of the email visible and the remainder of the Withheld
24 Document redacted. The Withheld Document’s metadata also shall be produced. If there is an assertion
25 of privilege with respect to the header email or email metadata of the Withheld Document, only the
26 information that is itself subject to the privilege shall be redacted (in the case of the email header) or
27 withheld (in the case of the email metadata).

28

1 If the Withheld Document within the “document family” is a child attachment, the Withheld
2 Document will be represented in the production by a placeholder TIFF image that bears the legend,
3 “Document Withheld as Privileged” and will be endorsed with a sequential Bates number. The Withheld
4 Document’s metadata shall be produced. If there is an assertion of privilege with respect to the Withheld
5 Document’s metadata, only the information that is itself subject to the privilege shall be withheld.

6 Each Withheld Document shall be logged on a privilege log, regardless of whether it is a parent
7 email or a child attachment.

8 **g) Paper Documents:**

9 All paper documents should be scanned and produced as single-page, TIFF images as described in
10 section 6(a) above. All documents are to be provided with per document searchable text files that contain
11 full text extraction. In the event a document is scanned into TIFF format, the text file should contain that
12 document’s OCR text. The OCR software should maximize text quality over process speed. Settings such
13 as “auto-skewing” and “auto-rotation” should be turned on during the OCR process. The documents
14 should be logically unitized (i.e., distinct documents should not be merged into a single record, and a
15 single document should not be split into multiple records) and should be produced in the order in which
16 they are kept in the usual course of business. The text and image load files should indicate page breaks. If
17 an original document contains color, the document should be produced as single-page, 300 DPI, color JPG
18 images. This includes color on graphs, charts, presentations, edits, or highlights that were made by hand
19 or electronically on the original.

20 Metadata for hard copy documents shall include: (i) Production Number Begin; (ii) Production
21 Number End; (iii) Production Attachment Range Number Begin; (iv) Production Attachment Range
22 Number End; (v) Production Doc Page Count; and (vi) Custodian.

23 **h) Embedded Files:**

24 Files embedded within other files shall be extracted, and shall be considered “child” attachments.
25 An embedded document should be processed and produced consistent with its category of ESI, rather than
26 the category of its parent document. All embedded files produced under this procedure shall be produced
27 subject to the same requirements set forth above. Load files for such embedded files shall refer to the
28 parent document in which the file was embedded.

1 **i) Hidden Content:**

2 To the extent that a document being produced with TIFF image files contains hidden content,
3 tracked changes, comments, notes, or other similar information, it shall be imaged so that such information
4 is captured on the produced image file.

5 **j) Deduplication:**

6 Removal of duplicate documents must be done for exact duplicate documents (based on MD5 or
7 SHA-1 hash values at the parent-document level) and must be done across custodians and sources. Near-
8 duplicate documents shall be produced rather than removed. The custodian associated with the first copy
9 of a document processed will be considered the primary custodian for that document (the custodian who
10 will be used as the basis for determining which other collected documents are duplicates). The producing
11 party shall produce an “All Custodian” field listing each processed custodian or source who or which
12 possessed a duplicate document.

13 **k) Email Threading:**

14 The producing party may not utilize email threading to cull the set of ESI searched or reviewed
15 in response to discovery requests without first meeting and conferring with the receiving party.

16 **l) Handwritten Notes or Other Alterations:**

17 If there are any handwritten notes, or any other markings, on a document, it shall not be considered
18 a duplicate. Any document that contains an alteration, marking on, or addition to the original document
19 shall be treated as a distinct version, and shall be produced as such. These alterations include handwritten
20 notes, electronic notes/tabs, edits, highlighting, or redlining.

21 **m) Encrypted Data:**

22 If any data source with ESI responsive to discovery request(s) or individual ESI responsive to
23 discovery request(s) is corrupted, password-protected, encrypted, or not readable, the producing party
24 shall make reasonable efforts to access the data source or file and produce to requesting party the
25 responsive ESI and any additional information necessary to access it. If the producing party believes that
26 the efforts necessary to access the data source or file are not reasonable, the parties shall confer and
27 cooperate to arrange for the mutually acceptable production of such ESI.

28

1 **n) Production of Relational Database ESI:**

2 The parties will promptly meet and confer regarding the format of production of data from
3 enterprise or other corporate relational databases if responsive ESI is contained in such databases.

4 **o) Other ESI:**

5 If the producing party agrees or is otherwise required to search a source of ESI not identified above,
6 the parties shall meet and confer regarding the appropriate collection and production formats for such ESI.

7 **p) Requests for Color or Native Production:**

8 After the production of imaged ESI, a requesting party may request that the producing party
9 produce individual imaged files in color and/or native format if some or all of the imaged files are not
10 sufficiently readable or legible or if the requesting party can otherwise demonstrate a particularized need
11 for production of the document in another format.

12 **q) Production:**

13 The producing party may deliver productions on digital media (such as a CD-ROM, DVD, or
14 external hard drive) or via a secure internet transfer tool (such as an SFTP site or ShareFile).

15 **7. MODIFICATION**

16 This Order may be modified by a stipulated order of the parties or by the Court for good cause
17 shown.

18 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

19 Pursuant to Fed. R. Evid. 502(d), the inadvertent production of a privileged or work-product-
20 protected document is not a waiver of privilege or protection from discovery in this case or in any other
21 federal or state proceeding. For example, the mere production of privileged or work-product-protected
22 documents in this case as part of a mass production is not itself a waiver in this case or in any other federal
23 or state proceeding.

24
25 **IT IS ORDERED.**

26
27 DATED: March 24, 2021

Virginia K. DeMarchi

Hon. Virginia K. DeMarchi
United States Magistrate Judge

EXHIBIT A**METADATA FIELDS**

Field Name	Description	Example / Format
BEGDOC	The Document ID number of first page of the document.	ABC0000001
ENDDOC	The Document ID number of the last page of a document.	ABC0000003
BEGATTACH	The Document ID number of the first page of the parent document.	ABC0000001
ENDATTACH	The Document ID number of the last page of the last attachment.	ABC0000008
PARENT ID	Bates number associated with first page of parent document	
PGCOUNT	The number of pages in a document. (image records)	Numeric
CUSTODIAN	The primary custodian/source of a document from which the document originated.	Smith, Joe; Doe, Jane
ALL CUSTODIAN	All processed custodians/sources of a document from which the document originated.	
FILE PATH / FOLDER	Location of the original document / location in the ordinary course of business. This field should be populated for email and electronic files, and for hard copies where available.	Joe Smith/E-mail/Inbox Joe Smith/E-mail/Deleted Items
VOLUME	The name of the CD or Hard Drive for ESI, or collection, binder, cabinet for hard copy docs	VOL0001
RECORD TYPE	The type of document / record.	Email, hard copy, loose eFile
CONFIDENTIALITY	Indication if the document has been designated as "Confidential" pursuant to any applicable confidentiality or protective order	Confidential
REDACTED	Indication if the document has been redacted to withhold information protected by the attorney-client privilege or attorney work product doctrine; "Yes" for redacted documents or "No" for non-redacted documents	
WITHHELD	Indication that the document has been withheld on the basis of the attorney-client privilege or attorney work product doctrine; "Yes" for withheld documents	
EMAIL SUBJECT	The subject line of the e-mail.	
EMAIL AUTHOR / FROM	The display name and e-mail of the author of an e-mail.	Joe Smith <jsmith@email.com>
EMAIL RECIPIENTS / TO	The display name and e-mail of the recipient(s) of an e-mail.	Joe Smith <jsmith@email.com>; tjones@email.com
EMAIL CC	The display name and e-mail of the copyee(s) of an e-mail.	Joe Smith <jsmith@email.com>; tjones@email.com
EMAIL BCC	The display name and e-mail of the blind copyee(s) of an e-mail.	Joe Smith <jsmith@email.com>; tjones@email.com
EMAIL ATTACHMENT COUNT	The number of attachments to a parent	Numeric
EMAIL ATTACHMENT NAME	The original file name of attached record.	Attach1.doc
RECEIVED DATE	The date the document was received.	MM/DD/YYYY
RECEIVED TIME	The time the document was received.	HH:MM
SENT DATE	The date the document was sent.	MM/DD/YYYY

1	SENT TIME	The time the document was sent.	HH:MM
	EMAIL IMPORTANCE	E-mail Importance Flag	Normal, Low, High
2	EMAIL CONVERSATION INDEX /	ID used to tie together e-mail threads.	01C72AC4C
3	THREAD TEXT		
4	TIME OFFSET VALUE / TIMEZONE PROCESSED	The time zone that the data is set to when processed.	PST, CST, EST, etc
5	FILE NAME	The file name of a native document.	Document Name.xls
	FILE AUTHOR	The author of a document from extracted metadata.	jsmith
6	DOC TITLE	The extracted title of the document	Table of Contents
7	FILE MANAGER / APPLICATION DESCRIPTION	Native file application	Microsoft Excel, Word, etc.
8	FILE EXTENSION	The file extension of a document.	XLS
9	HIDDEN DATA	Whether hidden exists in the doc. For example, hidden Excel cells or Powerpoint comments or slides	Y,N,Blank
10	FILE CREATE DATE	The date the document was created.	MM/DD/YYYY
	FILE CREATE TIME	The time the document was created.	HH:MM
11	FILE LAST MODIFICATION DATE	The date the document was last modified.	MM/DD/YYYY
12	FILE LAST ACCESS DATE	The date the document was last accessed.	MM/DD/YYYY
	FILE LAST SAVED BY	The last individual to save the file.	jsmith
13	FILE LAST EDITED BY	The name of the last person to edit the document from extracted metadata.	jsmith
14	DATE APPOINTMENT START	Date of calendar appointment entry	MM/DD/YYYY
15	TIME APPOINTMENT START	Start time of calendar appointment entry	HH:MM
16	DATE APPOINTMENT END	End date of calendar appointment entry	MM/DD/YYYY
17	TIME APPOINTMENT END	End time of calendar appointment entry	HH:MM
18	FILESIZE	The file size of a document (Including embedded attachments).	Numeric
19	MD5HASH	The MD5 Hash value or de-duplication key" assigned to a document. "	
20	NATIVE LINK	The full path to a native copy of a document.	D:\NATIVES\ABC000001.xls
21	FULL TEXT	The path to the full extracted text of the document. There should be a folder on the deliverable, containing a separate text file per document. These text files should be named with their corresponding bates numbers. Note: E-mails should include header information: author, recipient, cc, bcc, date, subject, etc. If the attachment or e-file does not extract any text, then OCR for the document should be provided.	D:\TEXT\ABC000001.txt
22			
23			
24			
25			
26			
27			
28			