

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK HOFFMAN, on his own behalf  
and on behalf of other similarly situated  
persons ,

Plaintiff,

v.

ONE TECHNOLOGIES, LLC,

Defendant.

CASE NO. 16-01006-RSL

**AGREEMENT  
REGARDING  
DISCOVERY OF  
ELECTRONICALLY  
STORED  
INFORMATION AND  
ORDER**

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

**A. General Principles**

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

1 **B. ESI Disclosures**

2 Within 14 days after the entry of this order, each party shall disclose:

3 1. Custodians. The five custodians most likely to have discoverable ESI in their possession,  
4 custody or control. The custodians shall be identified by name, title, connection to the instant  
5 litigation, and the type of the information under his/her control.

6 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives,  
7 servers, etc.), if any, likely to contain discoverable ESI.

8 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain  
9 discoverable ESI (e.g. third-party email and/or mobile device providers, “cloud” storage, etc.)  
10 and, for each such source, the extent to which a party is (or is not) able to preserve information  
11 stored in the third-party data source.

12 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI  
13 (by type, date, custodian, electronic system or other criteria sufficient to specifically  
14 identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ.  
15 P. 26(b)(2)(B).

16 **C. Preservation of ESI**

17 The parties acknowledge that they have a common law obligation to take reasonable and  
18 proportional steps to preserve discoverable information in the party’s possession, custody or  
19 control. With respect to preservation of ESI, the parties agree as follows:

20 1. Absent a showing of good cause by the requesting party, the parties shall not be  
21 required to modify the procedures used by them in the ordinary course of business to back-up  
22 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their  
23 possession, custody or control.

24 2. All parties shall supplement their disclosures in accordance with Rule 26(e) with  
25 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that  
26 data is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(1)-

1 (2) below).

2 3. Absent a showing of good cause by the requesting party, the following categories of  
3 ESI need not be preserved:

- 4 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 5 b. Random access memory (RAM), temporary files, or other ephemeral data  
6 that are difficult to preserve without disabling the operating system.
- 7 c. On-line access data such as temporary internet files, history, cache, cookies, and  
8 the like.
- 9 d. Data in metadata fields that are frequently updated automatically, such as last-  
10 opened dates (see also Section (E)(5)).
- 11 e. Back-up data that are substantially duplicative of data that are more  
12 accessible elsewhere.
- 13 f. Server, system or network logs.
- 14 g. Data remaining from systems no longer in use that is unintelligible on the systems  
15 in use.
- 16 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from  
17 mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided  
18 that a copy of all such electronic data is routinely saved elsewhere (such as on a  
19 server, laptop, desktop computer, or “cloud” storage).

20 **D. Privilege**

21 1. With respect to privileged or work-product information generated after the filing of the  
22 complaint, parties are not required to include any such information in privilege logs.

23 2. Activities undertaken in compliance with the duty to preserve information are protected  
24 from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

25 3. Information produced in discovery that is protected as privileged or work product shall  
26 be immediately returned to the producing party, and its production shall not constitute a waiver  
of such protection, if: (i) such information appears on its face to have been inadvertently produced  
or (ii) the producing party provides notice within 15 days of discovery by the producing  
party of the inadvertent production.

**E. ESI Discovery Procedures**

1. On-site inspection of electronic media. Such an inspection shall not be permitted

1 absent a demonstration by the requesting party of specific need and good cause or by agreement  
2 of the parties.

3       2.     Search methodology. The parties shall timely attempt to reach agreement on  
4 appropriate search terms, or an appropriate computer- or technology-aided methodology, before  
5 any such effort is undertaken. The parties shall continue to cooperate in revising the  
6 appropriateness of the search terms or computer- or technology-aided methodology.

7 In the absence of agreement on appropriate search terms, or an appropriate computer- or  
8 technology-aided methodology, the following procedures shall apply:

9           a.     A producing party shall disclose the search terms or queries, if any, and  
10 methodology that it proposes to use to locate ESI likely to contain discoverable information. The  
11 parties shall meet and confer to attempt to reach an agreement on the producing party's search  
12 terms and/or other methodology.

13           b.     If search terms or queries are used to locate ESI likely to contain  
14 discoverable information, a requesting party is entitled to no more than 5 additional terms or  
15 queries to be used in connection with further electronic searches absent a showing of good cause  
16 or agreement of the parties. The 5 additional terms or queries, if any, must be provided by the  
17 requesting party within 14 days of receipt of the producing party's production.

18           c.     Focused terms and queries should be employed; broad terms or queries,  
19 such as product and company names, generally should be avoided.

20           d.     The producing party shall search both non-custodial data sources and ESI  
21 maintained by the custodians identified above.

22       3.     Format. The parties agree that ESI will be produced to the requesting party with  
23 searchable text, in a format to be decided between the parties. Acceptable formats include, but are  
24 not limited to, native files, single-page TIFFs (only with load files for e-discovery software that  
25 includes metadata fields identifying natural document breaks and also includes companion OCR  
26 and/or extracted text files), and searchable PDF. Unless otherwise agreed to by the parties, files

1 that are not easily converted to image format, such as spreadsheet, database and drawing files,  
2 should be produced in native format.

3           a.       Each document image file shall be named with a unique Bates Number (e.g.  
4 the unique Bates Number of the page of the document in question, followed by its file extension).  
5 For documents produced as single-page TIFF files, the parties shall produce their information in  
6 the following format: single- page images and associated multi-page text files containing extracted  
7 text or with appropriate software load files containing all requisite information for use with the  
8 document management system (e.g., Concordance®) as agreed to by the parties.

9           b.       The parties shall consider whether or not the full text of each electronic  
10 document with extractable text shall be extracted ("Extracted Text") and produced in a text file.  
11 If the parties so agree, the Extracted Text shall be provided in searchable ASCII text format (or  
12 Unicode text format if the text is in a foreign language) and shall be named with a unique Bates  
13 Number (e.g. the unique Bates Number of the first page of the corresponding production version  
14 of the document followed by its file extension).

15           c.       If a document is more than one page, the unitization of the document and  
16 any attachments and/or affixed notes shall be maintained as they existed in the original  
17 document.

18           d.       The parties may produce hard-copy documents in an electronic format. The  
19 production of hard-copy documents in a TIFF format shall include a cross-reference file that  
20 indicates document breaks and sets forth the Custodian or Source associated with each produced  
21 document. Hard-copy documents shall be scanned using Optical Character Recognition  
22 technology and searchable ASCII text files shall be produced (or Unicode text format if the text  
23 is in a foreign language), unless the producing party can show that the cost would outweigh the  
24 usefulness of scanning (for example, when the condition of the paper is not conducive to scanning  
25 and will not result in accurate or reasonably useable/searchable ESI). Each file shall be named  
26 with a unique Bates Number (e.g. the Unique Bates Number of the first page of the corresponding

1 production version of the document followed by its file extension). With a showing of good cause,  
2 a party receiving production of a hard-copy document may compel production of an electronic  
3 copy of the document.

4 4. De-duplication. The parties may de-duplicate their ESI production across  
5 custodial and non-custodial data sources after disclosure to the requesting party.

6 5. Metadata fields. If the requesting party seeks metadata, the parties agree that only  
7 the following metadata fields need be produced: begin bates number; end bates number; begin  
8 attachment bates number; end attachment bates number; document type; custodian; duplicate  
9 custodians; author/from; recipient/to, cc and bcc; title/subject; file name and size; original file  
10 path; date and time created, date and time sent, date and time modified, and/or date and time  
11 received; and hash value.

12  
13 DATED: June 27, 2017

14 /s/ Albert H. Kirby

14 Albert H. Kirby, WSBA #40187  
15 **SOUND JUSTICE LAW GROUP PLLC**  
15 936 North 34th Street, Suite 300  
16 Seattle, Washington 98103  
16 Tel: (206) 489-3210  
17 Fax: (866) 845-6302  
17 Email: [ahkirby@soundjustice.com](mailto:ahkirby@soundjustice.com)

Kim Williams, WSBA #9077  
Rob Williamson, WSBA #26759  
**WILLIAMSON & WILLIAMS**  
2239 West Viewmont Way West  
Seattle, Washington 98199  
Tel: (206) 466-2685  
Fax: (206) 535-7899  
Email: [kim@williamslaw.com](mailto:kim@williamslaw.com)  
[rob@williamslaw.com](mailto:rob@williamslaw.com)

18  
19 Attorneys for Plaintiff

20 /s/ Ari N. Rothman

20 Ari N. Rothman, Pro Hac Vice  
21 Danielle E. Sunberg, Pro Hac Vice  
21 **VENABLE, LLP**  
22 575 7<sup>th</sup> Street N.W.  
22 Washington, DC 20004  
23 Tel: (202) 344-4220  
23 Email: [anrothman@venable.com](mailto:anrothman@venable.com)  
24 [desunberg@venable.com](mailto:desunberg@venable.com)

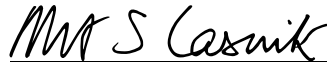
Craig S. Sternberg, WSBA #521  
**STERNBERG THOMSON OKRENT**  
& **SCHER PPLC**  
520 Pike Street, Ste. 2250  
Seattle, WA 98101  
Tel: (206) 386-5438  
Fax: (206) 374-2868  
Email: [craig@stoslaw.com](mailto:craig@stoslaw.com)

25 Attorneys for Defendant  
26

**ORDER**

Based on the foregoing, IT IS SO ORDERED.

DATED: June 28, 2017

  
Robert S. Lasnik  
United States District Judge

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