

HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN CHEN, et. al.,

Plaintiffs,

vs.

NATALIE D'AMICO, et al.,

Defendants.

CIVIL ACTION NO. 16-cv-01877-JLR

**MODEL AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND
[PROPOSED] 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.

B. ESI Disclosures

Within 30 days after this Order is entered, each party shall disclose:

ESI AGREEMENT AND ORDER - 1
16-cv-01877-JLR

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

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

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

4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B). *[Section (C)(3)(a)(i) below sets forth data sources and ESI which are not required to be preserved by the parties. Those data sources and ESI do not need to be included on this list.]*

C. Preservation of ESI

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

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

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

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

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

D. Privilege

1. With respect to privileged or work-product information generated after the filing of the complaints, parties are not required to include any such information in privilege logs. For clarity, the plaintiffs need not log otherwise responsive privileged or work product information generated after the date any complaint was filed by any of them against any of the defendants in this action, and the defendants need not log otherwise responsive privileged or work product information generated after the date any complaint was filed against him, her, or it by any of the plaintiffs in this action.

2. Activities undertaken in compliance with the duty to preserve information are protected

1 from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

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

7 **E. ESI Discovery Procedures**

8 1. On-site inspection of electronic media. Such an inspection shall not be permitted
9 absent a demonstration by the requesting party of specific need and good cause or by agreement
10 of the parties.

11 2. Search methodology. The parties shall timely attempt to reach agreement on
12 appropriate custodians and search terms, or an appropriate computer- or technology-aided
13 methodology, before any such effort is undertaken. The parties shall continue to cooperate in
14 revising the appropriateness of the search terms or computer- or technology-aided methodology.
15 In the absence of agreement on appropriate search terms, or an appropriate computer- or
16 technology-aided methodology, the following procedures shall apply:

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

21 b. If search terms or queries are used to locate ESI likely to contain
22 discoverable information, a requesting party is entitled to no more than 5 additional terms or
23 queries to be used in connection with further electronic searches absent a showing of good cause
24 or agreement of the parties. The 5 additional terms or queries, if any, must be provided by the
25 requesting party within 30 days of receipt of the producing party's disclosure to the requesting
26 party of its search terms/queries and methodology.

27 c. Focused terms and queries should be employed; broad terms or queries,

1 such as product and company names, generally should be avoided. Absent a showing of good
2 cause, each search term or query returning more than 250 megabytes of data are presumed to be
3 overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file
4 types.

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

7 3. Format. The parties agree that ESI will be produced to the requesting party with
8 searchable text, in a format to be decided between the parties. Acceptable formats include, but are
9 not limited to, native files, multi-page TIFFs (with a companion OCR or extracted text file),
10 single-page TIFFs (only with load files for e-discovery software that includes metadata fields
11 identifying natural document breaks and also includes companion OCR and/or extracted text
12 files), and searchable PDF. Unless otherwise agreed to by the parties, files that are not easily
13 converted to image format, such as spreadsheet, database and drawing files, should be produced
14 in native format.

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

17 5. Metadata fields. If the requesting party seeks metadata, the parties agree that only
18 the following metadata fields need be produced, unless otherwise agreed: document type;
19 custodian and duplicate custodians; author/from; recipient/to, cc and bcc; title/subject; file name
20 and size; original file path; date and time created, sent, modified and/or received; and hash value.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 14, 2018.

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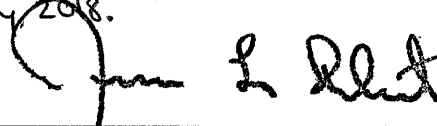
Timothy Earwood, Jill Kegel, Bill Moss,

Kevin Quigley, and Tom Soule

ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED: this 15th day of February 2018.



THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served the foregoing on the following counsel of record by the method indicated:

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Dated this 14th day of February, 2018.

/s/Molly Price

Molly Price