

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CEN COM, INC., a Washington Corporation  
doing business as American Digital  
Monitoring,

Plaintiff,

v.

NUMEREX CORP., a Pennsylvania  
Corporation; NextAlarm, LLC, a Georgia  
Limited Liability Company; and DOES 1-10,

Defendants.

Case No.: 2:17-cv-00560-RSM

**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

AGREEMENT RE DISCOVERY OF ESI  
AND ORDER

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1 be reasonably targeted, clear, and as specific as possible.

2 **B. ESI Disclosures**

3 Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the  
4 parties, each party shall disclose:

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

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

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

14 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI  
15 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify  
16 the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P.  
17 26(b)(2)(B).

18 **C. Preservation of ESI**

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

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

26 2. All parties shall supplement their disclosures in accordance with Rule 26(e) with  
27 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that

1 data is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(1)-  
2 (2) below).

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

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

#### 21 **D. Privilege**

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

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

26 3. Information produced in discovery that is protected as privileged or work product shall  
27 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.

1 **E. ESI Discovery Procedures**

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

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

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

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

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

20 c. Focused terms and queries should be employed; broad terms or queries,  
21 such as product and company names, generally should be avoided. Absent a showing of good  
22 cause, each search term or query returning more than 250 megabytes of data are presumed to be  
23 overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file  
24 types.

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

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

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

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

15           Dated this 22<sup>nd</sup> Day of June 2017.

16  
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NextAlarm, LLC

**ORDER**

Based on the foregoing, IT IS SO ORDERED.

DATED: June 26, 2017



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE