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HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CENTRAL FREIGHT LINES, INC., a Texas Corporation)
Plaintiff,)
v.)
AMAZON FULFILLMENT SERVICES,)
a Delaware corporation, and DOES 1 through)
25, inclusive,)
Defendants.)

Case No. 2:17-cv-00814

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.

AGREEMENT REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION AND
[PROPOSED] ORDER - 1
Case No. 2:17-cv-00814

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1 3. The parties agree to work collaboratively and in good faith regarding the production of
2 ESI. The parties agree to preserve originals of documents or other information that is produced
3 through the course of litigation, including ESI. The parties agree to work together to reach
4 agreement on limits to the scope of production of ESI, including the use of date restrictions, key
5 word terms, and file types.
6

7 **B. ESI Disclosures**

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

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

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

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

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

23 **C. Preservation of ESI**

24 The parties acknowledge that they have a common law obligation to take reasonable and
25 proportional steps to preserve discoverable information in the party's possession, custody or
26 control. With respect to preservation of ESI, the parties agree as follows:
27

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

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

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

- 11 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 12 b. Random access memory (RAM), temporary files, or other ephemeral data
that are difficult to preserve without disabling the operating system.
- 13 c. On-line access data such as temporary internet files, history, cache, cookies, and
14 the like.
- 15 d. Data in metadata fields that are frequently updated automatically, such as last-
opened dates (see also Section (E)(5)).
- 16 e. Back-up data that are substantially duplicative of data that are more
accessible elsewhere.
- 17 f. Server, system or network logs.
- 18 g. Data remaining from systems no longer in use that is unintelligible on the
19 systems in use.
- 20 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from
21 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
22 server, laptop, desktop computer, or "cloud" storage).

22 **D. Privilege**

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

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

1 3. Parties shall confer on appropriate non-waiver order under Fed. R. Evid. 502. Until non-
2 waiver order is entered, information produced in discovery that is protected as privileged or
3 work product shall be immediately returned to the producing party, and its production shall not
4 constitute a waiver of such protection, if: (i) such information appears on its face to have been
5 inadvertently produced or (ii) the producing party provides notice within 15 days of
6 discovery by the producing party of 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 search terms, or an appropriate computer- or technology-aided methodology, before
13 any such effort is undertaken. The parties shall continue to cooperate in revising the
14 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 10 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 10 additional terms or queries, if any, must be provided by
25 the requesting party within 30 days of receipt of the producing party's production or as
26 otherwise agreed.

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
2 good cause, each search term or query returning more than 100 GBs of data is presumed to be
3 overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large
4 file types, unless otherwise agreed.

5 d. The producing party shall search both non-custodial data sources and
6 ESI 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 outlined in the attached Additional Provisions for More Complex
9 Cases. Unless otherwise agreed to by the parties, files that are not easily converted to image
10 format, such as photographs, spreadsheets, databases and drawing files, should be produced
11 in native format.

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

14 5. Metadata fields. If the requesting party seeks metadata, the parties agree to
15 provide metadata as outlined in the attached Additional Provisions for More Complex Cases.

16 DATED: February 20, 2018
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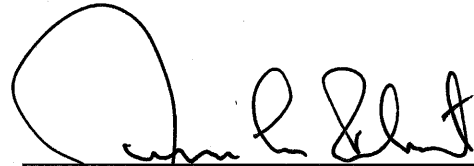
Attorneys for Defendants

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ORDER

Based on the foregoing, IT IS SO ORDERED.

Dated this 21st day of February, 2018.



The Honorable James L. Robart
UNITED STATES DISTRICT JUDGE

1 **ADDITIONAL PROVISIONS FOR MORE COMPLEX CASES**

2 In addition to the provisions set forth in the Model ESI Agreement above, parties
3 may find the following provisions appropriate and useful in addressing more complicated
4 ESI discovery issues. The complexity of ESI discovery varies from case to case and is not
5 necessarily tied to the number or size of the parties or the amount in controversy. The
6 additional provisions below are intended to assist parties in anticipating and addressing
7 early on more complicated ESI discovery issues but may not be appropriate or necessary in
8 every case. The following provisions are intended as suggested provisions from which
9 parties may pick and choose, taking into consideration the needs of the particular case.

10 1. Search methodology.

11 Upon reasonable request and if appropriate for the particular case, a party
12 shall also disclose information relating to network design, the types of databases, database
13 dictionaries, the access control list and security access logs and rights of individuals to access
14 the system and specific files and applications, the ESI document retention policy,
15 organizational chart for information systems personnel, or the backup and systems recovery
16 routines, including, but not limited to, tape rotation and destruction/overwrite policy.

17 2. Format.

18 The parties agreed to produce electronically stored information as follows:

- 19 a. General Document Image Format. The parties shall produce each electronic
20 document (other than photographs and documents produced in native format) in
21 single-page Tagged Image File Format (“TIFF”) images, and named with a
22 unique production number followed by the appropriate file extension. For
23 multi-page documents, the unitization of the document and any attachments
24 and/or affixed notes shall be maintained as they existed in the original document
25 (e.g. all email shall be produced with any corresponding attachments). The Load
26 Files, as outlined below, shall indicate the location and unitization of the TIFF
27 files.

- 1 b. Text-Searchable Documents. The parties shall produce each electronic
2 document in text-searchable format, but shall also preserve the integrity of the
3 underlying ESI (e.g. the original formatting, metadata (outlined below), and,
4 where applicable, the revision history) for each document.
- 5 c. Footer. The parties shall produce each document image to include, in a footer, a
6 sequentially ascending production number (Bates number).
- 7 d. Native Files. The parties shall produce in native format any document that is
8 not easily converted to image format, such as photographs, Excel files, Access
9 files, and drawing files. Static image placeholders containing a corresponding
10 production number (Bates number) shall be provided for cross-referencing
11 purposes within the Load Files.
- 12 e. Metadata. The parties shall provide Metadata for each electronic document.

13 “Metadata” means the following:

- 14 i. For email, “Metadata” means all information associated with the email
15 as it is kept in the usual course of business and/or as ordinarily
16 maintained, including: to, from, cc, bcc, date and time created, date and
17 time sent, date and time received, subject, folder, and custodian.
- 18 ii. For electronic documents, “Metadata” means all information associated
19 with the document as it is kept in the usual course of business and/or as
20 ordinarily maintained, including: document type, custodian(s), title,
21 author, subject, file name and size, original file path, date and time
22 created, and date and time modified.
- 23 f. Load Files. Load Files means information created for each document for purposes
24 of managing production of the document in this litigation. The parties shall provide
25 Load Files associating the foregoing metadata of each document with the TIFF and
26 text file or native format file and indicating the location and unitization of the
27 document (e.g. .DAT and .OPT files and full Native File metadata fields, and

1 extracted text). The Load Files shall also include the document's beginning and
2 ending Bates number, the beginning and ending Bates number of the entire range of
3 documents that were grouped together (family group), any confidentiality
4 designation, and any redaction associated with the document.

5 Metadata fields. *See* Format specifications above.

6 4. Hard-Copy Documents. If the parties elect to produce hard-copy documents
7 in an electronic format, the production of hard-copy documents shall include a cross-
8 reference file that indicates document breaks and sets forth the Custodian or Source
9 associated with each produced document. Hard-copy documents shall be scanned using
10 Optical Character Recognition ("OCR") technology and searchable ASCII text files shall be
11 produced (or Unicode text format if the text is in a foreign language), unless the producing
12 party can show that the cost would outweigh the usefulness of scanning (for example, when
13 the condition of the paper is not conducive to scanning and will not result in accurate or
14 reasonably useable/searchable ESI). Each file shall be named with a unique Bates Number
15 (e.g. the Unique Bates Number of the first page of the corresponding production version of
16 the document followed by its file extension).

17 5. Privilege Log Based on Metadata. The parties agree that privilege logs shall
18 be provided 30 days after the date agreed upon for final production in this matter. The
19 privilege log shall include a unique identification number for each document and the basis for
20 the claim (attorney-client privileged or work-product protection). For ESI, the privilege log
21 may be generated using available metadata, including author/recipient or to/from/cc/bcc
22 names; the subject matter or title and date created. Should the available metadata provide
23 insufficient information for the purpose of evaluation the privilege claim asserted, the
24 producing party shall include such additional information as required by the Federal Rules of
25 Civil Procedure.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America that on the 20th day of February, 2018, the document attached hereto was served on the undersigned via electronic mail:

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Executed on the 20th day of February, 2018, at Seattle, Washington.

/s/Jacob M. Downs

Jacob M. Downs, WSBA No. 37982