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HON. JAMAL N. WHITEHEAD

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

VALVE CORPORATION,

Plaintiff,

v.

LEIGH ROTHSCHILD, ROTHSCHILD  
BROADCAST DISTRIBUTION SYSTEMS,  
LLC, DISPLAY TECHNOLOGIES, LLC,  
PATENT ASSET MANAGEMENT, LLC,  
MEYLER LEGAL, PLLC, AND SAMUEL  
MEYLER,

Defendants.

Case No. 2:23-cv-1016

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

**NOTE ON MOTION CALENDAR:  
April 22, 2024**

Complaint Filed: 07/07/2023

JURY TRIAL DEMANDED

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. As provided in LCR 26(f), 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

1 responses should be reasonably targeted, clear, and as specific as possible. This agreement is  
2 intended to assist the parties in identifying relevant, responsive information that has been stored  
3 electronically and is proportional to the needs of the case. The agreement does not supplant the  
4 parties' obligations to comply with Fed. R. Civ. P. 34.

5 **B. ESI Disclosures**

6 Within 10 business days of entry of this Order, each party shall disclose:

7 1. Custodians. The 5 custodians most likely to have discoverable ESI in their  
8 possession, custody, or control. The custodians shall be identified by name, title, connection to the  
9 instant litigation, and the type of the information under the custodian's control. If a party does not  
10 have 5 custodians it reasonably believes have discoverable ESI in their possession, custody, or  
11 control, it so shall state and provide justification.

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

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

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

21 **C. ESI Discovery Procedures**

22 1. On-site inspection of electronic media. Such an inspection shall not be required  
23 absent a demonstration by the requesting party of specific need and good cause or by agreement of  
24 the parties.

25 2. Search methodology. The parties agree to use search terms for custodial data  
26 sources (including email). If the producing party elects to use search terms to locate potentially  
27 responsive ESI for non-custodial data sources, the following provisions shall apply as well. The  
28 parties shall timely confer to attempt to reach agreement on appropriate search terms and queries,

1 file type and date restrictions, data sources (including custodians), and other appropriate computer-  
2 or technology-aided methodologies, before any such effort is undertaken. The parties shall  
3 continue to cooperate in revising the appropriateness of the search methodology.

4 a. Prior to running searches:

5 i. Within 14 days of this order or within 14 days of receiving  
6 discovery requests, whichever is later, the producing party shall disclose the data sources  
7 (including custodians), search terms and queries, any file type and date restrictions, and any other  
8 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
9 information. The producing party may provide unique hit counts for each search query.

10 ii. The following provisions apply to search terms / queries of the  
11 requesting party. Focused terms and queries should be employed; broad terms or queries, such as  
12 product and company names, generally should be avoided. Within 10 business days of receiving  
13 the proposed search terms of queries from the requesting party, the producing party shall perform  
14 the test searches for the proposed search terms or queries and inform the requesting party whether  
15 it objects to any of the proposed terms or queries based, at least in part, on the results of the test  
16 searches. The parties shall then meet and confer within five business days and if the disagreement  
17 cannot be resolved, they shall submit their dispute to the Court in accordance with the Court's  
18 discovery dispute procedure. Without waiting for a ruling on the disputed search terms or queries,  
19 the producing party shall search using the non-objected to search terms or queries, if any.

20 b. The requesting party is entitled to add no more than 10 search terms or  
21 queries to those disclosed by the producing party absent a showing of good cause or agreement of  
22 the parties.

23 3. Format.

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

1           b. Unless otherwise agreed to by the parties, files that are not easily converted  
2 to image format, such as spreadsheet, database, and drawing files, will be produced in native  
3 format.

4           c. Each document image file shall be named with a unique number (Bates  
5 Number). File names should not be more than twenty characters long or contain spaces. When a  
6 text-searchable image file is produced, the producing party must preserve the integrity of the  
7 underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where applicable,  
8 the revision history.

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

11           e. The parties shall produce their information in the following format: single-  
12 page images and associated multi-page text files containing extracted text or with appropriate  
13 software load files containing all information required by the litigation support system used by the  
14 receiving party.

15           f. The full text of each electronic document shall be extracted (“Extracted  
16 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII text  
17 format (or Unicode text format if the text is in a foreign language) and shall be named with a  
18 unique Bates Number (e.g., the unique Bates Number of the first page of the corresponding  
19 production version of the document followed by its file extension).

20           4. De-duplication. The parties may de-duplicate their ESI production across custodial  
21 and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian  
22 information removed during the de-duplication process tracked in a duplicate/other custodian field  
23 in the database load file.

24           5. Email Threading. The parties may use analytics technology to identify email  
25 threads and need only produce the unique most inclusive copy and related family members and  
26 may exclude lesser inclusive copies. The parties must produce all related family members and  
27 lesser inclusive copies if they include attachments or other unique information. Upon reasonable  
28 request, the producing party will produce a less inclusive copy.

1           6.       Metadata fields. The parties agree that only the following metadata fields need be  
2 produced, and only to the extent it is reasonably accessible and non-privileged: document type;  
3 custodian and duplicate custodians (or storage location if no custodian); author/from; recipient/to,  
4 cc and bcc; title/subject; email subject; file name; file size; file extension; original file path; date  
5 and time created, sent, modified and/or received; and hash value. The list of metadata type is  
6 intended to be flexible and may be changed by agreement of the parties, particularly in light of  
7 advances and changes in technology, vendor, and business practices.

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

18       **D.     Preservation of ESI**

19           The parties acknowledge that they have a common law obligation, as expressed in Fed. R.  
20 Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the  
21 party's possession, custody, or control. With respect to preservation of ESI, the parties agree as  
22 follows:

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

27           2.       The parties will supplement their disclosures in accordance with Fed. R. Civ. P.  
28 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure

1 where that data is created after a disclosure or response is made (unless excluded under Sections  
2 (D)(3) or (E)(1)-(2)).

3 3. Absent a showing of good cause by the requesting party, the following categories  
4 of 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,  
9 and the like.
- 10 d. Data in metadata fields that are frequently updated automatically, such as  
11 last-opened dates (see also Section (E)(5)).
- 12 e. Back-up data that are duplicative of data that are more accessible elsewhere.
- 13 f. Server, system or network logs.
- 14 g. Data remaining from systems no longer in use that is unintelligible on the  
15 systems in use.
- 16 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or  
17 from mobile devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such  
18 electronic data is automatically saved in real time elsewhere (such as on a server, laptop, desktop  
19 computer, or “cloud” storage).

20 **E. Privilege**

21 1. A producing party shall create a privilege log of all documents fully withheld from  
22 production on the basis of a privilege or protection, unless otherwise agreed or excepted by this  
23 Agreement and Order. Privilege logs shall include a unique identification number for each  
24 document, a general description of the document, and the basis for the claim (attorney-client  
25 privileged or work-product protection). For ESI, the privilege log may be generated using  
26 available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title;  
27 and date created. Should the available metadata provide insufficient information for the purpose of  
28 evaluating the privilege claim asserted, the producing party shall include such additional

1 information as required by the Federal Rules of Civil Procedure. Privilege logs will be produced to  
2 all other parties no later than 30 days after delivering a production unless a later deadline is agreed  
3 to by the parties.

4 2. Redactions need not be logged so long as the basis for the redaction is clear on the  
5 redacted document.

6 3. With respect to privileged or work-product information generated after the filing of  
7 the complaint, parties are not required to include any such information in privilege logs except  
8 upon a showing of good cause or upon agreement of the parties.

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

11 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically  
12 stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall  
13 not, for the purposes of this proceeding or any other federal or state proceeding, constitute a  
14 waiver by the producing party of any privilege applicable to those documents, including the  
15 attorney-client privilege, attorney work-product protection, or any other privilege or protection  
16 recognized by law. This Order shall be interpreted to provide the maximum protection allowed by  
17 Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained  
18 herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI  
19 or information (including metadata) for relevance, responsiveness and/or segregation of privileged  
20 and/or protected information before production. Information produced in discovery that is  
21 protected as privileged or work product shall be immediately returned to the producing party.

1 DATED: April 22, 2024

Respectfully submitted,

2  
3 By: /s/ Kathleen G. Geyer

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15 DATED: April 22, 2024

Respectfully submitted,

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29 Dated this 17th day of June, 2024.



30 HON. JAMAL N. WHITEHEAD  
31 UNITED STATES DISTRICT JUDGE