

1 THE HONORABLE JOHN C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JODIE SIELOFF,

11 Plaintiff,

12 v.

13 CARBURETORS UNLIMITED INC., et al.,

14 Defendants.

NO. C22-5341-JCC-SKV

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

15  
16 The parties hereby stipulate to the following provisions regarding the discovery of  
17 electronically stored information (“ESI”) in this matter:

18 **A. General Principles**

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

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

1           **B.     ESI Disclosures**

2           Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each  
3 party shall disclose:

4           1.     Custodians. The custodians most likely to have discoverable ESI in their  
5 possession, custody, or control. The custodians shall be identified by name, title, connection to  
6 the instant litigation, and the type of the information under the custodian’s control.

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

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

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

16           **C.     ESI Discovery Procedures**

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

20           2.     Search methodology. The parties shall timely confer to attempt to reach  
21 agreement on appropriate search terms and queries, file type and date restrictions, data sources  
22 (including custodians), and other appropriate computer- or technology-aided methodologies,  
23 before any such effort is undertaken. The parties shall continue to cooperate in revising the  
24 appropriateness of the search methodology.

25           a.     Prior to running searches:

26           i.     The producing party shall disclose the data sources (including  
custodians), search terms and queries, any file type and date restrictions, and any other

1 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
2 information. The producing party may provide unique hit counts for each search query.

3           ii.       The requesting party is entitled to, within 14 days of the producing  
4 party's disclosure, add no more than 10 search terms or queries to those disclosed by the  
5 producing party absent a showing of good cause or agreement of the parties.

6           iii.       The following provisions apply to search terms / queries of the  
7 requesting party. Focused terms and queries should be employed; broad terms or queries, such  
8 as product and company names, generally should be avoided. A conjunctive combination of  
9 multiple words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as  
10 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer"  
11 or "system") broadens the search, and thus each word or phrase shall count as a separate search  
12 term unless they are variants of the same word. The producing party may identify each search  
13 term or query returning overbroad results demonstrating the overbroad results and a counter  
14 proposal correcting the overbroad search or query. A search that returns more than 250  
15 megabytes of data, excluding Microsoft PowerPoint files, audio files, and similarly large file  
16 types, is presumed to be overbroad.

17           b.       After production: Within 21 days of the producing party notifying the  
18 receiving party that it has substantially completed the production of documents responsive to a  
19 request, the responding party may request no more than 10 additional search terms or queries.  
20 The immediately preceding section (Section C(2)(a)(iii)) applies.

21           c.       Upon reasonable discovery request, a party shall disclose information  
22 relating to network design, the types of databases, database dictionaries, the access control list  
23 and security access logs and rights of individuals to access the system and specific files and  
24 applications, the ESI document retention policy, organizational chart for information systems  
25 personnel, or the backup and systems recovery routines, including, but not limited to, tape  
26 rotation and destruction/overwrite policy.

1           3.     Format.

2           a.     ESI will be produced to the requesting party with searchable text, in a  
3 format to be decided between the parties. Acceptable formats include, but are not limited to,  
4 native files, and searchable PDF.

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

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

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

16          e.     For any discoverable ESI that a party is unable to produce as a searchable  
17 PDF or in Native format, the Parties shall meet and confer on a mutually acceptable format for  
18 producing such materials.

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

23          5.     Email Threading. The parties may use analytics technology to identify email  
24 threads and need only produce the unique most inclusive copy and related family members and  
25 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce  
26 a less inclusive copy.

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

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

20 **D.     Preservation of ESI**

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

25           1.     Absent a showing of good cause by the requesting party, the parties shall not be  
26 required to modify the procedures used by them in the ordinary course of business to back-up

1 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their  
2 possession, custody, or control.

3           2.       The parties will supplement their disclosures in accordance with Fed. R. Civ. P.  
4 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure  
5 where that data is created after a disclosure or response is made (unless excluded under Sections  
6 (D)(3) or (E)(1)-(2)).

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

- 9           a.       Deleted, slack, fragmented, or other data only accessible by forensics.
- 10           b.       Random access memory (RAM), temporary files, or other ephemeral  
11 data that are difficult to preserve without disabling the operating system.
- 12           c.       On-line access data such as temporary internet files, history, cache,  
13 cookies, and the like, except to the extent such information evidences  
14 Plaintiff's work for Defendants (including but not limited to work  
15 performed on or through their website and their eBay site).
- 16           d.       Data in metadata fields that are frequently updated automatically, such  
17 as last-opened dates (see also Section (E)(5)).
- 18           e.       Back-up data that are duplicative of data that are more accessible  
19 elsewhere.
- 20           f.       Server, system or network logs.
- 21           g.       Data remaining from systems no longer in use that is unintelligible on the  
22 systems in use.
- 23           h.       Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or  
24 from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that  
25 a copy of all such electronic data is automatically saved in real time  
26 elsewhere (such as on a server, laptop, desktop computer, or "cloud"  
storage).

## 24 **E.     Privilege**

25           1.       A producing party shall create a privilege log of all documents fully withheld  
26 from production on the basis of a privilege or protection, unless otherwise agreed or excepted by  
this Agreement and Order. Privilege logs shall include a unique identification number for each

1 document and the basis for the claim (attorney-client privileged or work-product protection). For  
2 ESI, the privilege log may be generated using available metadata, including author/recipient or  
3 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata  
4 provide insufficient information for the purpose of evaluating the privilege claim asserted, the  
5 producing party shall include such additional information as required by the Federal Rules of  
6 Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after  
7 delivering a production and, in any event, no later than 30 days before the deadline for filing  
8 motions related to discovery unless an earlier deadline is agreed to by the parties.

9         2. Redactions need not be logged if the producing party reasonably believes that the  
10 basis for the redaction is clear on the redacted document. Notwithstanding, in the event the basis  
11 for a redaction is unclear to the party receiving the production, then the basis for the redaction  
12 shall be provided upon request.

13         3. Neither Plaintiff nor Defendants are required to include on any privilege logs any  
14 attorney-client privileged or work-product information generated by them or their undersigned  
15 counsel after retaining their respective undersigned counsel for this matter.

16         4. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this  
17 proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,  
18 constitute a waiver by the producing party of any privilege applicable to those documents,  
19 including the attorney-client privilege, attorney work-product protection, or any other privilege  
20 or protection recognized by law. Information produced in discovery that is protected as  
21 privileged or work product shall be immediately returned to the producing party, and its  
22 production shall not constitute a waiver of such protection.

1 RESPECTFULLY SUBMITTED AND DATED this 20<sup>th</sup> day of July, 2022.

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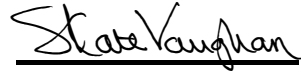
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1 **ORDER**

2 Based on the foregoing, IT IS SO ORDERED.

3 Dated this 21st day of July, 2022.

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6 S. KATE VAUGHAN  
7 United States Magistrate Judge  
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