

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

v.

**CIVIL ACTION**

**NO.        -KSM**

**[MODEL] STIPULATED ORDER GOVERNING ELECTRONIC DISCOVERY**

**AND NOW**, this    day of                   , 202 , following a preliminary pretrial conference, it is **ORDERED** as follows:

**1. Introduction.** This Stipulated Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of this Court. Nothing in this Stipulated Order is intended to alter or affect any party’s rights or obligations under any order by this Court, but shall be construed instead, wherever possible, as consistent with any order by this Court.

**2. Cooperation.** The parties are aware of the importance this Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with the Federal Rules of Civil Procedure, the Local Rules of Civil Procedure and Standing Orders of this Court, and Judge Marston’s Policies and Procedures. The parties acknowledge they have reviewed and shall reference the above-mentioned rules, orders, policies, and procedures when seeking to resolve discovery disputes about ESI during the pendency of this action.

**3. Liaison.** The parties have identified/will within **seven (7) days** identify liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection,

search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

**4. Preservation and Retention.** The parties have discussed their preservation obligations under Fed. R. Civ. P. 37(e) and agree that preservation of potentially relevant ESI will be reasonable and proportionate. The parties represent that they have taken reasonable and proportionate steps to suspend or modify regular or automatic policies or practices that would result in the loss of relevant documents. And to reduce the costs and burdens of preservation, attempt to avoid accusations of spoliation, and ensure ESI is preserved, the parties agree that:

- a. Only ESI created or received between \_\_\_\_\_ and \_\_\_\_\_ will be preserved;
- b. The parties have exchanged a list of ESI they believe should be preserved and the custodians, or general job titles of custodians, for whom they believe ESI should be preserved, e.g., “Sales Manager,” “Nurse,” and “Engineer.” The parties shall add or remove custodians as reasonably necessary;
- c. The parties have agreed/will agree on the number of custodians per party for whom ESI will be preserved;
- d. These data sources are not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced: \_\_\_\_\_;
- e. Among the sources of data the parties agree are not reasonably accessible, the parties agree not to preserve the following: \_\_\_\_\_;
- f. In addition to the agreements above, the parties agree data from these sources could contain relevant information but under the proportionality factors, should not be preserved: \_\_\_\_\_.

**5. Search.** The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not.

**6. Production Formats.** The parties agree to produce documents in PDF, TIFF, native and/or paper file formats. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process, and agree to preserve the integrity of the electronic document's contents, i.e., the original formatting of the document, its metadata and, where applicable, its revision history. On-site inspections of electronic media under Fed. R. Civ. P. 34(b) shall not be permitted absent exceptional circumstances where good cause and specific need have been demonstrated.

**7. Documents Protected from Discovery.**

- a. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this or any other proceeding.
- b. Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log.
- c. As specified in Section II.C.3 of Judge Marston's Policies and Procedures, if a party proposes to withhold material as privileged, it must produce a privilege log that is sufficiently detailed for the opposing party to determine the basis for the assertion of privilege. The parties agree that privilege logs must be produced no later than **thirty (30) days** after the party's disclosures or discovery responses are made.

**8. Timing.** When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to phase the production of ESI and that the initial production will be from the following sources and custodians: \_\_\_\_\_ . Following the initial production, the parties will continue to prioritize the order of subsequent productions. Electronic searches of documents identified as limited accessibility shall not be conducted until the initial electronic document search has been completed.

**9. Costs.** Generally, the costs of discovery shall be borne by each party. But the Court will apportion the costs of e-discovery upon a showing of good cause.

**10. Modification.** This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

**11. Protective Order or Confidentiality Agreement.** The terms of any protective order entered by the Court or confidentiality agreement agreed to by the parties are incorporated herein by reference and also govern all productions pursuant to this Stipulated Order.

**IT IS SO STIPULATED**, through Counsel of Record.

Date:

\_\_\_\_\_  
Counsel for Plaintiff(s)

\_\_\_\_\_  
Counsel for Defendant(s)

**IT IS SO ORDERED** that the foregoing agreement is **APPROVED**.

\_\_\_\_\_  
**KAREN SPENCER MARSTON, J.**