

**UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

Plaintiff(s))
)
-against-)
)
Defendant(s))
)
)
)

No.: _____ CV _____
**ESI Plan and [Proposed]
Order**

The parties in this action stipulate and agree that the following ESI Plan and [Proposed] Order shall govern the preservation, collection and production of electronically stored information and documents in this action.

(1) Description of Claims/Counterclaims/CrossClaims:

(a) Plaintiff's Estimated Monetary Damages and Description of Other Relief Sought:

(b) Defendant's Estimated Damages on any Counterclaim/Cross-Claims and Description of Other Relief Sought:

By signing below, counsel for the parties confirm that they have factored in the potential damages and relief sought in this case, as well as the resources of the parties, to develop an ESI Plan that is proportional to the needs of this case.

(2) Meet and Confer. Pursuant to Fed. R. Civ. P. 26(f), counsel are required to meet and confer regarding certain matters relating to electronic discovery before the Initial Pretrial Conference (the Rule 16 Conference). Counsel hereby certify that they have met and conferred to discuss these issues.

Date(s) of parties' meet-and-confer conference(s): _____

(3) Preservation.

(a) The parties have discussed the obligation to preserve potentially relevant electronically stored information and agree to the following scope and methods for preservation, including but not limited to: (e.g., retention of electronic data and implementation of a data preservation plan; identification of potentially relevant data; disclosure of the programs and manner in which the data is maintained; identification of computer system(s) utilized; and identification of the individual(s) responsible for data preservation, etc.)

Plaintiff(s):

Defendant(s):

- (b) State the extent to which the parties have disclosed or have agreed to disclose the dates, contents, and/or recipients of “litigation hold” communications.

(4) Collection

- (a) State the extent to which the parties have agreed on the scope of documents to be collected (e.g., custodians and files/folders, servers, databases) for search and review and agreement on methods of collection.

- (b) **Source(s) of Electronically Stored Information.** The parties anticipate that discovery may occur from one or more of the following potential source(s) of electronically stored information [e.g., email, word processing documents, spreadsheets, presentations, databases, instant messages, web sites, blogs, social media, ephemeral data, etc.]:

Plaintiff(s):

Defendant(s):

- (c) **Custodians/Databases.** The parties have agreed that data will be collected from the following custodians/databases for review:

Plaintiff(s):

Defendant(s):

(5) Search and Review

- (a) **The parties have discussed methodologies or protocols for the search and review of electronically stored information, as well as the disclosure of techniques to be used. (Some of the approaches that may be considered**

include: the use and exchange of keyword search lists, "hit reports," and/or responsiveness rates; concept search; machine learning, or other advanced analytical tools; limitations on the fields or file types to be searched; date restrictions; limitations on whether back-up, archival, legacy, or deleted electronically stored information will be searched; testing; sampling; etc.) To the extent the parties have reached agreement as to search and review methods, provide details below:

Plaintiff(s):

Defendant(s):

(6) Production

(a) Limitations on Production. The parties have discussed factors relating to the scope of production, including but not limited to: (i) number of custodians; (ii) date ranges for which potentially relevant data will be drawn; (iii) timing of productions (including phased discovery or rolling productions); (iv) prioritization of review; and (vi) electronically stored information in the custody or control of non-parties. To the extent the parties have reached agreements related to any of these factors, describe below:

Plaintiff(s):

Defendant(s):

(b) Form(s) of Production and Metadata to be produced:

(1) The parties have readied the following agreements regarding the form(s) of productions and metadata fields to be produced:

Plaintiff(s):

Defendant(s):

(2) Please specify any exceptions to the form(s) of production indicated above (e.g., word processing documents in TIFF with load files, but spreadsheets in native form):

(3) Methods to expedite review. The parties have discussed and agree to the following (e.g., de-duplication, email threading, etc.)

(4) Privileged Material.

(a) Identification. The parties have agreed to the following method(s) for the identification (e.g., form of logs, acceptability of categorical logs for certain categories of communications, production of metadata log in lieu of or in advance of more limited document by document log, categories of documents that need not be logged, disclosure of number of documents withheld pursuant to certain privileges in lieu of document by document log), and the redaction of privileged documents:

(b) Inadvertent Production / Claw-Back Agreements. Pursuant to Fed R. Civ. Proc. 26(b)(5) and F.R.E. 502(e), the parties have agreed to the following concerning the inadvertent production of privileged documents (e.g. “quick-peek” agreements, on-site examinations, non-waiver agreements or orders pursuant to F.R.E. 502(d), etc.) (the parties are referred to the Rule 502 order in Judge Willis’s form confidentiality order):

(c) The parties have discussed a 502(d) Order. Yes ; No

The provisions of any such proposed Order shall be set forth in a separate document and presented to the Court for its consideration.

(5) Cost of Production. The parties have analyzed their client’s data repositories and have estimated the costs associated with the production of electronically stored information. The factors and components underlying these costs are estimated as follows:

(a) Costs.

Plaintiff(s):

Defendant(s):

(b) Cost Allocation. The parties have considered cost-shifting or cost-sharing and have reached the following agreements, if any:

(c) Cost Savings. The parties have considered cost-saving measures, such as the use of a common electronic discovery vendor or a shared document repository, and have reached the following agreements, if any:

The preceding constitutes the agreement(s) reached between the parties to certain matters concerning electronic discovery as of this date. Counsel certify that in connection with preparation of this ESI Plan and [Proposed] Order they are sufficiently knowledgeable in matters relating to their clients' technological systems to discuss competently issues relating to electronic discovery, or have involved someone competent to address these issues on their behalf.

Party: _____ By: .

Party: _____ By: .

Party: _____ By: .

Party: _____ By: .

Party: _____ By: .

Dated: _____, 20__

SO ORDERED:

Jennifer E. Willis
United States Magistrate Judge