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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF HAWAII**
6

7) Case Number:
8) [MODEL] STIPULATED ORDER
9 Plaintiff(s),) RE: DISCOVERY OF
10 vs.) ELECTRONICALLY STORED
11) INFORMATION FOR STANDARD
12 Defendant(s).) LITIGATION
13)

14 **1. PURPOSE**

15 This Order will govern discovery of electronically stored information
16 (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this
17 Court’s Guidelines for the Discovery of Electronically Stored Information, and
18 any other applicable orders and rules.

19 **2. COOPERATION**

20 The parties are aware of the importance the Court places on cooperation,
21 and they commit to cooperate in good faith throughout the matter consistent with
22 this Court’s Guidelines for the Discovery of ESI.

23 **3. LIAISON**

24 The parties have identified liaisons to each other who are and will be
25 knowledgeable about and responsible for discussing their respective ESI. Each
26 e-discovery liaison will be, or have access to those who are, knowledgeable about
27 the technical aspects of e-discovery, including the location, nature, accessibility,
28 format, collection, search methodologies, and production of ESI in this matter.

1 The parties will rely on the liaisons, as needed, to confer about ESI and to help
2 resolve disputes without court intervention.

3 **4. PRESERVATION**

4 The parties have discussed their preservation obligations and needs and
5 agree that preservation of potentially relevant ESI will be reasonable and
6 proportionate. To reduce the costs and burdens of preservation and to ensure
7 proper ESI is preserved, the parties agree that:

- 8 a) Only ESI created or received between _____ and _____ will be
9 preserved;
- 10 b) The parties have exchanged a list of the types of ESI they believe
11 should be preserved and the custodians, or general job titles or
12 descriptions of custodians, for whom they believe ESI should be
13 preserved, e.g., “HR head,” “scientist,” and “marketing manager.” The
14 parties shall add or remove custodians as reasonably necessary;
- 15 c) The parties have agreed/will agree on the number of custodians per
16 party for whom ESI will be preserved;
- 17 d) These data sources are not reasonably accessible because of undue
18 burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from
19 these sources will be preserved but not searched, reviewed, or
20 produced: [e.g., backup media of [named] system, systems no longer in
21 use that cannot be accessed];
- 22 e) Among the sources of data the parties agree are not reasonably
23 accessible, the parties agree not to preserve the following: [e.g., backup
24 media created before _____, digital voicemail, instant messaging,
25 automatically saved versions of documents];
- 26 f) In addition to the agreements above, the parties agree data from these
27 sources (a) could contain relevant information but (b) under the
28 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

1 that is not subject to discovery.

2 **6. PRODUCTION FORMATS**

3 The parties agree to produce documents in PDF, TIFF, native
4 and/or paper or a combination thereof (check all that apply) file formats. If
5 particular documents warrant a different format, the parties will cooperate to
6 arrange for the mutually acceptable production of such documents. The parties
7 agree not to degrade the searchability of documents as part of the document
8 production process.

9 **7. PHASING**

10 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34,
11 the parties agree to phase the production of ESI and the initial production will be
12 from the following sources and custodians:

13 _____ . Following the
14 initial production, the parties will continue to prioritize the order of subsequent
15 productions.

16 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

17 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or
18 work-product-protected document, whether inadvertent or otherwise, is
19 not a waiver of privilege or protection from discovery in this case or in
20 any other federal or state proceeding. For example, the mere production
21 of privileged or work-product-protected documents in this case as part
of a mass production is not itself a waiver in this case or in any other
federal or state proceeding.

22 b) The parties have agreed upon a “quick peek” process pursuant to Fed.
23 R. Civ. P. 26(b)(5) and reserve rights to assert privilege as follows

24 _____
25 _____.

26 c) Communications involving trial counsel that post-date the filing of the
27 complaint need not be placed on a privilege log. Communications may
28 be identified on a privilege log by category, rather than individually, if
appropriate.

